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Monday, December 30, 2024

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Doc. No. AMS–SC–23–0009]

RIN 0581–AE32

Section 8e Import Inspection Fee Structure

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is revising the regulations governing the inspection and certification for fresh fruits, vegetables, and other products by amending certain fees charged for Section 8e import inspections from a per-carlot basis to a per-pound basis, reducing the fee for each additional subplot by 50 percent, and establishing a new fee calculation for lots less than a carlot. These revisions recover, as nearly as practicable, the costs of performing inspection services on imported commodities in accordance with the Agricultural Marketing Agreement Act of 1937.

DATES: Effective January 29, 2025.

FOR FURTHER INFORMATION CONTACT: The Standardization Branch, Specialty Crops Inspection Division, Specialty Crops Program, Agricultural Marketing Service, U.S. Department of Agriculture, National Training and Development Center; 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406; fax: (540) 361–1199, or via the internet at: <https://www.regulations.gov>.

SUPPLEMENTARY INFORMATION: This document amends regulations at 7 CFR part 51 issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended.

Executive Orders 12866, 13563, and 14094

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

Executive Order 13175

This rule has been reviewed under Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” which requires agencies to consider whether their rulemaking actions would have Tribal implications.

AMS has determined that this rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This action is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Background

On June 20, 2024, a proposed rulemaking was published in the **Federal Register** (89 FR 51850) providing a 60-day comment period for interested parties to comment on proposed changes to Section 8e import inspection charges and revisions to the

fee structure of the Specialty Crop Inspection Division (Division). One comment in support of the proposal was received. Prior to developing proposed revisions to the Section 8e fee structure, AMS engaged in discussions with State partners including Association of Fruit and Vegetable Inspection and Standardization Agencies (AFVISA) members and the Texas Cooperative Inspection Program (TCIP), as well as industry stakeholders. The outcome of those discussions was a positive perception of the fee changes as proposed. AMS is adopting the proposed rulemaking with no changes. Through this final rule, AMS will charge for certain Section 8e import inspections on a per-pound basis and implement additional revisions to the fee structure of the Division.

Currently, fees for all terminal market inspections, including Section 8e import inspections, are charged on a carlot basis (7 CFR 51.37). The current single carlot fee structure charges per conveyance and does not account for sampling and inspection time required for today’s larger conveyances transporting larger volumes. Under this final rule, the fees for Section 8e import inspections for lots qualifying as a full carlot (or a whole lot) or for lots less than a full carlot will no longer be calculated on a per-carlot basis. Instead, those fees will be calculated on a per-pound rate basis. The per-pound fee structure will better ensure full recovery of inspection cost by AMS while mitigating the financial impact on applicants of additional subplot fees.

The per-pound rate will be calculated by dividing the current inspection fee for a full carlot by the average weight by pound of a full carlot (40,000 pounds) (for example: the current inspection fee for a full carlot (\$254) divided by 40,000 will result in a per-pound rate of \$0.00635). The Division will use 40,000 lbs. as the appropriate measurement for calculating the per-pound rate. AMS notes that 40,000 pounds is generally recognized as the standard weight of the measurement used in USDA–AMS inspection practices when identifying a full carlot.

Additionally, AMS will have two separate subplot (or additional lot of the same product) fees: one for Section 8e sublots and one for non-Section 8e sublots. For example, under this rule, the fee for a Section 8e subplot is reduced

by 50 percent, from the current \$116 per subplot fee (the FY 2025 rate) to \$58 per subplot. All non-8e inspection fees remain unchanged by this rule. The per-pound rate for a full carlot or for lots less than a full carlot, and the 8e subplot fee, are subject to the annual updated Specialty Crops Program’s inspections fee schedule.

Under this rule, for all Section 8e import inspections, AMS will apply the current lot separation and sampling rates at 7 CFR 51.2(d)(1) through (3). To calculate inspection fees for a full carlot, AMS will multiply the current per-pound rate, using the calculation as noted above, by the total weight of the full carlot, plus any applicable subplot fees. To calculate the inspection fee for lots less than a carlot, AMS will multiply the current per-pound rate, using the per-pound rate calculation as noted above, by the total weight of the lot, with a minimum charge equivalent

to 2-hours computed at the current established hourly rate, whichever is greater, plus any subplot fee(s) as applicable. As shown in Table 1, applicants importing typical 40,000-pound loads comprising one lot will see no change in inspection fees under this new rule. Table 2 shows that larger size loads, which typically require increased sampling and inspection, will see a proportional increase in fees under this new rule. However, loads currently subject to additional subplot fees will see a significant decrease in fees per subplot under this new rule. The fee calculation changes under this final rule more accurately assess fees on inspected volume, better aligning the Division’s ability to ensure cost recovery while significantly reducing additional subplot fees charged to applicants. The following comparison of the Section 8e fee structure is based on FY 2025 fees. Any increase or decrease to Section 8e

fees will be included in the annual fee structure package in subsequent years.

Columns 1 and 2 of Table 1 compare the currently scheduled FY 2025 fee structure to the new fee structure for a standard 40,000-pound lot. As shown in row 1, column 1, the currently scheduled FY 2025 fee structure for one lot is \$254. Row 1, column 2 shows that under the new fee structure, the fee for one lot will remain at \$254 but will be expressed at the per pound rate of \$0.00635 (multiplied by 40,000 pounds).

Column 1 (rows 2 through 5) shows that without the new fee structure, the inspection fee for each additional 40,000-pound increases by \$116. Column 2 shows that with the new fee, the incremental cost per additional lot will be cut in half to \$58. Column 3 shows the cost savings for additional lots.

TABLE 1—SCI SEC. 8e INSPECTION FEES FOR STANDARD 40,000 POUND LOT: COMPARISON OF FY 2025 FEE TO NEW FEE STRUCTURE
[Showing reduced cost for additional lots]

Number of lots	FY 2025 fee	New fee ¹	Reduced cost to importer applicant
	(1)	(2)	(3)
1	\$254	\$254	\$0.
2	\$370	\$297	\$58.
3	\$486	\$355	\$116.
4	\$602	\$413	\$174.
5	\$718	\$471	\$232.
Each additional subplot	Plus \$116	Plus \$58	\$58 savings per additional subplot.

¹ The fee for one standard lot under this rule is \$254, unchanged from the FY 2025 fee, but will be expressed as the per-pound equivalent of \$0.00605. (\$254 inspection cost per 40,000-pound lot divided by 40,000 pounds equals \$0.00635 per pound). Each additional lot will cost an additional \$58, a 50% reduction from the FY 2025 incremental cost of \$116.

Table 2 shows the new fee structure for alternative lot sizes under this final rule. Row 2 shows again that the 40,000-pound lot fee will remain \$254. Row 3 shows that for a 50,000-pound lot, the \$317.50 inspection fee will be

determined by multiplying the proposed per-pound rate (\$0.00635) by 50,000 pounds. Row 1 shows that for any lot weighing less than 40,000 pounds, the applicable fee will be a 2-hour minimum charge at the currently

established FY 2025 hourly inspection rate of \$123 (\$123 multiplied by 2 equals \$246). Any increase or decrease to the hourly inspection rates will be included in the annual fee structure package in subsequent years.

TABLE 2—SCI 8e INSPECTION FEES FOR ALTERNATIVE LOT SIZES
[Proposed inspection rate per pound]

	Alternative lot sizes	Pounds per lot	Inspection fee per lot ^{1 2}
1	Less than full (standard) lot	(¹)	\$246.00 minimum.
2	Standard Lot	40,000	\$254.00.
3	Lot 25% larger than standard	50,000	\$317.50.

¹ For lots less than a standard lot, the fees are computed by multiplying pounds per lot by rate per pound (\$0.00635) with a minimum charge equivalent to 2-hours applied at the current established FY 2025 hourly inspection rate of \$123.

² Inspection fee per lot for standard lot or larger [(2) and (3)] are computed by multiplying pounds per lot by rate per pound (\$0.00635).

Final Regulatory Flexibility Analysis

Pursuant to the requirement set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS provides this final regulatory flexibility analysis. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject

to such actions in order that small businesses will not be unduly or disproportionately burdened.

The action described herein is being taken for several reasons, including that additional user fee revenues are needed to cover the costs of (1) providing current program operations and services; (2) improving the timeliness in

which inspection services are provided; and (3) improving the work environment. AMS regularly reviews its user-fee financed programs to determine if the fees are adequate.

This rule revises the regulations governing the inspection and certification for fresh fruits, vegetables, and other products by increasing certain

fees charged for Section 8e import inspections on a per-pound basis. These revisions recover, as nearly as practicable, the costs of performing inspection services on imported commodities in accordance with the Agricultural Marketing Agreement Act of 1937.

Since the inspection fees to be charged under this final rule's new rate structure are proportional to size of lots, smaller businesses (importers) are not unduly or disproportionately burdened.

This new fee structure, for imports subject to Section 8e grading requirements, balances cost increases (for lots larger than 40,000 pounds) with cost decreases for additional sublots. The fee for a standard 40,000-pound lot remains unchanged.

Tables 3 and 4 show the impact on the nine Section 8e commodities affected by this rule, using data from USDA's Compliance Enforcement Management System (CEMS) database, which lists the weight of each lot

inspected over the three-year period FY 2021 through FY 2023. Table 3 puts the number of inspections into two categories: column 1 shows the number of lots that weighed 40,000 pounds or less, and column 2 shows the number of lots that weighed more than 40,000 pounds. Column 3 presents the sum of columns 1 and 2. The last row of column 3 shows that the total number of inspections for the three-year period was 611,475.

TABLE 3—8e COMMODITIES IMPORTED: NUMBER OF INSPECTIONS, CATEGORIZED BY SIZE OF LOT INSPECTED, USING 40,000-POUND STANDARD LOT SIZE THRESHOLD
[FY2021–FY2023¹]

	≤40,000 lbs. per lot	>40,000 lbs. per lot	Total inspections	Pct of total inspections (percent)	Cumulative percent
	1	2	3	4	5
Avocados	395,812	64,139	459,951	75.2	75.2
Onions	17,026	51,918	68,944	11.3	86.5
Grapes	35,434	5,445	40,879	6.7	93.2
Oranges	9,955	8,219	18,174	3.0	96.2
Kiwifruit	8,208	7,358	15,566	2.5	98.7
Tomatoes	3,925	33	3,958	0.6	99.3
Grapefruit	2,314	1,051	3,365	0.6	99.90
Filberts	240	109	349	0.1	99.95
Potatoes	193	96	289	0.05	100.0
9 commodities	473,107	138,368	611,475		

¹ Source: Compliance Enforcement Management System (CEMS) database, Market Development Division, Specialty Crops Program, Agricultural Marketing Service, USDA.

TABLE 4—8e COMMODITIES IMPORTED: PERCENT OF INSPECTIONS, CATEGORIZED BY SIZE OF LOT INSPECTED, USING 40,000-POUND STANDARD LOT SIZE THRESHOLD
[FY2021–FY2023]

	≤40,000 lbs. per lot (%)	>40,000 lbs. per lot (%)
Avocados	86	14
Onions	25	75
Grapes	87	13
Oranges	55	45
Kiwifruit	53	47
Tomatoes	99	1
Grapefruit	69	31
Filberts	69	31
Potatoes	67	33
9 commodities	77	23

Table 4 shows that for all nine commodities combined, 77 percent of the inspections would have had equal or lower fees if charged with the new fee structure. Twenty-three percent of the lots would have been subject to higher fees. Looking at individual years (not shown), the percentage of inspections representing lots weighing 40,000 pounds or less for FY 2021, FY 2022 and FY 2023 was 73, 75, and 80 percent, respectively. Therefore, for a large majority of annual inspections, the cost per individual inspection would have

been the same or lower than with the previous fee system in place.

The impacts of the revised fee structure vary significantly by commodity. Table 4 shows that for six of the nine commodities, at least two thirds of the lots inspected would have had equal or lower fees (*i.e.*, lots weighing 40,000 pounds or less—avocados, grapes, tomatoes, grapefruit, filberts, potatoes) under the revised fee structure. One commodity, onions, would have had the opposite result, with 25 percent of lots seeing lower

fees, and 75 percent higher. This variation would be offset by the onion industry's prevalence of additional sublots in inspections. See Table 1, "SCI Sec. 8e Inspection Fees for Standard 40,000 Pound Lot: Comparison of FY 2025 Fee to New Fee Structure, Showing Reduced Cost for Additional Lots." For oranges and kiwifruit, the results were about even; slightly more than 50 percent of the lots weighed equal to or less than 40,000 pounds and, therefore, would have been subject to lower fees.

This analysis assumes that each lot is sampled and inspected independently. This may overstate the extent of higher fees because under the new fee structure the cost declines for each additional subplot, as shown in Table 1. To the extent that the lots for which fees were charged in the CEMS database are actually sublots associated with an inspected lot from a particular importer, the value in Table 4, column (2) (*i.e.*, for lots more than 40,000 pounds) overstates the percentage of lots that would have been subject to a higher fee.

It is also important to note that certain commodities represented larger proportions of the lots inspected, as shown in columns (4) and (5) of Table 3. Just over 75 percent of the inspected lots were for avocados. Adding the next four commodities in terms of the magnitude of total inspections (onions, grapes, oranges, and kiwifruit) raises the cumulative percentage up to nearly 99 percent. Four commodities (tomatoes, grapefruit, filbert, and potatoes) represented about 1.3 percent of the total number of lots inspected.

This analysis shows that the fee impacts vary by commodity, with smaller fees per inspected lot expected for eight of the nine commodities, suggesting that for a large majority of annual inspections the cost per individual inspection would be the same or lower than with the fee system that would otherwise be in place in FY 2025 and future years.

Comments

AMS received one comment from the Texas International Produce Association (TIPA) in full support of implementing this rule, noting the changes not only help prevent increased food prices but also reflects a modernization of the fresh produce industry.

USDA has determined that this rule is consistent with and will effectuate the purpose of the Agricultural Marketing Act of 1946. Therefore, AMS is amending certain fees charged for Section 8e import inspections from a per-carlot basis to a per-pound basis, reducing the fee for each additional subplot by 50 percent, and establishing a new fee calculation for lots less than a carlot.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

For reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 51 as follows:

PART 51—FRESH FRUITS, VEGETABLES, AND OTHER PRODUCTS (INSPECTION, CERTIFICATION, AND STANDARDS)

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 2. Revise § 51.37 to read as follows:

§ 51.37 Charges for fees, rates, and expenses.

For each carlot of product inspected, a fee or rate determined in accordance with §§ 51.38, 51.39, and 51.40, and expenses determined in accordance with § 51.41, shall be paid by the applicant.

§§ 51.39 through 51.62 [Redesignated as §§ 51.40 through 51.63]

■ 3. Redesignate §§ 51.39 through 51.62 as §§ 51.40 through 51.63 as follows:

Old section	New section
Schedule of Fees and Charges at Destination Markets (undesignated center heading)	
§ 51.37 (unchanged)	§ 51.37 (unchanged).
§ 51.38 (unchanged)	§ 51.38 (unchanged).
§ 51.39	§ 51.40.
§ 51.40	§ 51.41.
§ 51.41	§ 51.42.
§ 51.42	§ 51.43.
§ 51.43	§ 51.44.
§ 51.44	§ 51.45.

Schedule of Fees and Charges at Shipping Point Areas (undesignated center heading)

§ 51.45	§ 51.46.

Miscellaneous (undesignated center heading)

§ 51.46	§ 51.47.
§ 51.47	§ 51.48.
§ 51.48	§ 51.49.
§ 51.49	§ 51.50.
§ 51.50	§ 51.51.
§ 51.51	§ 51.52.
§ 51.52	§ 51.53.

Requirements for Plants Operating Under Continuous Inspection on a Contract Basis (undesignated center heading)

§ 51.53	§ 51.54.
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§ 51.55	§ 51.56.
§ 51.56	§ 51.57.
§ 51.57	§ 51.58.
§ 51.58	§ 51.59.
§ 51.59	§ 51.60.
§ 51.60	§ 51.61.
§ 51.61	§ 51.62.
§ 51.62	§ 51.63.

■ 4. Add new § 51.39 to read as follows:

§ 51.39 Charges for fees and rates for 8e import inspection.

(a) *8e import inspection fees charged on a per-pound basis.*—(1) *Establishing the per-pound inspection rate.* To compute the per-pound inspection rate, divide the current per-lot inspection fee for a full carlot (whole lot) by 40,000 (the generally accepted weight by pound of a full carlot).

(2) *Applying the per-pound rate.* The per-pound inspection rate shall be applied to the following lot sizes as follows:

(i) For a full carlot, multiply the per-pound rate by the total weight of the full carlot plus any applicable fees for additional lots of the same product as described in paragraph (b) of this section.

(ii) For lots less than a full carlot, multiply the per-pound rate by the total weight of the lot with a minimum fee equivalent to a 2-hour charge computed at the current established hourly rate, whichever is greater, plus any applicable fees for additional lots of the same product as described in paragraph (b) of this section.

(b) *8e import inspection fees charged on additional lots of the same product.* To compute the inspection fee for additional lots of the same product, multiply each additional lot by one-half of the current non-8e additional lot of the same product inspection fee.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024–31144 Filed 12–27–24; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 20, 26, 50, 51, 55, 73, 140, 170, and 171

[NRC–2011–0087]

RIN 3150–AI96

Non-Power Production or Utilization Facility License Renewal

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule and guidance; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations that govern the license renewal process for certain production or utilization facilities. In this final rule, the NRC collectively refers to these facilities as non-power production or utilization facilities (NPUFs). This final

rule revises the definitions of “non-power reactor,” “research reactor,” and “testing facility.” This final rule also eliminates license terms for licenses for facilities used for medical therapy or research and development, other than testing facilities; these licenses are issued under the authority of Sections 104a or 104c of the Atomic Energy Act of 1954, as amended (AEA). This final rule defines the license renewal process for licenses issued to testing facilities under the authority of Section 104c of the AEA or commercial or industrial NPUFs (including testing facilities) under the authority of Section 103 of the AEA. This final rule requires all NPUF licensees to submit to the NRC final safety analysis report (FSAR) updates at intervals not to exceed 5 years. In addition, this final rule provides an accident dose criterion of 1 Roentgen equivalent man (rem) (0.01 sievert [Sv]) total effective dose equivalent (TEDE) for NPUFs other than testing facilities. The NRC is also issuing final implementation guidance for this final rule.

DATES: This final rule is effective on January 29, 2025.

ADDRESSES: Please refer to Docket ID NRC–2011–0087 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- **Federal Rulemaking website:** Go to <https://www.regulations.gov> and search for Docket ID NRC–2011–0087. Address questions about NRC dockets to Helen Chang; telephone: 301–415–3228; email: Helen.Chang@nrc.gov. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC’s Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to pdr.resource@nrc.gov. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the “Availability of Documents” section.

- **NRC’s PDR:** The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please

send an email to PDR.Resource@nrc.gov or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Robert Beall, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–3874, email: Robert.Beall@nrc.gov and Duane Hardesty, Office of Nuclear Reactor Regulation, telephone: 301–415–3724, email: Duane.Hardesty@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Executive Summary

A. Need for the Regulatory Action

In April 2008, the Commission issued staff requirements memorandum (SRM) M080317B, “Briefing on State of NRC Technical Programs,” which directed the staff to “examine the license renewal process for non-power reactors and identify and implement efficiencies to streamline this process while ensuring that adequate protection of public health and safety are maintained.” The need for improvement in the reliability and efficiency of the license renewal process was primarily driven by four issues: (1) historic NRC priorities and emergent issues; (2) limited licensee resources; (3) inconsistent existing license infrastructure; and (4) regulatory requirements and the broad scope of the renewal process.

B. Major Provisions

The major provisions of this final rule include changes that:

- Revise the definitions for *Non-power reactor*, *Testing facility*, and *Research reactor*;
- Eliminate license terms for medical therapy or research and development facilities, other than testing facilities, licensed under paragraphs (a) or (c) of § 50.21 of title 10 of the *Code of Federal Regulations* (10 CFR);
- Define the license renewal process for all commercial or industrial NPUFs (including testing facilities) licensed under § 50.22 and testing facilities licensed under § 50.21(c);
- Require all NPUF licensees to submit an updated FSAR and subsequent FSAR updates to the NRC at intervals not to exceed 5 years;
- Amend the current timely renewal provision under § 2.109, allowing NPUFs subject to license renewal to continue operating under an existing license past its expiration date if the licensee submits a license renewal application at least 2 years (rather than

30 days) before the current license expiration date;

- Provide an accident dose criterion of 1 rem (0.01 Sv) TEDE for NPUFs other than testing facilities;
 - Extend the applicability of § 50.59 to NPUF licensees regardless of their decommissioning status;
 - Clarify an NPUF applicant’s requirements for meeting the existing provisions of § 51.45 for submitting an environmental report; and
 - Eliminate the requirement for NPUF licensees to submit financial qualification information with license renewal applications under § 50.33(f)(2).
- Concurrent with this final rule, the NRC is issuing Regulatory Guide (RG) 2.7, Revision 0, “Preparation of Updated Final Safety Analysis Reports for Non-Power Production or Utilization Facilities.”

C. Costs and Benefits

The NRC prepared a regulatory analysis to determine the expected quantitative costs and benefits of this final rule and the final implementing guidance, as well as qualitative factors to be considered in the NRC’s rulemaking decision. Based on the analysis, the NRC concluded that this final rule will result in net savings to licensees and the NRC. The analysis examined the benefits and costs of the final rule requirements and the final implementing guidance compared to the baseline for the current license renewal process (*i.e.*, the no-action alternative). Compared to the no-action baseline, the NRC estimates that total net benefits to NPUFs (*i.e.*, cost savings minus costs) will be \$5.5 million (\$3.9 million using a 3-percent discount rate or \$2.6 million using a 7-percent discount rate) over a 20-year period. The average NPUF will receive net benefits ranging from approximately \$78,000 to \$166,000 over a 20-year period. The NRC will receive total net benefits of \$12 million (\$8.6 million using a 3-percent discount rate or \$5.9 million using a 7-percent discount rate) over a 20-year period.

The regulatory analysis also considered, in a qualitative fashion, additional benefits of this final rule and the final implementing guidance associated with regulatory efficiency, protection of public health and safety, promotion of the common defense and security, and protection of the environment.

The regulatory analysis concluded that this final rule and the final implementing guidance are justified because of the cost savings received by both licensees and the NRC while public health and safety are maintained. A detailed discussion of the

methodology and complete results is presented in the “Regulatory Analysis” section of this document.

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I. Background

The NRC licenses NPUFs under the authority granted in Sections 103 and 104 of the AEA. Section 103 of the AEA applies to commercial and industrial facilities, and Sections 104a and 104c of the AEA apply to facilities used for medical therapy or research and development activities, respectively. The section of the AEA that provides licensing authority for the NRC corresponds directly to the class of license issued to a facility (*e.g.*, Section 104a of the AEA authorizes the issuance of a “class 104a” license). Furthermore, Sections 104a and 104c of the AEA require that the Commission impose the minimum amount of regulation needed to promote the common defense and security; protect the health and safety of the public; and permit, under Section 104a, the widest amount of effective medical therapy possible and, under Section 104c, the conduct of widespread and diverse research and development.

The NRC regulates 34 NPUFs, of which 29 are research reactors or testing facilities currently licensed to operate. The NRC has issued construction permits for two of the five remaining NPUFs (SHINE Medical Technologies, Inc. (SHINE) and the Hermes-Kairos Testing facility),¹ and the other three licensees are in the process of decommissioning their facilities (*i.e.*, removing a facility or site safely from service and reducing residual radioactivity to a level that permits release of the site for unrestricted use or use under restricted conditions). Most NPUFs are located at universities or

colleges throughout the United States. The NRC regulates one operating testing facility at the National Institute of Standards and Technology.

A. License Terms

The AEA dictates an initial license term of no more than 40 years for class 103 facilities, which the NRC licenses under § 50.22, but the AEA does not specify license terms for class 104a or 104c facilities, which are licensed under § 50.21(a) or (c). The regulation that implements this statutory authority, § 50.51(a), currently specifies that the NRC may grant an initial license for NPUFs for no longer than a 40-year license term. If the NRC initially issues a license for a shorter period, then it may renew the license by amendment for a maximum aggregate period not to exceed 40 years. An NPUF license is usually renewed for a term of 20 years. If the requested renewal would extend the license beyond 40 years from the date of issuance, the original license may not be renewed by amendment. Rather, the NRC must issue a renewed license that supersedes the initial license.

Any application for license renewal must include an FSAR describing: (1) changes to the facility or facility operations resulting from new or amended regulatory requirements, and (2) changes and effects of changes to the facility or procedures and new experiments. The FSAR must include the elements specified in § 50.34. The NRC has guidance for preparing the FSAR in NUREG-1537, Part 1, “Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors: Format and Content.” The NRC reviews NPUF initial and renewal license applications using NUREG-1537, Part 2, “Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors: Standard Review Plan and Acceptance Criteria.”

As a license term nears its end, a licensee must submit a license renewal application to continue operations. A “timely renewal” provision exists in § 2.109(a) to enable operations to continue beyond the license term during the NRC’s review of a license renewal application. If the licensee files an application for a renewal or for a new license for the authorized activity at least 30 days before the expiration of an existing license, the existing license will not be deemed to have expired until the application has been finally determined.

B. Need for Improvement in the License Renewal Process

In 2008, the NRC recognized a need to identify and implement efficiencies in the NPUF license renewal process while ensuring that adequate protection of public health and safety is maintained. Four issues primarily drove this effort to improve the reliability and efficiency of the process.

1. Historic NRC Priorities and Emergent Issues

Under the Atomic Energy Commission (AEC), the NRC’s predecessor agency, NPUFs were some of the first reactors licensed and the first reactors to undergo license renewal. Most of these reactors were initially licensed in the late 1950s and 1960s for terms that varied from 10 to 40 years. The AEC started renewing these licenses in the 1960s. License renewal was primarily an administrative activity until 1976, when the NRC decided to also conduct a technical review equivalent to the initial licensing of the facility. The licenses that had been issued with initial 20-year terms were due for renewal during this timeframe. As the NRC started developing methods for conducting these technical reviews, an accident occurred at Unit 2 of the Three Mile Island (TMI) nuclear power plant.

The NRC’s focus on post-TMI activities resulted in a suspension of NPUF license renewal activities for several years. After license renewal activities were reinitiated, the NRC issued numerous renewals in a short period of time, primarily by relying on generic evaluations. These 20-year renewals expired starting in the late 1990s. The original licenses issued with 40-year terms also started expiring in the late 1990s, creating a new surge of license renewal applications.

As a result of the NRC’s response to the events of September 11, 2001, the NRC deferred work on a number of NPUF license renewal applications. In addition, the NRC’s NPUF licensing activities focused on implementing § 50.64, “Limitations on the use of highly enriched uranium (HEU) in domestic non-power reactors,” to convert non-power reactors to the use of low-enriched uranium. Therefore, reviews of these license renewal applications extended for many years. In all cases, the timely renewal provision enabled these NPUFs to continue operating during the NRC’s review period.

2. Limited Licensee Resources

Many NPUF licensees have limited staff resources available for licensing

¹ On May 18, 2018, the NRC issued a construction permit for Northwest Medical Isotopes, LLC. That construction permit was terminated on July 11, 2022.

support. The number of NPUF staff can range from one part-time employee for some low-power facilities to four or five full-time employees for higher-power facilities. The NPUF staff that perform the licensing function typically do so in addition to their normal organizational responsibilities, which often results in delays in the license renewal process, particularly in responding to the NRC's requests for additional information.

3. Inconsistent Existing License Infrastructure

The NPUFs licensed under § 50.21(a) or (c) are primarily at college and university sites. Staff turnover and limited staffing resources at an NPUF often contribute to a lack of historical knowledge of the development of the licensee's FSAR and changes to the FSAR. During the most recent round of license renewals, the NRC found that some of the submitted FSARs did not adequately reflect the current licensing bases for the respective licensees. Because the only required FSAR submission comes at license renewal, which can be at 20-year or greater intervals, submitted FSARs often contain varying levels of completeness and accuracy. Consequently, the NRC has issued requests for additional information to obtain missing information, seek clarifications and corrections, and document the current licensing basis.

4. Regulatory Requirements and Broad Scope of the Renewal Process

For power reactors, license renewal reviews have a defined scope, primarily focused on aging management, as described in 10 CFR part 54. For NPUFs, there are no explicit requirements on the scope of issues to be addressed during license renewal. Therefore, the scope of review for license renewal was initially treated the same as that for an original license.

In response to Commission direction in SRM-SECY-91-061, "Separation of Non-Reactor and Non-Power Reactor Licensing Activities from Power Reactor Licensing Activities in 10 CFR part 50," the NRC developed licensing guidance for the first time since many NPUF applicants were originally licensed. In that guidance (NUREG-1537, Parts 1 and 2), the NRC provides detailed descriptions of the scope, content, and format of FSARs and the NRC's process for reviewing initial license applications and license renewal applications. However, the first license renewals using NUREG-1537 had varying levels of consistency and did not propose an acceptable alternative to the guidance. This resulted in the NRC sending

requests for additional information and some of the issues already described in Section I.B. of this document.

C. NRC Response to These Issues

As a result of these issues, a backlog of NPUF license renewal applications developed and persisted. The Commission and other stakeholders voiced concerns not only about the backlog, but also about the burdensome nature of the license renewal process itself. The Commission issued SRM-M080317B, "Briefing on State of NRC Technical Programs," in April 2008, directing the staff to "examine the license renewal process for non-power reactors to identify and implement efficiencies to streamline this process while ensuring that adequate protection of public health and safety are maintained."

In October 2008, the staff provided the Commission with plans to improve the review process for NPUF license renewal applications in SECY-08-0161, "Review of Research and Test Reactor License Renewal Applications." In SECY-08-0161, the staff summarized a public meeting held with stakeholders to gather feedback on the current process, ways the process could be improved, and options for improving the review process. The staff provided a detailed description of five options for streamlining the NPUF license renewal process:

- An "alternate safety review approach" that would limit the review of license renewal applications to changes to the facility since the previous license review occurred. Safe operation of the facility would be assured by the review of changes to the facility, compliance with the current regulations, the previous NRC analysis, and the NRC's inspection process.
- A "graded approach" that would base the areas of review on the relative risk associated with the facility applying for a renewed license. The graded approach would ensure safe operation by properly identifying the inherent risk associated with the facility and ensuring those risks are minimized.
- A "generic analysis approach" that would require the NRC to review and approve a generic reactor design similar to the NRC topical report process. The NRC would rely on the previously approved generic analysis and would not reanalyze those items.
- A "generic siting analysis approach" that would require the NRC to develop a generic communication that contains information related to each of the licensee sites. The licensees could then reference this generic

communication in their license renewal submittals.

- An "extended license term approach" would permit extended or indefinite terms for NPUF licenses. The staff described this approach in SECY-08-0161:

In order to permit an extended term (including possibly an indefinite term), the staff would have to explain why it is appropriate and, more importantly, demonstrate that there are no aging concerns.

Environmental conditions such as temperature, pressure and radiation levels in most [research and test reactors] are not significant. With surveillance, maintenance and repair, [research and test reactors] can have indefinite lives.

For a facility to be eligible for an extended license term, the staff would complete a detailed renewal with a licensing basis reviewed against NUREG-1537. To maintain the licensing basis over time, the staff would propose a license condition or regulation that requires licensees to revise their [safety analysis reports] on a periodic basis such as every 2 years. The inspection program would be enhanced to place additional focus on surveillance, maintenance and repair, and changes to the facility made under 10 CFR 50.59. The licensee would still be required to adhere to changes in the regulations.

The Commission issued SRM-SECY-08-0161, "Review of Research and Test Reactor License Renewal Applications," in March 2009. The Commission directed the staff to: (1) immediately implement short-term program initiatives to address the backlog of license renewal applications; (2) work with the regulated community and other stakeholders to develop an interim streamlining process to focus the review on the most safety-significant aspects of the license renewal application; and (3) streamline the review process to ensure that it becomes more efficient and consistent, thereby reducing uncertainties in the process while ensuring compliance with regulatory requirements.

As part of its direction to develop the program initiatives, the Commission instructed the staff to implement a graded approach commensurate with the risk posed by each facility, incorporate elements of the alternate safety review approach, and use risk insights from security assessments to inform the dose threshold. In addition, the Commission told the staff to develop an interim staff guidance (ISG) document that employs the graded approach to streamline the license renewal application process.

Lastly, the Commission instructed the staff to submit a long-term plan for an enhanced NPUF license renewal process. The Commission directed that the plan include development of a basis

for redefining the scope of the process as well as a recommendation regarding the need for rulemaking and guidance development.

The staff responded to the Commission's direction by implementing short-term actions to address the license renewal application backlog and developing ISG–2009–001, “Interim Staff Guidance on the Streamlined Review Process for License Renewal for Research Reactors,” hereafter referred to as the ISG. The ISG called for employing a graded approach to streamline the license renewal application process. Since October 2009, the NRC has reviewed license renewal applications according to the streamlined review process presented in the ISG. The ISG identified the three most safety-significant sections of an FSAR: reactor design and operation, accident analysis, and technical specifications. The NRC also has reviewed licensees' radiation protection and waste management programs and compliance with financial requirements. The ISG divided facilities into two groups: (1) those facilities with licensed power of less than 2 megawatts thermal (MW(t)), which would undergo a limited review focusing on the safety-significant aspects, considering the decisions and precedents set by past NRC reviews; and (2) those facilities with licensed power of 2 MW(t) and greater, which would undergo a full review using NUREG–1537, Part 2. The process outlined in the ISG facilitated the NRC's review of license renewal applications and enabled the NRC to review applications in a timelier manner.

In addition, the staff issued SECY–09–0095, “Long-Term Plan for Enhancing the Research and Test Reactor License Renewal Process and Status of the Development and Use of the Interim Staff Guidance,” in June 2009, to provide the Commission with a long-term plan for enhancing the NPUF license renewal process. In the long-term plan, the staff proposed to develop a regulatory basis to support rulemaking to streamline and enhance the NPUF license renewal process. The Commission issued SRM–M090811, “Briefing on Research and Test Reactor (RTR) Challenges,” in August 2009, which directed the staff to accelerate the rulemaking to establish a more efficient, effective, and focused regulatory framework.

D. 2012 Regulatory Basis

In August 2012, the staff completed the “Non-Power Reactor (NPR) License Renewal Rulemaking: Regulatory Basis

Document,” hereafter referred to as the regulatory basis.²

The NRC, in the regulatory basis, analyzed the NPUF license renewal process's technical, legal, and policy issues; effects on public health, safety, and security; effects on licensees; effects on the NRC; and stakeholder feedback. The NRC also considered lessons learned from implementation of the streamlined review process outlined in the ISG. The NRC concluded that a rulemaking was warranted. A public meeting was held on August 7, 2014, to discuss the regulatory basis and rulemaking options. The NRC held another public meeting on October 7, 2015, to afford stakeholders the opportunity to provide feedback and comment on preliminary proposed rule concepts. Participant comments and questions focused on the potential effects of eliminating license terms, the scope of review under the new process, and how the amended regulation would work compared to the existing license renewal process. The NRC considered the comments when developing the proposed rule.

E. 2017 Proposed Rule

On March 30, 2017, the NRC published the proposed rule, “Non-Power Production or Utilization Facility License Renewal” in the **Federal Register** (82 FR 15643). The NRC proposed to eliminate license terms for facilities used for medical therapy or research and development licensed under the authority of Sections 104a or 104c of the AEA, other than for testing facilities. Other proposed amendments addressed the license renewal process for licenses issued to testing facilities under the authority of Section 104c of the AEA and licenses issued to non-power commercial facilities under the authority of Section 103 of the AEA (including testing facilities). The proposed rule also included a provision to require all NPUF licensees to submit FSAR updates to the NRC every 5 years. The NRC also proposed an accident dose criterion of 1 rem (0.01 Sv) TEDE for NPUFs other than testing facilities. The NRC requested public feedback on specific questions, including the criteria, other than power level, to use

² At the time of publication of the regulatory basis, the rulemaking title was “Non-Power Reactor (NPR) License Renewal Rulemaking.” During the development of the proposed rule, the scope of the rulemaking expanded to include licenses for certain facilities that are not reactors, based upon recent license applicants (e.g., for medical radioisotope irradiation and processing facilities). In order to encompass all affected entities, the NRC has changed the title of the rulemaking to “Non-power Production or Utilization Facility License Renewal.”

when determining the applicability of requirements for low-risk commercial production or utilization facilities and low-risk testing facilities. The proposed rule provided a public comment period of 75 days. The NRC received 16 comment submissions on the proposed rule and draft implementation guidance, as discussed further in Section IV of this document. The NRC considered those comments in developing this final rule.

II. Discussion

This final rule: (1) revises the definitions for *Non-power reactor*, *Research reactor*, and *Testing facility*; (2) eliminates license terms for NPUFs licensed under § 50.21(a) or (c), other than testing facilities; (3) defines the license renewal process for NPUFs (including testing facilities) licensed under § 50.22 and testing facilities licensed under § 50.21(c); (4) requires all NPUF licensees to submit to the NRC an updated FSAR and subsequent FSAR updates at intervals not to exceed 5 years; (5) amends the current timely renewal provision under § 2.109, allowing an NPUF subject to license renewal to continue operating under an existing license past its expiration date if the licensee submits a license renewal application at least 2 years before the current license expiration date; (6) provides an accident dose criterion of 1 rem (0.01 Sv) TEDE for NPUFs other than testing facilities; (7) extends the applicability of § 50.59 to NPUFs regardless of their decommissioning status; (8) clarifies the requirements for NPUF license applicants to meet the existing provisions of § 51.45; and (9) eliminates the requirement to submit financial qualification information with license renewal applications under § 50.33(f)(2).

This final rule enhances the effectiveness and efficiency of the NPUF license renewal process, consistent with the AEA's criterion for imposing minimum regulation on facilities of these types that is needed to promote the common defense and security and protect the health and safety of the public. Each of the nine main objectives of this final rule are discussed in detail in this section.

1. Revises the definitions for *Non-power reactor*, *Research reactor*, and *Testing facility*.

This final rule addresses inconsistencies in definitions and terminology throughout 10 CFR chapter I to improve clarity in determining the applicability of the regulations associated with NPUFs as defined in § 50.2.

The NRC received public comments on the proposed definition of *Non-*

power production or utilization facility. In reviewing the comments, the NRC identified that the proposed definition for *Non-power production or utilization facility* was too broad for defining production facilities that are NPUFs. Previously, the definition excluded fuel reprocessing plants, but did not exclude production facilities designed or used primarily for the formation of plutonium or uranium-233 or designed or used for the separation of the isotopes of plutonium. Ultimately, the NRC did not revise the definition for *Non-power production or utilization facility* because an appropriate definition to exclude all production facilities as defined under paragraphs (1) and (2) of the definition of *Production facility* in § 50.2 was added by the rule on Emergency Preparedness for Small Modular Reactors and Other New Technologies (88 FR 80050; November 16, 2023). Production facilities of the type defined under paragraph (1) of the definition of *Production facility* in § 50.2 have been owned by the U.S. Department of Energy to produce plutonium or uranium-233 and have not been NRC licensees. If such a facility were to be licensed by the NRC, the facility's particular use of special nuclear material would require the Commission to determine the licensing path for the facility. Production facilities, as defined under paragraph (2) of the definition of *Production facility* in § 50.2, are not NPUFs because these facilities have a higher potential of radiological risk to the environment and the public than NPUFs (e.g., an inventory of high-level liquid radioactive wastes). This higher risk is evidenced by the applicability to these facilities of NRC regulations in appendix B to 10 CFR part 50, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants" and appendix F to 10 CFR part 50, "Policy Relating to the Siting of Fuel Reprocessing Plants and Related Waste Management Facilities." The definition of *Non-power production or utilization facility* in § 50.2 excludes production facilities designed or used primarily for the formation of plutonium or uranium-233 or the separation of the isotopes of plutonium.

The NRC also received a comment from the National Institute of Standards and Technology on the definition of *Testing facility* in § 50.2 and *Research reactor* in § 171.11(b)(2). The commenter recommended that the NRC revise the definitions of *Testing facility* and *Research reactor* to "remove the arbitrary 10 MW(t) threshold, and apply instead a risk-based approach to its

regulation of a testing facility." Further, the commenter stated that the risk "is best quantified by accident analyses performed under a licensing safety analysis" and linked the recommended definition to the NRC's accident dose criterion of 1 rem (0.01 Sv) in the proposed rule.

The technical basis associated with the 10 MW(t) threshold under the current definition for *Testing facility*, while generally based on safety significance, is not explicitly documented. Similarly, the technical basis for the 1 MW(t) threshold (coupled with specific design features) under the current definition for *Testing facility* is not explicitly documented. These prescriptive power thresholds do not account for the safety features that are engineered into the facility design and those barriers that must be breached during an accident before a release of radioactive material to the environment can occur. Therefore, these thresholds do not accurately represent the risk associated with a particular facility. For these reasons, the use of a postulated accident dose is a more risk-informed, performance-based approach, compared to using the power level of the reactor for distinguishing between types of NPUFs, such as research reactors and testing facilities. As a result of this public comment, the NRC revised the definitions of *Testing facility* and *Research reactor* to reflect this risk-informed approach by incorporating an accident dose criterion of 1 rem (0.01 Sv) TEDE, the basis for which is discussed in section II.6 of this document.

Additionally, the NRC is making conforming changes to the definitions of *Testing facility*, *Research reactor*, and *Non-power reactor* wherever these definitions appear throughout 10 CFR chapter I. The regulations currently refer to many types of facilities that are categorized as NPUFs, such as non-power reactors, research reactors, training reactors, testing reactors, testing facilities, and critical assemblies. The NRC reviewed each instance of these various terms in 10 CFR chapter I. Where appropriate in this final rule, the NRC added, corrected, or standardized the terminology and definitions.

While this final rule revises the definition of *Research reactor* in §§ 170.3 and 171.5 to conform to other definitions in 10 CFR chapter I, the NRC did not change the definition of *Research reactor* in the specific exemption for Federally owned and State-owned research reactors in § 170.11(a)(9) or § 171.11(b)(2). The current definition in § 171.11(b)(2) is based on the language of the Omnibus

Budget Reconciliation Act of 1990, as amended (Pub. L. 101–508) (OBRA–90), a statutory requirement imposed by Congress. Further, a substantively similar definition of *Research reactor* was included in the provisions of the Nuclear Energy Innovation and Modernization Act (Pub. L. 115–439) (NEIMA) that relate to the NRC's fee recovery structure. Changing the definition of *Research reactor* in § 171.11(b)(2) would therefore be inconsistent with OBRA–90 and NEIMA. The definition of *Research reactor* in § 170.11(a)(9) is not based on OBRA–90, but the basis for that exemption from fees parallels the basis for the exemption from annual fees in § 171.11(b)(2). Changing the definition of *Research reactor* in § 170.11(a)(9) would be a substantive change beyond the scope of this final rule.

Where appropriate, this final rule standardizes the terminology in other parts of the regulations to modify the intended scope of regulations citing *Research* and *test reactors* to be either *Non-power reactors* or *Non-power production or utilization facilities*. For example, this final rule changes *Research and test reactors* to *Non-power production or utilization facilities* in appendix E to 10 CFR part 50, "Emergency Planning and Preparedness for Production and Utilization Facilities," while in § 55.40, this final rule changes *Test and research reactors* to *Non-power reactors*. Also, where appropriate, the final rule changes the uses in other parts of the regulations for *Testing facility*, *Research reactor*, and *Non-power reactor* to reference only one definition in the part where that definition is used most, unless the specific meaning is needed and different for a given part. In addition, the final rule adds the definition of *Non-power reactor*, as it is defined in § 50.2, to the definitions section in 10 CFR part 73 because the term is used many times throughout that part. These changes increase clarity by defining all NPUF-related terms consistently where they are most used in the regulations.

This final rule also revises the definition of *Non-power reactor* to distinguish between non-power reactors used for research and development activities and non-power reactors used for commercial or industrial purposes. Before this final rule, all non-power reactors were defined in § 50.2 as "a research or test reactor licensed under §§ 50.21(c) or 50.22 of this part for research and development." This final rule defines non-power reactors more precisely as one of three mutually exclusive categories of facilities: (1) testing facilities, (2) research reactors

that are NPUFs licensed under § 50.21(c), or (3) commercial or industrial reactors that are NPUFs licensed under § 50.22. The second and third categories exclude testing facilities, and the facilities in those categories must meet the accident dose criterion in § 50.34(a)(1)(i). If they do not meet this criterion, then they will be considered testing facilities.

2. Eliminates license terms for NPUFs, other than testing facilities, licensed under § 50.21(a) or (c).

The final rule language in § 50.51(c) eliminates license terms for NPUFs, other than testing facilities, licensed under § 50.21(a) or (c). Before this final rule, § 50.51(a) stated, “Each license will be issued for a fixed period of time to be specified in the license but in no case to exceed 40 years from date of issuance.” This included all facility licenses issued under 10 CFR part 50, including licenses for facilities issued under § 50.21(a) or (c). However, the AEA does not establish specific license terms nor the need for license terms for class 104 facilities.

Historically, license renewal afforded both the NRC and the public the opportunity to re-evaluate the licensing basis of the NPUF. The purpose of license renewal was to assess the likelihood of continued safe operation of the facility, such that radioactive materials can be used for beneficial civilian purposes in a safe and secure manner. For several reasons that are unique to NPUFs, this objective can be achieved through existing oversight activities and review of FSAR updates submitted pursuant to the new requirements in § 50.71(e) of the final rule (see Section II.4. of this document). This approach is consistent with the NRC’s goal of efficient and effective licensing and will implement and reflect lessons learned from decades of processing license renewal applications. The NRC reached this conclusion based on three considerations: (1) low overall radiological risk, (2) limited aging-related issues, and (3) slow evolution of the design basis.

First, compared to power reactors, the NPUFs licensed under § 50.21(a) or (c), other than testing facilities, operate at low power levels, temperatures, and pressures, and have a small inventory of fission products in the fuel. Therefore, these NPUFs present a lower potential radiological risk to the environment and the public. Additionally, the consequences of the maximum hypothetical accidents (MHAs) for these facilities fall below the standards in 10 CFR part 20 for protecting the health and safety of the public.

Of the 30 NPUFs that are currently licensed to operate and are eligible for non-expiring licenses (excluding the one testing facility), 26 have cores that are submerged in tanks or pools of water that provide sufficient passive decay heat removal to prevent overheating of the fuel.³ Of these 26 licensed facilities, 24 are not required to have emergency core cooling systems (ECCSs) because conservative accident analyses have shown that these NPUFs do not generate enough decay heat, even after extended operation at maximum licensed power, to be at risk of overheating, failure of a fission product barrier, or posing a threat to public health and safety. Additionally, many of the licensees monitor for leaks by routinely inspecting the facility, tracking and trending water inventory, and performing surveillance on installed pool-level instrumentation and sensors. Licensees sample the water periodically and analyze the radioisotopes in the primary and, if applicable, secondary coolant. Many licensees sample weekly for gross radioactive material content. This data also is used to establish trends to quickly identify fuel or heat exchanger failure. Most of these licensees analyze, in their FSARs, pool and heat exchanger failures and the potential consequences for the safety of the reactor, workers, and public. In general, the radioisotope concentrations in pool or tank water at NPUFs are within the effluent concentration limits specified in appendix B to 10 CFR part 20, and therefore are not radiologically significant.

Only two of the NPUFs eligible for non-expiring licenses are required by their safety analyses to have an ECCS to maintain core cooling in the highly unlikely case that a loss-of-coolant accident uncovers the core.⁴ For these NPUFs, the ECCS is needed only to direct flow into the top of the tank or pool to provide cooling for a limited time after reactor shutdown. This period of time depends on the recent operational history of the reactor, which determines the decay heat present at reactor shutdown. After this relatively brief time, air cooling is adequate to remove decay heat without the ECCS. Additionally, required surveillance and testing of the ECCS at these facilities

help ensure the performance of the system. Operation of the facility is not permitted if the ECCS has not been verified to be operable before reactor startup or if the system is deemed inoperable during reactor operation.

Second, the NRC has found that the simple design and operation of these facilities yield a limited scope of aging-related concerns. There have been no significant aging issues identified at the time of license renewal because the NRC currently imposes aging-related surveillance requirements on NPUFs via technical specifications, as needed. Aging of components is specifically addressed in the standard review plan and acceptance criteria used for evaluating license renewal applications (*i.e.*, NUREG–1537, Part 2). Parts 1 and 2 of NUREG–1537 document lessons learned and known aging issues from prior reviews. Since NUREG–1537 was published in 1996, NRC reviews and assessments have not revealed any additional issues or need to update the NUREG. Specifically, based on operating experience over the past 60 years and review of license renewal applications over the past 40 years, and as documented in NUREG–1537, Parts 1 and 2, the NRC has determined that for NPUFs, the two main areas related to aging that could need surveillance because of potential safety concerns are 1) fuel cladding and 2) instrumentation and control features.

Regarding fuel cladding, the NRC currently requires NPUFs to perform periodic fuel inspections. Through years of experience, the NRC has found that aging-related fuel failures either do not occur, or failures that do occur do not release significant amounts of fission products and are quickly detected by existing monitoring systems and surveillances. If fuel failures are detected, licensees are able to take the facility out of service and remove any failed assemblies from service.

With regard to instrumentation and control, the NRC has found that failures in this area result in automatic facility shutdown. Failures reveal themselves to the licensee and do not prevent safe shutdown. Over the past 60 years of operation of these facilities, the potential occurrence of age-related degradation has been successfully mitigated through inspection, surveillance, monitoring, trending, recordkeeping, replacement, and refurbishment. In addition, licensees are required to report preventive and corrective maintenance activities in their annual reports, which are reviewed by the NRC. This allows the NRC to identify new aging issues if they occur. Therefore, the NRC has

³ The three Aerojet-General Nucleonics reactors (University of New Mexico (Docket No. 50–252), Idaho State University (Docket No. 50–284), and Texas A&M University (Docket No. 50–59)), each rated at 5 watts, and the University of Florida Argonaut reactor (Docket No. 50–83), rated at 100 kilowatts, are not considered tank or pool reactors but have similarly low risk profiles.

⁴ The two facilities are Massachusetts Institute of Technology (MIT) (Docket No. 50–20) and the University of California/Davis (Docket No. 50–607).

concluded that existing requirements and facility design and operational features will address concerns over aging-related issues during a non-expiring license term.

Third, the design bases of these facilities evolve slowly over time, with approximately five license amendment requests from all NPUF licensees combined each year and, on average, only five § 50.59 evaluations per facility per year for changes that do not require prior NRC approval.

Given these considerations, the elimination of license terms for medical therapy or research and development facilities, other than testing facilities, licensed under § 50.21(a) or (c), combined with the addition of requirements for periodic FSAR submittals, will provide a new framework for enabling licensees to continue to operate safely while reducing burden on licensees and the NRC. The final rule at § 50.71(e) requires licensees to submit updated FSARs and subsequent FSAR updates to ensure that a facility's licensing basis is kept up-to-date, a major function previously provided by the license renewal process, while imposing significantly less burden on licensees. Eliminating license terms for these licensees will allow the NRC to focus its resources on oversight of these facilities, such as conducting routine inspection activities and reviewing annual reports and FSAR updates. Recurring FSAR updates by licensees and reviews by the NRC will increase licensees' focus on maintaining their facilities' licensing bases. Should the NRC identify potential issues with the facility's continued safe operation in its reviews of FSAR updates, the Commission can undertake regulatory actions specified in § 2.202 to modify, suspend, or revoke a license. In addition, the public will remain informed about facility operations through the publicly available FSAR submittals and will continue to have opportunities to participate in the regulatory process through licensing actions and the § 2.206 petition process. By eliminating license terms and requiring periodic FSAR update submittals, coupled with existing oversight processes, the NRC will reduce the burden on the affected licensees and the NRC, which is consistent with the AEA and supports the NRC's goal of efficient and effective licensing.

Most licenses of existing NPUFs licensed under § 50.21(a) or (c), other than testing facilities, will be modified by order to remove the license terms after the effective date of this final rule (see Section II.4. of this document).

Facilities licensed under § 50.21(a) or (c), other than testing facilities, that have undergone relicensing using the guidance in NUREG-1537, Part 2 will be eligible to receive a non-expiring license without again renewing the current license. The current NPUF licensees that have not undergone the license renewal process using the guidance in NUREG-1537, Part 2, will each need to submit an application for license renewal if they wish to continue facility operation beyond the current license term. The NRC will review the application using NUREG-1537, Part 2, and the ISG. If the NRC concludes that a licensee's application meets the standard for issuing a renewed license, then the NRC would issue a non-expiring renewed license. If, in the future, the NRC issues an operating license to a new facility, other than a testing facility, under § 50.21(a) or (c), the license would be non-expiring and would be subject to periodic FSAR submittal requirements applicable to all NPUF licensees.

This final rule makes conforming changes to requirements for facilities that are decommissioning by revising § 50.82(b) and (c). These provisions currently use the expiration of the operating license as a reference point to address license termination applications and collection periods for shortfalls in decommissioning funding for NPUFs. This final rule clarifies that NPUFs (including testing facilities) licensed under § 50.22 and testing facilities licensed under § 50.21(c) are the only NPUFs with license expiration dates. The reference point for NPUFs licensed under § 50.21(a) or (c), other than testing facilities, is the NPUF's permanent cessation of operations.

3. Defines the license renewal process for NPUFs (including testing facilities) licensed under § 50.22 and testing facilities licensed under § 50.21(c).

For NPUFs (including testing facilities) licensed under § 50.22 and testing facilities licensed under § 50.21(c), this final rule defines the license renewal process in § 50.135. This one section consolidates existing regulatory requirements (e.g., requirements regarding written communications, application filing, application contents, and the issuance of renewed licenses) for current and future licensees. This final rule does not impose new regulations on these facilities. The NRC also is making a conforming change to § 50.8 to reflect the approved information collection requirement of § 50.135.

Section 103 of the AEA establishes a license term of no more than 40 years for commercial or industrial facilities

licensed under § 50.22. Although the AEA does not establish a fixed license term for testing facilities, licensees for these facilities are currently subject to additional license renewal requirements (e.g., siting subject to 10 CFR part 100, Advisory Committee on Reactor Safeguards review, and environmental impact statements) because of the potential for higher radiological risks associated with their facilities' design, operation, or use as compared to other class 104a or 104c licensees. Therefore, all commercial or industrial NPUFs (including testing facilities) licensed under § 50.22 and testing facilities licensed under § 50.21(c) will continue to have fixed license terms and undergo license renewal. As described in § 50.135(c)(2), these NPUFs will be able to submit a license renewal application to the Commission no more than 10 years in advance of the expiration of the operating license currently in effect. The requirement in § 50.135(c)(2) is not intended to affect the term of operating licenses granted to NPUFs.

The NRC is making renewed operating licenses for these facilities effective, and thereby replacing the previous operating license, immediately upon the date of issuance. The applicant for the renewed license can propose a schedule for implementation of the renewed licensee. This implementation schedule would ensure that the licensee can make any necessary and conforming changes to the facility processes and procedures required by the applicable conditions of the renewed license. The NRC will review and make the schedule, if approved, a condition of the renewed license. The immediate effectiveness of the renewed license is a change from the proposed rule, which would have made the renewed license effective 30 days after issuance. This final rule provides a substantively similar result as the proposed rule and provides licensees additional flexibility in the timing of their implementation of the renewed license.

If administrative or judicial appeal affects the renewed license, then the previous operating license will be reinstated unless its term has expired and the facility has failed to submit a license renewal application in a timely manner.

During the development of this final rule, the NRC recognized that § 50.135(e)(2) in the proposed rule could have unnecessarily restricted the license term for a renewed NPUF license to less than 40 years. Section 103 of the AEA allows for license terms of up to 40 years. To address this issue, this final rule clarifies that renewed licenses are

issued for a fixed period of time, not to exceed 40 years.

4. Requires all NPUF licensees to submit to the NRC updated FSARs and subsequent FSAR updates at intervals not to exceed 5 years.

Maintaining up-to-date FSARs facilitates safe management of a facility, including current understanding of the licensing bases and effective training of personnel, and enables the NRC to fulfill its statutory obligations and regulatory responsibilities effectively. Section 50.71(e) of the final rule requires all NPUF licensees to submit to the NRC updated FSARs and subsequent FSAR updates at intervals not to exceed 5 years. The updated FSAR will incorporate the various supplements and amendments that may have been submitted, either in response to NRC questions or on the licensee's own initiative, following the original submittal to create a single and complete updated document that can then serve as the baseline for future changes. Given the requirement to submit subsequent FSAR updates, the NRC anticipates that licensees will document changes to the licensing bases as they occur, which will aid in maintaining continuity of knowledge and the understanding of changes and effects of changes on the facility both for the licensee and the NRC. The NRC anticipates that these changes will result in minimal additional burden on licensees and the NRC because only a small number of changes have occurred per facility each year. In addition, licensees should have already documented these changes under § 50.59 or through a license amendment request under § 50.90.

This final rule requires licensees to submit, in accordance with § 50.4, a complete updated FSAR within 5 years of receipt of a facility operating license (§ 50.71(e)(3)(iv)) and subsequent FSAR updates at successive intervals not to exceed 5 years (§ 50.71(e)(4)(ii)). The NRC will issue orders to existing facilities licensed under § 50.21(c) that have undergone the license renewal process using the guidance in NUREG-1537, Part 2. These licensee-specific orders will direct these licensees to submit their updated FSARs, after which they will be subject to the new requirement in § 50.71(e)(4)(ii) to submit subsequent FSAR updates.

To issue the licensee-specific orders, the NRC will group the facilities based upon when they have undergone license renewal using NUREG-1537. The orders will dictate when a licensee's initial updated FSAR will be due to the NRC. The NRC plans to stagger the dates over a 5-year period following the effective

date of this final rule. The NRC will place existing operating and decommissioning NPUF licensees in three groups as follows:

(1) Group 1 consists of licensees that completed the license renewal process most recently using NUREG-1537. The NRC will establish a due date for the updated FSAR that will be at least 1 year and no later than 3 years from the effective date of this final rule. The NRC will require these licensees to submit an updated FSAR first because, with a recent license renewal, the FSARs should require minimal updates.

(2) Group 2 generally consists of licensees for which the NRC reviewed the license renewal application before Group 1 using NUREG-1537, and includes the three facilities currently in decommissioning. The NRC will establish a due date for the updated FSAR that will be at least 2 years and no later than 5 years from the effective date of this final rule. The NRC will allow these licensees more time to submit an updated FSAR than Group 1 licensees because more time has passed since license renewal, so additional time may be needed to update their FSARs.

(3) Group 3 consists of the remaining NPUF licensees that have not undergone license renewal using NUREG-1537. The licenses for these facilities are all due to expire in less than 5 years from the effective date of this final rule. If these licensees choose to renew their facility operating licenses, they will be subject to the requirements in § 50.71(e) after issuance of the renewed license.

The general approach will be to stagger the submittal dates within Groups 1 and 2 such that licensees that most recently completed license renewal will be the first to submit their updated FSAR. However, the licensee-specific orders will also consider facility-specific circumstances and NRC discretion.

This final rule also corrects a grammatical error in footnote 1 to § 50.71(e). The footnote previously stated, "Effects of changes includes appropriate revisions of descriptions in the FSAR such that the FSAR (as updated) is complete and accurate." This final rule changes "includes" to "include" so that the plural subject is followed by a plural verb.

5. Amends the current timely renewal provision under § 2.109, allowing an NPUF subject to license renewal to continue operating under an existing license past its expiration date if the licensee submits a license renewal application at least 2 years before the current license expiration date.

The requirements in § 2.101(a) allow the NRC to determine the acceptability of an application for review by the NRC. However, before this final rule, § 2.109 allowed an NPUF licensee to submit its license renewal application as late as 30 days before the expiration of the existing license. Historical precedent indicates that 30 days is not a sufficient period of time for the NRC to adequately assess the sufficiency of a license renewal application for review. As a result, the NRC accepted license renewal applications and addressed their deficiencies in the license renewal process by issuing requests for additional information. This approach increased the duration of the license renewal process and resulted in multiple facilities operating many years into a "timely renewal" period without renewed licenses.

To address this issue, the NRC is revising the timely renewal provision for NPUFs (including testing facilities) licensed under § 50.22 and testing facilities licensed under § 50.21(c) to establish a length of time adequate for the NRC to review the sufficiency of a license renewal application. Specifically, this final rule amends § 2.109, allowing a facility to continue operating under an existing license past its expiration date if the licensee submits a sufficient license renewal application at least 2 years before the current license expiration date. In such cases, the existing license will not be deemed to have expired until the application has been finally determined by the NRC. This final rule ensures that the NRC has adequate time prior to the expiration of the current license to review the sufficiency of license renewal applications while the facility continues to operate under the terms of its current license.

The proposed rule would have eliminated this provision for medical therapy or research and development facilities, other than testing facilities, licensed under § 50.21(a) or (c), because these facilities would no longer have license expiration dates.

The NRC reinstates the provision in this final rule to enable its use for the remaining license renewal applications that may be submitted after this final rule is published. The NRC anticipates that there is one research reactor licensee that would use this provision.

6. Provides an accident dose criterion of 1 rem (0.01 Sv) TEDE for NPUFs other than testing facilities.

The standards in 10 CFR part 20 for protection against ionizing radiation provide a limit on the maximum yearly radiation dose a member of the public can receive from the operation of any

NRC-licensed facility. Licensees are required to maintain programs and facility design features to ensure that these limits are met. In addition to the dose limits in 10 CFR part 20, accident dose criteria are also applied during licensing to determine the acceptability of the licensed facility. The accident dose criteria are not dose limits; they inform a licensee's accident analyses and the development of successive safety measures (*i.e.*, defense in depth) so that in the unlikely event of an accident, the NRC has reasonable assurance that no acute radiation-related harm will result to any member of the public. Before this final rule, the accident dose criterion for NPUFs, other than testing facilities, was the 10 CFR part 20 dose limit to a member of the public. For testing facilities, accident dose criteria are found in 10 CFR part 100: 25 rem (0.25 Sv) to the whole body and 300 rem (3 Sv) to the thyroid.

Before January 1, 1994, the NRC had generally found acceptable accident doses for applicants applying for an initial or renewed NPUF license, other than for testing facilities, that were less than 0.5 rem (0.005 Sv) to the whole body and 3 rem (0.03 Sv) to the thyroid for members of the public. On May 21, 1991,⁵ the NRC amended 10 CFR part 20 to reduce the dose limit to a member of the public to 0.1 rem (0.001 Sv) TEDE (56 FR 23360) with an implementation date of January 1, 1994. Since January 1, 1994, for applicants applying for an initial or renewed NPUF license, other than for testing facilities, the NRC has compared the results from the accident analyses submitted in initial or renewed license applications with the standards in 10 CFR part 20.

The NRC has determined that the public dose limit of 0.1 rem (0.001 Sv) TEDE in 10 CFR part 20 is unduly restrictive to be applied as accident dose criteria for NPUFs except for testing facilities, which are subject to 10 CFR part 100. The NRC bases this determination on the NRC Atomic Safety and Licensing Appeal Board's decision that the standards in 10 CFR part 20 are unduly restrictive as accident dose criteria for research reactors (Trustees of Columbia University in the City of New York, ALAB-50, 4 AEC 849, 854-855 (May 18, 1972)). At the time of this decision, the 10 CFR part 20 public dose limit was 0.5 rem (0.005 Sv) whole body.

However, the NRC considers the accident dose criteria in 10 CFR part 100 to be too high for NPUFs other than testing facilities, because those NPUFs

have lower risk profiles than testing facilities. For these reasons, this final rule modifies § 50.34 to add an accident dose criterion of 1 rem (0.01 Sv) TEDE for NPUFs not subject to 10 CFR part 100. The accident dose criterion of 1 rem (0.01 Sv) TEDE is based on the Environmental Protection Agency's (EPA) Protection Action Guides (PAGs). The EPA PAGs are dose guidelines that support decisions during a radiological incident to take protective actions such as staying indoors or evacuating. The proposed rule stated that the 1 rem (0.01 Sv) TEDE accident dose criterion was based on the EPA PAGs published in EPA 400-R-92-001, "Manual of Protective Action Guides and Protective Actions for Nuclear Incidents." In January 2017, the EPA published an update to its PAGs in EPA-400/R-17/001, "PAG Manual: Protective Action Guides and Planning Guidance for Radiological Incidents." This update to the EPA PAGs does not change the basis for the 1 rem (0.01 Sv) TEDE accident dose criterion.

The PAG is defined as the projected dose to an individual from a release of radioactive material at which a specific protective action to reduce or avoid that dose is recommended. Three principles considered in the development of the EPA PAGs include: (1) prevent acute effects; (2) balance protection with other important factors and ensure that actions result in more benefit than harm; and (3) reduce risk of chronic effects. In the early phase (*i.e.*, the beginning of the radiological incident, which may last hours to days), if the sum of the projected dose from external radiation exposure and the inhalation of radioactive material is 1 rem (0.01 Sv) to 5 rem (0.05 Sv), the EPA PAG recommends the protective action of sheltering-in-place or evacuation of the public to avoid inhalation of gases or particulates in an atmospheric plume and to minimize external radiation exposures. The EPA PAG Manual does not provide a protective action recommendation for the public when the projected dose to an individual from an incident is less than 1 rem (0.01 Sv). In light of this understanding of the early phase EPA PAG, the NRC's accident dose criterion of 1 rem (0.01 Sv) TEDE for NPUFs, other than testing facilities, provides reasonable assurance of adequate protection of the public from unnecessary exposure to radiation.

The NRC revised § 50.34(a)(1)(ii)(D)(2) of the proposed rule to replace "postulated accidental release of licensed material" with "postulated accident." This final rule requires applicants and licensees to evaluate the potential dose from postulated accidents

to include the potential exposure from all radiological sources, such as direct or scattered radiation from an unshielded source inside the facility, in addition to potential exposure from a release of radioactive materials. This requirement is consistent with the evaluation methodology described in NUREG-1537, Part 1. Under this final rule, these evaluations need to demonstrate that the dose to any individual located in the unrestricted area will not be in excess of 1 rem (0.01 Sv) TEDE for the duration of the accident. Although the EPA PAGs were developed for radiological incidents that lead to the release or potential release of radioactive materials into the environment, the three principles considered in their development are not dependent on whether the dose received is due to exposure from a release of radioactive materials or from direct or scattered radiation.

To provide further clarification on the NRC's intent of the 1 rem (0.01 Sv) TEDE accident dose criterion for NPUFs, other than testing facilities, a footnote has been incorporated into the final rule text. The footnote clarifies that this 1 rem (0.01 Sv) TEDE accident dose criterion is not a dose limit, as explained in the preceding paragraphs.

In this final rule, the NRC moves proposed § 50.34(a)(1)(ii)(D)(2) to § 50.34(a)(1)(i) and leaves the rule language in § 50.34(a)(1)(ii)(D) unchanged. During the development of this final rule, the NRC recognized that the accident dose criterion more appropriately belongs in § 50.34(a)(1)(i) because the requirements in § 50.34(a)(1)(ii) apply to power reactor construction permit applicants, while the requirements in § 50.34(a)(1)(i) apply to all other construction permit applicants, such as NPUF applicants. Similarly, proposed § 50.34(a)(1)(ii)(D)(2) would have imposed a requirement on applications for renewed NPUF operating licenses, which more appropriately belongs in § 50.34(b). Therefore, the NRC moved the requirement to new § 50.34(b)(13) in this final rule to clarify that an application for an operating license or a renewed operating license for an NPUF must include in the FSAR a final evaluation of the applicable radiological consequences consistent with § 50.34(a)(1)(i).

7. Extends the applicability of § 50.59 to NPUFs regardless of their decommissioning status.

Before this final rule, § 50.59(b) of the Commission's regulations did not apply § 50.59 to NPUFs whose licenses were amended to reflect permanent cessation of operations and that no longer had

⁵ In the proposed rule, the NRC misidentified the part 20 rulemaking date as January 1, 1994.

fuel on site (e.g., they returned all of their fuel to the U.S. Department of Energy). The former language stated that § 50.59 applied to licensees “whose license has been amended to allow possession of nuclear fuel, but not operation of the facility.” Therefore, § 50.59 did not apply to NPUF licensees that no longer possessed nuclear fuel. For these licensees, the NRC has typically added license conditions identical to the provisions of § 50.59 to allow the licensee to make changes to its facility or changes in its procedures that would not otherwise require obtaining a license amendment pursuant to § 50.90. Because most NPUFs promptly return their fuel to the U.S. Department of Energy after permanent shutdown, in contrast to decommissioning power reactors, these licensees had to request the addition of the license conditions, which imposed an administrative burden on the licensees and the NRC. This final rule eliminates this burden by revising § 50.59(b) to extend the applicability of § 50.59 to NPUFs regardless of their decommissioning status.

8. Clarifies an applicant’s requirements for meeting the existing provisions of § 51.45.

The NRC is required to prepare either an environmental impact statement or environmental assessment, as appropriate, for all licensing actions pursuant to 10 CFR part 51, unless a categorical exclusion applies as provided in § 51.22. For most types of licenses, 10 CFR part 51 specifies that an applicant must submit environmental documentation in the form of an environmental report, or a supplement to a previously submitted environmental report, to assist the NRC’s review and its compliance with the National Environmental Policy Act of 1969, as amended. However, before this final rule, the NRC did not have explicit requirements under 10 CFR part 51 with respect to the nature of the environmental documentation that must accompany applications for construction permits, initial licenses, and renewed licenses for NPUFs.

This final rule adds a new section to 10 CFR part 51 to clarify NPUF environmental reporting requirements. Section 51.56 clarifies an applicant’s existing requirements for meeting the provisions of § 51.45. This change improves consistency throughout 10 CFR part 51 with respect to environmental report submissions required from applicants. The NRC also is making a conforming change to § 51.17 to reflect the approved information collection requirement of § 51.56.

9. Eliminates the requirement for NPUF licensees to submit financial qualification information with license renewal applications under § 50.33(f)(2).

This final rule eliminates license renewal financial qualification requirements for NPUFs. Before this final rule, § 50.33(f) required NPUF license applicants to provide information sufficient to demonstrate their financial qualifications to carry out the activities for which the license is sought. Because the regulatory requirements for the content of an application for a renewed NPUF license were the same as those for an original license, NPUF licensees that requested license renewal were required to submit an update to the same financial information that was required in an application for an initial license. In addition, the NRC found that the financial qualification information did not meaningfully contribute to the NRC’s safety determination on the license renewal application. The elimination of NPUF license renewal financial qualification requirements reduces the burden associated with license renewal applications while still enabling the NRC to conduct its review of these applications.

This change is consistent with the current license renewal process for power reactors. On January 30, 2004, the NRC published in the **Federal Register** the final rule, “Financial Information Requirements for Applications to Renew or Extend the Term of an Operating License for a Power Reactor” (69 FR 4439). This final rule discontinued financial qualification reviews for power reactors at the license renewal stage except in very limited circumstances. The Commission stated that “[t]he NRC believes that its primary tool for evaluating and ensuring safe operations at nuclear power reactors is through its inspection and enforcement programs” Further, the Commission stated that “[t]he NRC has not found a consistent correlation between licensees’ poor financial health and poor safety performance. If a licensee postpones inspections and repairs that are subject to NRC oversight, the NRC has the authority to shut down the reactor or take other appropriate action if there is a safety issue.”

At NPUF sites, the NRC’s inspection and enforcement programs serve as important tools for evaluating licensee performance and ensuring safe operations. The NRC periodically inspects each operating NPUF using a graded approach that prioritizes higher-power facilities. The NRC completes an annual inspection of NPUFs licensed to

operate at power levels of 2 MW(t) or greater. For NPUFs operating under 2 MW(t), the inspection program is designed to be completed every two years, although inspector availability and licensee availability sometimes dictate that an inspection cycle is carried out in multiple inspections over the 2-year cycle. Inspections can include reviews of organizational structure, operator training and qualification, design and design control, radiation and environmental protection, maintenance and surveillance activities, transportation, material control and accounting, operational activities, review and audit functions, experiments, fuel handling, procedural controls, emergency preparedness, and security. The NRC also performs special and reactive inspections. In addition, the NRC manages the NPUF operator license examination program. The NRC also manages the review of NPUF emergency and security plans and develops and implements policy and guidance concerning the NPUF licensing program.

The same basis for the NRC’s elimination of financial qualification requirements for power reactor licensees at the time of license renewal supports the NRC’s elimination of NPUF financial qualification requirements at the time of license renewal. The NRC is not aware of any connection between an NPUF’s financial qualifications at license renewal and safe operation of the facility. The NRC retains broad authority under the AEA and § 50.54(cc), § 50.54(f), and § 2.102 to request additional financial information from its licensees and applicants, as necessary, to protect public health and safety.

III. Opportunity for Public Participation

The NRC hosted two public meetings to engage with external stakeholders on the proposed rule and associated draft guidance document during the public comment period. A public meeting was held on May 24, 2017, to discuss the proposed rule. A public meeting on the implementation schedule of the final requirements was held on April 25, 2019. Summaries of both public meetings are available in ADAMS, as provided in the “Availability of Documents” section. The feedback from these public meetings informed the development of this final rule.

IV. Public Comment Analysis

The NRC prepared a summary and analysis of public comments received on the 2017 proposed rule and draft regulatory guide, as referenced in the

“Availability of Documents” section. In response to the proposed rule and draft regulatory guide, the NRC received 16 comment submissions.

The public comment submittals are available from the Federal e-Rulemaking website at <http://www.regulations.gov> under Docket ID NRC–2011–0087. Responses to the public comments, including a summary of how the final rule text or guidance changed as a result of the public comments, can be found in the public comment analysis document.

For more information about the associated guidance document, see the “Availability of Guidance” section of this document.

V. Section-by-Section Analysis

The following paragraphs describe the specific changes within this final rule.

Section 2.109 Effect of timely renewal application.

In § 2.109, this final rule revises paragraph (a) to exclude NPUFs (including testing facilities) licensed under § 50.22 and testing facilities licensed under § 50.21(c) from the 30-day timely renewal provision by adding paragraph (f) to require these same licensees to submit a license renewal application at least 2 years before license expiration to be considered timely.

Section 20.1905 Exemptions to labeling requirements.

In § 20.1905, this final rule revises paragraph (g) to standardize terminology by replacing the term “reactors” with the phrase “production or utilization facilities.”

Section 26.3 Scope.

In § 26.3, this final rule revises paragraph (e) to standardize terminology by replacing the term “reactor” with the phrase “production or utilization facility.”

Section 50.2 Definitions.

In § 50.2, this final rule revises the definitions for *Non-power reactor* and *Testing facility*.

Section 50.8 Information collection requirements: OMB approval.

In § 50.8, this final rule revises paragraph (b) to include new § 50.135 as an approved information collection requirement in 10 CFR part 50.

Section 50.33 Contents of applications; general information.

In § 50.33, this final rule revises paragraph (f)(2) to remove the phrase “for a power reactor” from the fourth sentence and to remove the fifth

sentence, which required a non-power reactor applicant to submit with license renewal applications the same financial information that is required for initial license applications. It also redesignates the footnote to conform to the Office of the Federal Register’s requirements.

Section 50.34 Contents of applications; technical information.

In § 50.34, this final rule revises paragraph (a)(1)(i) to include an accident dose criterion for applicants for construction permits for NPUFs not subject to 10 CFR part 100 and a new footnote 2. It also redesignates the footnotes to conform to the Office of the Federal Register’s requirements. This final rule also adds paragraph (b)(13) to require an applicant for an operating or a renewed operating license for an NPUF to include in the FSAR a final evaluation of the applicable radiological consequences in § 50.34(a)(1)(i).

Section 50.36 Technical specifications.

In § 50.36, this final rule revises paragraph (c)(6) to standardize terminology by replacing the term “non-power reactor” with the phrase “non-power production or utilization.”

Section 50.51 Continuation of license.

In § 50.51, this final rule revises paragraph (a) to add the conditional phrase “except as noted under § 50.51(c).” This final rule also adds new paragraph (c) to clarify that NPUFs licensed under § 50.21(a) or (c), other than testing facilities, after the effective date of this final rule, will have non-expiring license terms.

Section 50.59 Changes, tests, and experiments.

In § 50.59, this final rule revises paragraph (b) to extend applicability to NPUFs that have permanently ceased operations and that no longer have fuel on site.

Section 50.71 Maintenance of records, making of reports.

In § 50.71, this final rule revises paragraph (e) to include NPUFs in the requirement and makes a tense correction to footnote 1. This final rule also revises paragraph (e)(3)(i) and redesignates paragraph (4) as paragraph (4)(i) to clarify that these paragraphs only apply to nuclear power reactors. New paragraphs (e)(3)(iv) and (e)(4)(ii) are added to include the requirements for NPUFs. This final rule also revises paragraph (g) to standardize terminology by replacing the phrase “non-power reactor” with the phrase “non-power production or utilization facility.”

Section 50.75 Reporting and recordkeeping for decommissioning planning.

In § 50.75, this final rule also revises paragraphs (d)(1), (e)(1)(iv), and (f)(4) to standardize terminology by replacing the phrase “non-power reactor” with the phrase “non-power production or utilization facility.” This final rule also revises paragraph (f)(5) by replacing the phrase “non-power reactors” with the phrase “non-power production or utilization facilities.”

Section 50.82 Termination of license.

In § 50.82, this final rule revises paragraph (b) to standardize terminology by replacing the term “reactor” with the phrase “production or utilization facility” and revises paragraph (b)(1) to include testing facilities licensed under § 50.21(c) and holders of a license issued under § 50.22. Paragraph (c) is revised by moving the phrase “that has permanently ceased operation before the expiration of its license” to new paragraph (c)(2) to clarify when the collection period for shortfalls in funding will be determined for NPUFs and holders of licenses issued under § 50.21(b) or § 50.22, or testing facilities.

Section 50.135 Renewal of non-power production or utilization facility licenses issued under § 50.22 and testing facility licenses.

This final rule adds new § 50.135 to clearly define the license renewal process for NPUFs (including testing facilities) licensed under § 50.22 and testing facilities licensed under § 50.21(c).

Appendix C to Part 50—A Guide for the Financial Data and Related Information Required To Establish Financial Qualifications for Construction Permits and Combined Licenses

In appendix C to part 50, this final rule revises paragraph III by replacing the reference to “medical and research reactors” with a reference to “non-power production or utilization facilities of a type described in § 50.21(a) or (c), other than testing facilities.”

Appendix E to Part 50—Emergency Planning and Preparedness for Production and Utilization Facilities

In appendix E to part 50, this final rule revises footnote 2 in paragraph I.3 to include the title of Regulatory Guide 2.6 and to replace the phrase “research and test reactor” with the phrase “non-power production or utilization facility.”

Section 51.17 Information collection requirements; OMB approval.

In § 51.17, this final rule revises paragraph (b) to add new § 51.56 as an approved information collection requirement in 10 CFR part 51.

Section 51.45 Environmental report.

In § 51.45, this final rule revises paragraph (a) to add a cross reference to new § 51.56.

Section 51.56 Environmental report—non-power production or utilization facility.

This final rule adds new § 51.56 to clarify existing requirements for the submittal and content of environmental reports by applicants seeking a permit to construct, a license to operate, or a renewal of a license to operate a non-power production or utilization facility.

Section 55.5 Communications.

In § 55.5, this final rule revises paragraph (b)(1) to remove the conditional phrase “except for test and research reactor facilities.” It also revises paragraph (b)(3) to clarify the applicability of this paragraph to utilization facilities licensed under 10 CFR part 50 that are not power reactors.

Section 55.40 Implementation.

In § 55.40, this final rule revises paragraph (d) to replace the phrase “test and research reactors” with the phrase “non-power reactors.”

Section 55.53 Conditions of licenses.

In § 55.53, this final rule revises paragraphs (e) and (f)(2) to replace the phrase “test and research reactors” with the phrase “non-power reactors.” It also revises paragraphs (j) and (k) to clarify that these paragraphs apply to utilization facilities licensed under 10 CFR part 50 that are not power reactors.

Section 55.59 Requalification.

In § 55.59, this final rule revises paragraph (c)(7) to clarify that this paragraph applies to utilization facilities licensed under 10 CFR part 50 that are not power reactors.

Section 55.61 Modification and revocation of licenses.

In § 55.61, this final rule revises paragraph (b)(5) to clarify that this paragraph applies to utilization facilities licensed under 10 CFR part 50 that are not power reactors.

Section 73.2 Definitions.

In § 73.2, this final rule adds the definition of *Non-power reactor* as it is defined in § 50.2.

Section 73.21 Protection of safeguards information: performance requirements.

In § 73.21, this final rule revises paragraph (a)(1)(ii) to replace the phrase “research and test reactors” with the phrase “non-power reactors.”

Section 73.23 Protection of safeguards information—modified handling: specific requirements.

In § 73.23, this final rule replaces the phrase “research and test reactors” with the phrase “non-power reactors.”

Section 73.60 Additional requirements for physical protection at non-power reactors.

In § 73.60, this final rule revises all instances of “nonpower” to read “non-power.”

Section 140.3 Definitions.

In § 140.3, this final rule removes the definition of *Testing reactor* and adds the definition of *Testing facility* as it is defined in § 50.2.

Section 140.11 Amounts of financial protection for certain reactors.

In § 140.11, this final rule revises paragraph (a)(3) to standardize terminology by replacing the term “reactor” with the term “facility.”

Section 170.3 Definitions.

In § 170.3, this final rule revises the definition of *Research reactor* and revises the definition of *Testing facility* to align with the definition in § 50.2.

Section 171.5 Definitions.

In § 171.5, this final rule revises the definitions of *Research reactor* and *Testing facility* to align with the definitions in § 170.3 and § 50.2, respectively.

VI. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NRC certifies that this rule does not have a significant economic impact on a substantial number of small entities. This final rule affects only the licensing and operation of NPUFs. In general, the companies, universities, and government agencies that own and operate these facilities do not fall within the scope of the definition of “small entities” set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810). Additional information is provided in Section 4 of the regulatory analysis, which is available as indicated in the “Availability of Documents” section of this document.

VII. Regulatory Analysis

The NRC has prepared a final regulatory analysis on this regulation and the implementation guidance. The analysis examines the costs and benefits of the alternatives considered by the NRC. The regulatory analysis is available as indicated in the “Availability of Documents” section of this document.

VIII. Backfitting

The NRC’s backfitting regulations for entities that are licensed under 10 CFR part 50 and within the scope of the NRC’s backfitting policy appear in § 50.109, “Backfitting.” “Backfitting” is defined in § 50.109(a)(1), in relevant part, as a modification of or addition to the systems, structures, components, or design of a facility, or the procedures or organization required to design, construct, or operate a facility, which results from a new or amended provision in the Commission’s regulations.

The amendments in this final rule include the following:

- revising the definitions for *Non-power reactor*, *Testing facility*, and *Research reactor*; eliminating license terms for medical therapy or research and development facilities, other than testing facilities, licensed under 10 CFR 50.21(a) or (c);
- defining the license renewal process for all commercial or industrial NPUFs (including testing facilities) licensed under § 50.22 and testing facilities licensed under § 50.21(c) by consolidating existing regulatory requirements in one section of the NRC’s regulations; requiring all NPUF licensees to submit an updated FSAR and subsequent FSAR updates to ensure that a facility’s licensing basis is kept up-to-date;
- amending the current timely renewal provision under § 2.109, allowing NPUFs subject to license renewal to continue operating under an existing license past its expiration date if the licensee submits a license renewal application at least 2 years (rather than 30 days) before the current license expiration date; providing an accident dose criterion of 1 rem (0.01 Sv) TEDE for NPUFs other than testing facilities, for use in applicants’ accident analyses; extending the applicability of § 50.59 to NPUF licensees regardless of their decommissioning status;
- clarifying an NPUF applicant’s environmental report requirements in § 51.45; and eliminating the requirement for NPUF licensees to submit financial qualification information with license renewal applications under § 50.33(f)(2).

These amendments do not result in a modification of or addition to the systems, structures, components, or design of a facility, or the procedures or organization required to design, construct, or operate a facility. The final rule changes do not meet the § 50.109(a)(1) definition of “backfitting” and, thus, do not constitute backfitting for any NPUF that may be within the scope of backfitting.

The NRC will clarify whether commercial NPUFs (*i.e.*, NPUFs licensed under Section 103 of the AEA) are within the scope of the NRC’s backfitting policy as a general matter through an interpretive rule process. An interpretive rule is an agency’s interpretation of a statute or its regulations that does not revise the agency’s regulations. Examples of NRC interpretive rules include regulatory guides and notices of interpretation.

As described in the “Availability of Guidance” section of this document, the NRC is issuing Regulatory Guide (RG) 2.7, “Preparation of Updated Final Safety Analysis Reports for Non-Power Production or Utilization Facilities,” which provides guidance on methods acceptable to the NRC for complying with the requirements in § 50.71(e) of this final rule. Issuance of this RG does not constitute backfitting under § 50.109. As discussed in the “Implementation” section of RG 2.7, licensees generally are not required to comply with the guidance in that RG. If, in the future, the NRC seeks to impose positions stated in the RG in a manner that would constitute backfitting or forward fitting, the NRC would need to make the showing as required in § 50.109 for backfitting or Management Directive 8.4, “Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests,” for forward fitting, that would allow the NRC to impose the positions.

IX. Cumulative Effects of Regulation

Cumulative Effects of Regulation (CER) consists of the challenges licensees may face in addressing the implementation of new regulatory positions, programs, and requirements (*e.g.*, rulemaking, guidance, generic letters, backfits, inspections). The CER may manifest in several ways, including the total burden imposed on licensees by the NRC from simultaneous or consecutive regulatory actions that can adversely affect the licensee’s capability to implement those requirements, while continuing to operate or construct its facility in a safe and secure manner.

The goals of the NRC’s CER effort were met throughout the development of this final rule. The NRC engaged

external stakeholders at public meetings and by soliciting public comments on the proposed rule and associated draft guidance document. A public meeting was held on May 24, 2017, to discuss the proposed rule. A public meeting on implementation was held on April 25, 2019. Summaries of both public meetings are available in ADAMS, as provided in the “Availability of Documents” section of this document. The feedback from the April 25, 2019, public meeting informed the NRC’s final rule implementation schedule.

Based upon input from the public and affected licensees, the NRC has specified that this final rule will take effect 30 days from the date of publication of this document. For the purposes of implementing the requirements of § 50.71(e), the NRC will be issuing orders to certain holders of operating licenses, as described in Section II.4 of this document.

X. Plain Writing

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

XI. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires agencies to use technical standards developed or adopted by voluntary consensus standards bodies unless the use of such standards is inconsistent with applicable law or is otherwise impractical. The NRC is amending its requirements for the license renewal process for certain production or utilization facilities. This action does not constitute the establishment of a standard that contains generally applicable requirements.

XII. Environmental Assessment and Final Finding of No Significant Environmental Impact

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission’s regulations in subpart A of 10 CFR part 51, that this final rule will not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The provision to eliminate license terms for NPUFs, other than testing facilities, licensed under § 50.21(a) or (c) will result in no

additional radiological or non-radiological impacts because of the minimal accident consequences of these facilities, existing surveillance and reporting by licensees, and NRC oversight. In addition, the implementation of this final rule will not affect the environmental review requirements for new facilities and facilities applying for license renewal. The NRC concludes that this final rule will not cause any additional radiological or non-radiological impacts on the human environment.

The NRC requested the views of the States on the environmental assessment for this rule. No States filed comments regarding the environmental assessment for this rule.

The determination of this environmental assessment is that there will be no significant offsite impact to the public from this action. The environmental assessment is available as indicated under the “Availability of Documents” section.

XIII. Paperwork Reduction Act

This final rule contains new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). The collections of information were approved by the Office of Management and Budget (OMB), approval number 3150–0268.

The burden to the public for the information collections is estimated to average 51 hours per response for information collection requirements contained in 10 CFR part 50 and 0 hours per response for information collection requirements contained in 10 CFR part 51, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collections.

The information collections are being conducted to create a more efficient licensing process that continues to protect public health, safety, and the environment. Information will be used by the NRC to ensure that licensing bases remain up-to-date and that adequate protection of public health and safety is maintained. Responses to these collections of information are mandatory under § 50.71(e) and § 51.56. Confidential and proprietary information submitted to the NRC is protected in accordance with NRC regulations at § 9.17(a) and § 2.390(b).

You may submit comments on any aspect of the information collections, including suggestions for reducing the burden, by the following methods:

• *Federal Rulemaking Website:* Go to <http://www.regulations.gov> and search for Docket ID NRC–2011–0087.

• *Mail comments to:* FOIA, Library, and Information Collections Branch, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; InfoCollects@nrc.gov; or to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150–0268), Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street NW, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the

collection displays a currently valid OMB control number.

XIV. Congressional Review Act

This final rule is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

XV. Criminal Penalties

For the purposes of Section 223 of the AEA, the NRC is issuing this final rule that amends 10 CFR 50.34, 50.36, 50.59, 50.71, 50.75, 50.82, 55.40, 55.53, 55.59, 73.21, 73.23, 73.60, and 140.11 and creates § 50.135 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of these provisions would be subject to criminal enforcement.

XVI. Availability of Guidance

The NRC is issuing RG 2.7, Revision 0, “Preparation of Updated Final Safety Analysis Reports for Non-Power Production or Utilization Facilities,” for the implementation of the requirements in § 50.71(e) of this final rule. The guidance is available in ADAMS under Accession No. ML18031A007. You can access information and public comment submissions related to the guidance at the federal rulemaking website, www.regulations.gov, by searching on Docket ID NRC–2011–0087.

XVII. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS accession No./web link/ Federal Register citation
NUREG–1537, Part 1, “Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors, Format and Content”.	ML042430055.
NUREG–1537, Part 2, “Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors, Standard Review Plan and Acceptance Criteria”.	ML042430048.
Interim Staff Guidance–2009–001, “Interim Staff Guidance on the Streamlined Review Process for License Renewal for Research Reactors”.	ML092240244.
Non-Power Reactor License Renewal: Preliminary Draft Regulatory Basis; Request for Comment.	77 FR 38742; June 29, 2012.
Non-Power Reactor (NPR) License Renewal Rulemaking: Regulatory Basis Document ..	ML12240A677.
Federal Register Notice: Final Regulatory Basis for Rulemaking to Streamline Non-Power Reactor License Renewal; Notice of Availability of Documents.	ML12250A658.
SECY–08–0161, “Review of Research and Test Reactor License Renewal Applications”	ML082550140.
SRM–SECY–08–0161, “Review of Research and Test Reactor License Renewal Applications”.	ML090850159.
SRM–M080317B, “Briefing on State of NRC Technical Programs”	ML080940439.
SECY–09–0095, “Long-Term Plan for Enhancing the Research and Test Reactor License Renewal Process and Status of the Development and Use of the Interim Staff Guidance”.	ML092150717.
SRM–SECY–91–061, “Separation of Non-Reactor and Non-Power Reactor Licensing Activities from Power Reactor Licensing Activities in 10 CFR Part 50”.	ML010050021.
SRM–M090811, “Briefing on Research and Test Reactor (RTR) Challenges”	ML092380046.
Draft Regulatory Guide DG–2006, “Preparation of Updated Final Safety Analysis Reports for Non-Power Production or Utilization Facilities”.	ML17068A041.
Proposed Rule: Draft Regulatory and Backfit Analysis	ML17068A038.
Proposed Rule: Draft OMB Supporting Statement	ML17068A077.
Proposed Rule: Draft Environmental Assessment	ML17068A035.
SECY–16–0048, “Proposed Rulemaking: Non-Power Production or Utilization Facility License Renewal (RIN 3150–AI96)”.	ML16019A048.
EPA 400–R–92–001, “Manual of Protective Action Guides and Protective Actions for Nuclear Incidents”.	https://www.epa.gov/sites/production/files/2016-03/documents/pags.pdf .
EPA–400/R–17/001, “PAG Manual: Protective Action Guides and Planning Guidance for Radiological Incidents”.	https://www.epa.gov/sites/production/files/2017-01/documents/epa_pag_manual_final_revisions_01-11-2017_cover_disclaimer_8.pdf .
Summary of August 7, 2014, Public Meeting to Discuss the Rulemaking for Streamlining Non-power Reactor License Renewal.	ML15322A400.
Summary of October 7, 2015, Public Meeting to Discuss the Rulemaking for Streamlining Non-Power Reactor License Renewal.	ML15307A002.
Federal Register Notice: Final Rule; Standards for Protection Against Radiation	56 FR 23360; May 21, 1991.
Federal Register Notice: Proposed Rule; Non-Power Production or Utilization Facility License Renewal.	82 FR 15643; March 30, 2017.
SRM–SECY–16–0048, “Staff Requirements—Proposed Rulemaking: Non-Power Production or Utilization Facility License Renewal (RIN 3150–AI96)”.	ML17045A543.
“Supporting Statement For Information Collections Contained In 10 CFR Part 50 Non-Power Production Or Utilization Facility License Renewal Final Rule,” dated December 2024.	ML18031A006.
“Supporting Statement For Information Collections Contained In 10 CFR Part 51 Non-Power Production Or Utilization Facility License Renewal Final Rule,” dated December 2024.	ML19113A007.

Document	ADAMS accession No./web link/ Federal Register citation
"Environmental Assessment and Finding of No Significant Impact Supporting Final Rule: Non-Power Production or Utilization Facility License Renewal," dated December 2024.	ML24241A112.
Final Rule: "Regulatory Analysis—Non-power Production or Utilization Facility License Renewal," dated December 2024.	ML24241A114.
"NRC Response to Public Comments; Non-Power Production or Utilization Facility License Renewal," dated December 2024.	ML18031A005.
Regulatory Guide 2.7, "Preparation of Updated Final Safety Analysis Reports for Non-Power Production or Utilization Facilities," dated December 2024.	ML18031A007.
Federal Register Notice: Final Rule; Financial Information Requirements for Applications to Renew or Extend the Term of an Operating License for a Power Reactor. Summary of May 24, 2017, Public Meeting to Discuss the Proposed Non-Power Production or Utilization Facility License Renewal Rule.	69 FR 4439; January 30, 2004.
Nuclear Energy Innovation and Modernization Act (Pub. L. 115–439), enacted January 14, 2019.	ML17170A066.
Summary of April 25, 2019, Public Meeting to Discuss the Implementation Schedule for the Non-Power Production or Utilization Facility License Renewal Final Rule.	https://www.congress.gov/115/bills/s512/BILLS-115s512enr.pdf .
NRC Response to Public Comment Non-Power Production or Utilization Facility License Renewal.	ML19133A080.
SECY–19–0062, "Final Rule: Non-Power Production or Utilization Facility License Renewal (RIN 3150–AI96, NRC–2011–0087)".	ML18031A005.
SRM–M240904: Affirmation Session—SECY–19–0062, "Final Rule: Non-Power Production or Utilization Facility License Renewal (RIN 3150–AI96, NRC–2011–0087)", dated September 4, 2024.	ML18031A000 (package).
Federal Register Notice: Final Rule; 10 CFR Part 50—Licensing of Production and Utilization Facilities.	ML24248A208 (package).
Federal Register Notice: Final Rule; Elimination of Review of Financial Qualifications of Electric Utilities in Licensing Hearings for Nuclear Power Plants.	33 FR 9704; July 4, 1968.
Federal Register Notice: Final Rule; Elimination of Review of Financial Qualifications of Electric Utilities in Operating License Reviews and Hearings for Nuclear Power Plants.	47 FR 13750; March 31, 1982.
Federal Register Notice: Final Rule; National Environmental Policy Act—Regulations	49 FR 35747; September 12, 1984.
Advanced Notice of Proposed Rulemaking; Revision of Backfitting Process for Power Reactors.	43 FR 55978; November 29, 1978.
Policy Statement; Revision of Backfitting Process for Power Reactors	48 FR 44217; September 28, 1983.
Federal Register Notice: Proposed Rule; Revision of Backfitting Process for Power Reactors.	48 FR 44173; September 28, 1983.
Federal Register Notice: Final Rule; Revision of Backfitting Process for Power Reactors	49 FR 47034; November 30, 1984.
Federal Register Notice: Final Rule; Financial Information Requirements for Applications to Renew or Extend the Term of an Operating License for a Power Reactor.	50 FR 38097; September 20, 1985.
Federal Register Notice: Proposed Rule; Revision of Backfitting Process for Power Reactors.	69 FR 4439; January 30, 2004.
Federal Register Notice: Final Rule; Revision of Backfitting Process for Power Reactors	52 FR 34223; September 10, 1987.
Federal Register Notice: Final Rule; Limiting the Use of Highly Enriched Uranium in Domestically Licensed Research and Test Reactors.	53 FR 20603; June 6, 1988.
Federal Register Notice: Final Rule; Clarification of Physical Protection Requirements at Fixed Sites.	51 FR 6514; February 25, 1986.
Federal Register Notice: Final Rule; Requirements for Fingerprint-Based Criminal History Record Checks for Individuals Seeking Unescorted Access to Non-Power Reactors.	58 FR 13699; March 15, 1993.
Plain Language in Government Writing	77 FR 27561, 27572; May 11, 2012.
	63 FR 31885; June 10, 1998.

List of Subjects

10 CFR Part 2

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

10 CFR Part 20

Byproduct material, Criminal penalties, Hazardous waste, Licensed

material, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Penalties, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 26

Administrative practice and procedure, Alcohol abuse, Alcohol testing, Appeals, Chemical testing, Drug abuse, Drug testing, Employee assistance programs, Fitness for duty, Management actions, Nuclear power plants and reactors, Privacy, Protection of information, Radiation protection,

Reporting and recordkeeping requirements.

10 CFR Part 50

Administrative practice and procedure, Antitrust, Classified information, Criminal penalties, Education, Fire prevention, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Penalties, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements, Whistleblowing.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statements, Hazardous waste, Nuclear

energy, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 55

Criminal penalties, Manpower training programs, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements.

10 CFR Part 73

Criminal penalties, Exports, Hazardous materials transportation, Imports, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 140

Criminal penalties, Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements.

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Nonpayment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the AEA, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 2, 20, 26, 50, 51, 55, 73, 140, 170, and 171:

PART 2—AGENCY RULES OF PRACTICE AND PROCEDURE

- 1. The authority citation for part 2 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 29, 53, 62, 63, 81, 102, 103, 104, 105, 161, 181, 182, 183, 184, 186, 189, 191, 234 (42 U.S.C. 2039, 2073, 2092, 2093, 2111, 2132, 2133, 2134, 2135, 2201, 2231, 2232, 2233, 2234, 2236, 2239, 2241, 2282); Energy Reorganization Act of 1974, secs. 201, 206 (42 U.S.C. 5841, 5846); Nuclear Waste Policy Act of 1982, secs. 114(f), 134, 135, 141 (42 U.S.C. 10134(f), 10154, 10155, 10161); Administrative Procedure Act (5 U.S.C. 552, 553, 554, 557, 558); National Environmental

Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note.

Section 2.205(j) also issued under Sec. 31001(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note).

- 2. In § 2.109, revise paragraph (a) and add paragraph (f) to read as follows:

§ 2.109 Effect of timely renewal application.

(a) Except for the renewal of licenses identified in paragraphs (b) through (f) of this section, if at least 30 days before the expiration of an existing license authorizing any activity of a continuing nature, the licensee files an application for a renewal or for a new license for the activity so authorized, the existing license will not be deemed to have expired until the application has been finally determined.

* * * * *

(f) If the licensee of a non-power production or utilization facility licensed under 10 CFR 50.22, or a testing facility, files a sufficient application for renewal at least 2 years before the expiration of the existing license, the existing license will not be deemed to have expired until the application has been finally determined.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

- 3. The authority citation for part 20 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 53, 63, 65, 81, 103, 104, 161, 170H, 182, 186, 223, 234, 274, 1701 (42 U.S.C. 2014, 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2210h, 2232, 2236, 2273, 2282, 2021, 2297f); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); Low-Level Radioactive Waste Policy Amendments Act of 1985, sec. 2 (42 U.S.C. 2021b); 44 U.S.C. 3504 note.

§ 20.1905 [Amended]

- 4. In § 20.1905, amend paragraph (g) by removing the word “reactors” and adding in its place the phrase “production or utilization facilities”.

PART 26—FITNESS FOR DUTY PROGRAMS

- 5. The authority citation for part 26 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 53, 103, 104, 107, 161, 223, 234, 1701 (42 U.S.C. 2073, 2133, 2134, 2137, 2201, 2273, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); 44 U.S.C. 3504 note.

§ 26.3 [Amended]

- 6. In § 26.3, amend paragraph (e) by removing the word “reactor” and adding in its place the phrase “production or utilization facility”.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

- 7. The authority citation for part 50 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 101, 102, 103, 104, 105, 108, 122, 147, 149, 161, 181, 182, 183, 184, 185, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 2131, 2132, 2133, 2134, 2135, 2138, 2152, 2167, 2169, 2201, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, sec. 306 (42 U.S.C. 10226); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note; Sec. 109, Pub. L. 96–295, 94 Stat. 783.

- 8. In § 50.2, revise the definitions for “Non-power reactor” and “Testing facility” to read as follows:

§ 50.2 Definitions.

* * * * *

Non-power reactor means:

- (1) A testing facility; or
(2) A research reactor, which is a non-power production or utilization facility that is a nuclear reactor licensed under § 50.21(c):

- (i) For which a safety assessment demonstrates accident radiation doses consistent with § 50.34(a)(1)(i); and
(ii) That is not a testing facility; or
(3) A commercial or industrial reactor, which is a non-power production or utilization facility that is a nuclear reactor licensed under § 50.22:

- (i) For which a safety assessment demonstrates accident radiation doses consistent with § 50.34(a)(1)(i); and
(ii) That is not a testing facility.

* * * * *

Testing facility means a non-power production or utilization facility that is a nuclear reactor licensed under § 50.21(c) or § 50.22 for which:

- (1) Analyzed accident radiation doses are in excess of the dose criterion for facilities not subject to 10 CFR part 100 set forth in § 50.34(a)(1)(i); or
(2) The Commission determines that the design, operation, or use and the associated risk warrant classification as a testing facility.

* * * * *

§ 50.8 [Amended]

- 9. In § 50.8, amend paragraph (b) by adding the number “50.135,” in numerical order.

§ 50.33 [Amended]

- 10. Amend § 50.33 by:

- a. Removing the phrase “for a power reactor” from the fourth sentence and removing the last sentence in paragraph (f)(2); and

■ b. Redesignating footnotes 4 and 5 as footnotes 1 and 2.

■ 11. In § 50.34:

■ a. Revise paragraph (a)(1)(i);

■ b. Add paragraph (b)(13);

■ c. Redesignate footnote 5 as footnote 1;

■ d. Add footnote 2;

■ e. Redesignate footnotes 6 and 7 as footnotes 3 and 4;

■ f. Remove footnotes 8 and 9; and

■ g. Redesignate footnotes 10 and 11 as footnotes 5 and 6.

The revision and addition read as follows:

§ 50.34 Contents of applications; technical information.

(a) * * *

(1) * * *

(i) A description and safety assessment of the site on which the facility is to be located, with appropriate attention to features affecting facility design. Special attention should be directed to the site evaluation factors identified in part 100 of this chapter. The assessment must contain an analysis and evaluation of the major structures, systems and components of the facility which bear significantly on the acceptability of the site under the site evaluation factors identified in part 100 of this chapter, assuming that the facility will be operated at the ultimate power level which is contemplated by the applicant. For non-power production or utilization facilities not subject to 10 CFR part 100, the assessment must provide an evaluation of the applicable radiological consequences that demonstrates with reasonable assurance that any individual located in the unrestricted area following the onset of a postulated accident, including consideration of experiments, would not receive a radiation dose in excess of 1 rem (0.01 Sv)² TEDE for the duration of the accident. With respect to operation at the projected initial power level, the applicant is required to submit information prescribed in paragraphs (a)(2) through (a)(8) of this section, as well as the information required by this paragraph, in support of the application for a construction permit, or a design approval.

* * * * *

(b) * * *

(13) Non-power production or utilization facility applicants who apply for an initial or renewed operating license shall provide a final evaluation of the applicable radiological consequences in § 50.34(a)(1)(i).

* * * * *

² The 1 rem accident dose criterion for non-power production or utilization facilities is

not a dose limit; it informs the analysis of postulated accidents and the development of safety measures so that in the unlikely event of an accident, the NRC has reasonable assurance that no acute radiation-related harm will result to any member of the public.

§ 50.36 [Amended]

■ 12. In § 50.36, amend paragraph (c)(6) by removing the phrase “non-power reactor” and adding in its place the phrase “non-power production or utilization”.

■ 13. In § 50.51, in the first sentence of paragraph (a) remove the word “Each” and add in its place the phrase “Except as noted in § 50.51(c), each” and add paragraph (c) to read as follows:

§ 50.51 Continuation of license.

* * * * *

(c) Each non-power production or utilization facility license issued under § 50.21(a) or (c), other than a testing facility license, after January 29, 2025, will be issued with no fixed license term.

■ 14. In § 50.59, revise paragraph (b) to read as follows:

§ 50.59 Changes, tests, and experiments.

* * * * *

(b) This section applies to each holder of an operating license issued under this part or a combined license issued under part 52 of this chapter, including the holder of a license authorizing the operation of a nuclear power reactor that has submitted the certification of permanent cessation of operations required under § 50.82(a)(1) or § 50.110, a reactor licensee whose license has been amended to allow possession of nuclear fuel but not operation of the facility, or a non-power production or utilization facility that has permanently ceased operations.

* * * * *

■ 15. In § 50.71:

■ a. In the first sentence of paragraph (e), add the phrase “, or non-power production or utilization facility,” after the word “reactor”;

■ b. In paragraph (e)(3)(i), remove the letter “A” at the beginning and add in its place the phrase “For nuclear power reactor licensees, a”;

■ c. Add paragraph (e)(3)(iv);

■ d. Redesignate paragraph (e)(4) as paragraph (e)(4)(i);

■ e. In newly redesignated paragraph (e)(4)(i), remove the word “Subsequent” and add in its place the phrase “For nuclear power licensees, subsequent”;

■ f. Add paragraph (e)(4)(ii);

■ g. In paragraph (g), remove the phrase “non-power reactor” and add in its place the phrase “non-power production or utilization facility”; and

■ h. In footnote 1, remove the word “includes” and add in its place the word “include”.

The revisions and additions read as follows:

§ 50.71 Maintenance of records, making of reports.

* * * * *

(e) * * *

(3) * * *

(iv) Holders of non-power production or utilization facility licenses issued after January 29, 2025, shall file a revision of the original FSAR containing those original pages that are still applicable plus new replacement pages within 5 years of the date of issuance of the operating license. The revision must bring the FSAR up to date as of a maximum of 6 months prior to the date of filing the revision.

* * * * *

(4) * * *

(ii) Non-power production or utilization facility licensees shall file an FSAR update no more than 5 years from the date of the submittal of the updated FSAR required by § 50.71(e)(3)(iv) or by order and shall file subsequent updates no more than 5 years from the date of the previous submittal. Each submittal must reflect all changes made to the FSAR up to a maximum of 6 months prior to the date of filing the submittal.

* * * * *

■ 16. In § 50.75:

■ a. Revise paragraph (d)(1);

■ b. In paragraphs (e)(1)(iv) and (f)(4), remove the phrase “non-power reactor” and add in its place the phrase “non-power production or utilization facility”; and

■ c. In paragraph (f)(5), remove the phrase “power and non-power reactors” and add in its place the phrase “power reactors and non-power production or utilization facilities”.

The revision reads as follows:

§ 50.75 Reporting and recordkeeping for decommissioning planning.

* * * * *

(d)(1) Each applicant for or holder of an operating license for a non-power production or utilization facility shall submit a decommissioning report as required by § 50.33(k) of this part.

* * * * *

■ 17. In § 50.82, revise paragraphs (b) introductory text, (b)(1), and (c) to read as follows:

§ 50.82 Termination of license.

* * * * *

(b) For non-power production or utilization facility licensees—

(1) A licensee that permanently ceases operations must make application for

license termination within 2 years following permanent cessation of operations, and for testing facilities licensed under § 50.21(c) or facilities licensed under § 50.22, in no case later than 1 year prior to expiration of the operating license. Each application for termination of a license must be accompanied or preceded by a proposed decommissioning plan. The contents of the decommissioning plan are specified in paragraph (b)(4) of this section.

* * * * *

(c) The collection period for any shortfall of funds will be determined, upon application by the licensee, on a case-by-case basis taking into account the specific financial situation of each holder of the following licenses:

(1) A non-power production or utilization facility licensed under § 50.21(a) or (c), other than a testing facility, that has permanently ceased operations.

(2) A facility licensed under § 50.21(b) or § 50.22, or a testing facility, that has permanently ceased operation before the expiration of its license.

■ 18. Add § 50.135 to read as follows:

§ 50.135 Renewal of non-power production or utilization facility licenses issued under § 50.22 and testing facility licenses.

(a) *Applicability.* The requirements in this section apply to applicants for renewed non-power production or utilization facility operating licenses issued under § 50.22 and to applicants for renewed testing facility operating licenses issued under § 50.21(c).

(b) *Written communications.* All applications, correspondence, reports, and other written communications must be filed in accordance with applicable portions of § 50.4.

(c) *Filing of application.* (1) The filing of an application for a renewed license must be in accordance with subpart A of 10 CFR part 2 and all applicable sections of this part.

(2) An application for a renewed license may not be submitted to the Commission earlier than 10 years before the expiration of the operating license currently in effect.

(d) *Contents of application.* (1) Each application must include the information specified in §§ 50.33, 50.34, and 50.36, as applicable.

(2) Each application must include conforming changes to the standard indemnity agreement, under 10 CFR part 140 to account for the expiration term of the proposed renewed license.

(3) Each application must include a supplement to the environmental report that complies with the requirements of 10 CFR 51.56.

(e) *Issuance of a renewed license.* (1) A renewed license will be of the class for which the operating license currently in effect was issued.

(2) A renewed license will be issued for a fixed period of time. The term of any renewed license may not exceed 40 years.

(3) A renewed license will become effective immediately upon its issuance, thereby superseding the operating license previously in effect. If a renewed license is subsequently set aside upon further administrative or judicial appeal, the operating license previously in effect will be reinstated unless its term has expired and the renewal application was not filed in a timely manner in accordance with 10 CFR 2.109.

(4) A renewed license may be subsequently renewed in accordance with all applicable requirements.

Appendix C to Part 50 [Amended]

■ 19. In appendix C to part 50, amend paragraph III by removing the phrase “for medical and research reactors” and adding in its place the phrase “for non-power production or utilization facilities of a type described in § 50.21(a) or (c), other than testing facilities”.

■ 20. In appendix E to part 50, revise footnote 2 to read as follows:

Appendix E to Part 50—Emergency Planning and Preparedness for Production and Utilization Facilities

* * * * *

² Regulatory Guide 2.6, “Emergency Planning for Research and Test Reactors and Other Non-Power Production and Utilization Facilities,” may be used as guidance for the acceptability of non-power production or utilization facility emergency response plans.

* * * * *

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

■ 21. The authority citation for part 51 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 161, 193 (42 U.S.C. 2201, 2243); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); National Environmental Policy Act of 1969 (42 U.S.C. 4332, 4334, 4335); Nuclear Waste Policy Act of 1982, secs. 144(f), 121, 135, 141, 148 (42 U.S.C. 10134(f), 10141, 10155, 10161, 10168); 44 U.S.C. 3504 note.

§ 51.17 [Amended]

■ 22. In § 51.17, amend paragraph (b) by adding the number “51.56,” in numerical order.

§ 51.45 [Amended]

■ 23. In § 51.45, amend paragraph (a) by adding the number “51.56,” in numerical order.

■ 24. Add § 51.56 to read as follows:

§ 51.56 Environmental report—non-power production or utilization facility.

Each applicant for a non-power production or utilization construction permit or facility license, or renewal of a non-power production or utilization facility license issued pursuant to § 50.21(a) or (c) or § 50.22 of this chapter shall submit a separate document, entitled “Applicant’s Environmental Report” or “Supplement to Applicant’s Environmental Report,” as appropriate, with its application to: ATTN: Document Control Desk, Director, Office of Nuclear Reactor Regulation. The environmental report or supplement shall contain the information specified in § 51.45. If the application is for a renewal of a license for which the applicant has previously submitted an environmental report, the supplement, to the extent applicable, shall include an analysis of any environmental impacts resulting from operational experience or a change in operations, and an analysis of any environmental impacts that may result from proposed decommissioning activities.

PART 55—OPERATORS’ LICENSES

■ 25. The authority citation for part 55 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 107, 161, 181, 182, 183, 186, 187, 223, 234 (42 U.S.C. 2137, 2201, 2231, 2232, 2233, 2236, 2237, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); Nuclear Waste Policy Act of 1982, sec. 306 (42 U.S.C. 10226); 44 U.S.C. 3504 note.

§ 55.5 [Amended]

■ 26. Amend § 55.5 by:

■ a. In paragraph (b)(1), removing the phrase “Except for test and research reactor facilities, the” and adding in its place the word “The”; and

■ b. In paragraph (b)(3), removing the phrase “a test and research reactor or non-power reactor facility licensed under 10 CFR part 50” and adding in its place “a utilization facility licensed under part 50 of this chapter that is not a power reactor”.

§ 55.40 [Amended]

■ 27. In § 55.40, amend paragraph (d) by removing the phrase “all test and research reactors” and adding in its place the phrase “all non-power reactors”.

§ 55.53 [Amended]

- 28. Amend § 55.53 by:
- a. In paragraphs (e) and (f)(2), removing the phrase “test and research reactors” and adding in its place the phrase “non-power reactors”; and
 - b. In paragraph (j), removing the phrase “non-power reactors” and adding in its place the phrase “utilization facilities licensed under 10 CFR part 50 that are not power reactors”; and
 - c. In paragraph (k):
 - i. Removing the phrase “non-power reactors” and adding in its place the phrase “utilization facilities licensed under 10 CFR part 50 that are not power reactors”; and
 - ii. Removing the term “non-power” at the end of the paragraph.

§ 55.59 [Amended]

- 29. In § 55.59, amend paragraph (c)(7) by:
- a. Removing in the paragraph heading, the phrase “*research and test reactor facilities*” and adding in its place the phrase “*utilization facilities licensed under 10 CFR part 50 that are not power reactors*”; and
 - b. Removing the phrase “research reactor or test reactor facility” and adding in its place “utilization facility licensed under 10 CFR part 50 that is not a power reactor”.

§ 55.61 [Amended]

- 30. In § 55.61, amend paragraph (b)(5) by removing the phrase “non-power reactors” and adding in its place the phrase “utilization facilities licensed under 10 CFR part 50 that are not power reactors”.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

- 31. The authority citation for part 73 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 53, 147, 149, 161, 161A, 170D, 170E, 170H, 170I, 223, 229, 234, 1701 (42 U.S.C. 2073, 2167, 2169, 2201, 2201a, 2210d, 2210e, 2210h, 2210i, 2273, 2278a, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); Nuclear Waste Policy Act of 1982, secs. 135, 141 (42 U.S.C. 10155, 10161); 44 U.S.C. 3504 note.

Section 73.37(b)(2) also issued under Sec. 301, Public Law 96–295, 94 Stat. 789 (42 U.S.C. 5841 note).

- 32. In § 73.2, add in alphabetical order the definition for *Non-power reactor*.

§ 73.2 Definitions.

* * * * *

Non-power reactor is defined at 10 CFR 50.2.

* * * * *

§ 73.21 [Amended]

- 33. In § 73.21, amend paragraph (a)(1)(ii) by removing the phrase “Research and test reactors” and adding in its place the phrase “non-power reactors”.

§ 73.23 [Amended]

- 34. Amend § 73.23 by removing the phrase “research and test reactors” and adding in its place the phrase “non-power reactors”.

§ 73.60 [Amended]

- 35. Amend § 73.60 by removing wherever it may appear, the word “nonpower” and adding in its place the word “non-power”.

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

- 36. The authority citation for part 140 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 161, 170, 223, 234 (42 U.S.C. 2201, 2210, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); 44 U.S.C. 3504 note.

- 37. Amend § 140.3 by removing the definition for “Testing reactor” and adding the definition for “Testing facility” to read as follows:

§ 140.3 Definitions.

* * * * *

Testing facility is defined at 10 CFR 50.2.

* * * * *

§ 140.11 [Amended]

- 38. In § 140.11, amend paragraph (a)(3) by removing the phrase “testing reactor” and adding in its place the phrase “testing facility”.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

- 39. The authority citation for part 170 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 161(w) (42 U.S.C. 2014, 2201(w)); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 42 U.S.C. 2215; 31 U.S.C. 901, 902, 9701; 44 U.S.C. 3504 note.

- 40. Amend § 170.3 by revising the definitions for “Research reactor” and “Testing facility” to read as follows:

§ 170.3 Definitions.

* * * * *

Research reactor means a non-power production or utilization facility, as

defined in 10 CFR 50.2, that is a nuclear reactor licensed under 10 CFR 50.21(c):

(i) For which a safety assessment demonstrates accident radiation doses consistent with 10 CFR 50.34(a)(1)(i); and

(ii) That is not a testing facility.

* * * * *

Testing facility is defined at 10 CFR 50.2.

* * * * *

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

- 41. The authority citation for part 171 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 161(w), 223, 234 (42 U.S.C. 2014, 2201(w), 2273, 2282); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 42 U.S.C. 2215; 44 U.S.C. 3504 note.

- 42. Amend § 171.5 by revising the definitions for “Research reactor” and “Testing facility” to read as follows:

§ 171.5 Definitions.

* * * * *

Research reactor is defined at 10 CFR 170.3.

* * * * *

Testing facility is defined at 10 CFR 50.2.

* * * * *

Dated: December 19, 2024.

For the Nuclear Regulatory Commission.

Carrie Safford,

Secretary of the Commission.

[FR Doc. 2024–30721 Filed 12–27–24; 8:45 am]

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FEDERAL HOUSING FINANCE AGENCY**12 CFR Part 1282**

RIN 2590–AB34

2025–2027 Enterprise Housing Goals

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is issuing a final rule on the housing goals for Fannie Mae and Freddie Mac (the Enterprises) for 2025 through 2027 as required by the Federal Housing Enterprises Financial Safety and Soundness Act of 1992. The final

rule establishes the benchmark levels for the single-family and multifamily housing goals and subgoals for 2025 through 2027. The final rule also includes technical changes and factors FHFA will consider when determining whether an Enterprise would be required to submit a housing plan to FHFA should the Enterprise fail to meet three of the single-family housing goals.

DATES: This final rule is effective February 28, 2025.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact MediaInquiries@FHFA.gov. For technical questions, please contact Padmasini Raman, Supervisory Policy Analyst, Housing & Community Investment, Division of Housing Mission and Goals, (202) 649-3633, Padmasini.Raman@fhfa.gov; or Carey Whitehead, Assistant General Counsel, Office of General Counsel, (202) 649-3630, Carey.Whitehead@fhfa.gov. These are not toll-free numbers. The mailing address is: Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. 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. Background

A. Statutory and Regulatory Background for Enterprise Housing Goals

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) requires FHFA to establish several annual housing goals for both single-family and multifamily mortgages purchased by the Enterprises.¹ The annual housing goals are one measure of the extent to which the Enterprises are meeting their public purposes, which include “an affirmative obligation to facilitate the financing of affordable housing for low- and moderate-income families in a manner consistent with their overall public purposes, while maintaining a strong financial condition and a reasonable economic return.”²

FHFA establishes annual housing goals for Enterprise purchases of single-family and multifamily mortgages consistent with the requirements of the Safety and Soundness Act. The structure of the housing goals and the parameters for determining how mortgage purchases are counted or not counted towards the goals are defined in FHFA’s Enterprise housing goals

regulation.³ This final rule amends the regulation to establish benchmark levels for the single-family and multifamily housing goals for 2025–2027.

Single-family housing goals. The single-family housing goals defined under the Safety and Soundness Act include separate categories for home purchase mortgages for low-income families, very low-income families, and families that reside in low-income areas.⁴ For purposes of the single-family housing goals, families that reside in low-income areas⁵ include: (1) families in low-income census tracts, defined as census tracts with median income less than or equal to 80 percent of area median income (AMI);⁶ (2) families with incomes less than or equal to 100 percent of AMI who reside in minority census tracts (defined as census tracts with a minority population of at least 30 percent and a tract median income of less than 100 percent of AMI);⁷ and (3) families with incomes less than or equal to 100 percent of AMI who reside in designated disaster areas.⁸ The Enterprise housing goals regulation also includes subgoals,⁹ within the low-income areas housing goal, that focus on single-family housing occupied by families in low-income census tracts and moderate-income families in minority census tracts.¹⁰ Performance on the single-family home purchase goals and subgoals is measured as the percentage of the total home purchase mortgages purchased by an Enterprise each year that qualify for each goal or subgoal. There is also a separate goal for single-family refinance mortgages for low-income families, and performance on the refinance goal is determined in a similar way.

³ 12 CFR part 1282.

⁴ 12 U.S.C. 4562(a)(1). To distinguish the goals and subgoals related to home purchase mortgages from the goal related to refinance mortgages, this preamble refers to the “low-income home purchase goal” and the “very low-income home purchase goal” to refer to the low-income families housing goal and the very low-income families housing goal, respectively, described in 12 CFR 1282.12(c) and (d). The terms “low-income census tracts home purchase subgoal” and “minority census tracts home purchase subgoal” are used to refer to the low-income census tracts housing subgoal and the minority census tracts housing subgoal, respectively, described in 12 CFR 1282.12(f) and (g).

⁵ See 12 U.S.C. 4502(28); 12 CFR 1282.1 (definition of “families in low-income areas”).

⁶ 12 CFR 1282.1 (par. (i) of definition of “families in low-income areas”).

⁷ 12 U.S.C. 4502(29); 12 CFR 1282.1 (par. (ii) of definition of “families in low-income areas” and definition of “minority census tract”).

⁸ 12 U.S.C. 4502(28); 12 CFR 1282.1 (definition of “designated disaster area” and par. (iii) of definition of “families in low-income areas”).

⁹ For brevity, sometimes this preamble uses the term “goals” to refer to goals and subgoals.

¹⁰ 12 CFR 1282.12(f).

Under the Safety and Soundness Act, the single-family housing goals are limited to mortgages on owner-occupied housing with one to four units. The single-family goals cover first lien, conventional, conforming mortgages, meaning mortgages that are not subordinate to other mortgage liens, that are not insured or guaranteed by the Federal Housing Administration or another government agency, and that have principal balances that do not exceed the conforming loan limits for Enterprise mortgages.

Two-part evaluation approach for single-family housing goals. The Enterprises’ performance on the single-family housing goals is evaluated using a two-part approach that compares the goal-qualifying share of each Enterprise’s mortgage purchases to two separate measures: a benchmark level and a market level. To meet a single-family housing goal, the percentage of mortgage purchases by an Enterprise that qualifies for credit under each goal must equal or exceed either the benchmark level or the market level for that year. The benchmark level is set prospectively by rulemaking based on various factors set forth in the Safety and Soundness Act, which are further discussed below.¹¹ The market level is determined retrospectively for each year, based on the actual goal-qualifying share of the overall market as measured by the Home Mortgage Disclosure Act¹² (HMDA) data for that year. The overall market that FHFA uses for setting both the prospective benchmark level and the retrospective market level consists of all single-family, owner-occupied, conventional, conforming mortgages that would be eligible for purchase by either Enterprise. It includes loans purchased by the Enterprises as well as comparable loans held in a lender’s portfolio. It also includes any loans that are part of a private label security, although few such securities have been issued for conventional conforming mortgages since 2008. Since 2018, several new HMDA data fields have become available. FHFA continues to monitor reporting of these new fields to consider potential adjustments to the way FHFA measures the overall market. Because FHFA’s econometric market models use past years’ data to construct the models, a potential transition to incorporate any new data variables will require time to obtain an adequate input data series.

While the retrospective market levels measure mortgage originations in a particular year, the performance of the

¹ 12 U.S.C. 4561(a).

² 12 U.S.C. 4501(7).

¹¹ See 12 U.S.C. 4562(e).

¹² 12 U.S.C. 2801 *et seq.*

Enterprises on the housing goals includes all Enterprise purchases in that year, regardless of the year in which the loan was originated. This includes any loans that are originated in one year and purchased by an Enterprise in a later year.

Multifamily housing goals. The multifamily housing goals defined under the Safety and Soundness Act include separate categories for mortgages on multifamily properties (properties with five or more units) with rental units affordable to low-income and very low-income families. The Safety and Soundness Act also requires reporting on smaller properties, and the Enterprise housing goals regulation includes a small multifamily low-income subgoal for properties with 5 to 50 units. The multifamily housing goals include all Enterprise multifamily mortgage purchases, regardless of the purpose of the loan. The multifamily housing goals evaluate the performance of the Enterprises based on the share of affordable units in properties that serve as collateral for mortgages purchased by an Enterprise. The Enterprise housing goals regulation does not include a retrospective market level measure for the multifamily housing goals, due in part to a lack of comprehensive data about the multifamily market. As a result, FHFA currently measures Enterprise multifamily housing goals performance against the benchmark levels only and the final rule retains this approach.

The Safety and Soundness Act requires that affordability for rental units under the multifamily housing goals be determined based on rents that “[do] not exceed 30 percent of the maximum income level of such income category, with appropriate adjustments for unit size as measured by the number of bedrooms.”¹³ The Enterprise housing goals regulation considers the net rent paid by the renter, *i.e.*, the rent is decreased by any subsidy payments that the renter may receive, including housing assistance payments.¹⁴

¹³ See 12 U.S.C. 4563(c). The 30 percent test for measuring affordability traces back to the “Brooke Amendment,” which amended the United States Housing Act of 1937 to cap public housing rents (Pub. L. 91–152). For purposes of the multifamily housing goals, to be affordable at the 80 percent of AMI level, the rents must not exceed 30 percent of the renter’s income, which must not exceed 80 percent of AMI. See https://www.huduser.gov/portal/pdredge/pdr_edge_featd_article_092214.html for a description of the Brooke Amendment and background on the notion of affordability embedded in the housing goals.

¹⁴ See 12 CFR 1282.1 (par. (i)(B) of definition of “rent”).

B. Considerations After Publication of the Final Rule

If, after publication of this final rule, new information indicates that any of the single-family or multifamily housing goals or subgoals should be adjusted in light of market conditions or the safety and soundness of the Enterprises, or for any other reason, FHFA may take any steps that are necessary and appropriate to respond, consistent with the Safety and Soundness Act and the Enterprise housing goals regulation.

For example, under the Safety and Soundness Act and the Enterprise housing goals regulation, FHFA is permitted to reduce a benchmark level in response to an Enterprise petition for reduction for any of the single-family or multifamily housing goals or subgoals in a particular year. Any adjustment in response to such a petition must be based on a determination by FHFA that: (1) market and economic conditions or the financial condition of the Enterprise require a reduction; or (2) efforts to meet the goal or subgoal would result in the constraint of liquidity, over-investment in certain market segments, or other consequences contrary to the intent of the Safety and Soundness Act or the purposes of the Enterprises’ charter acts.¹⁵

The Safety and Soundness Act and the Enterprise housing goals regulation also consider the possibility that achievement of a particular housing goal or subgoal may or may not have been feasible for an Enterprise. If FHFA determines that a housing goal or subgoal was not feasible for an Enterprise to achieve, then the statute and regulation do not require any further action related to that housing goal or subgoal for that year.¹⁶

If FHFA determines that an Enterprise did not meet a housing goal or subgoal and that achievement of the housing goal or subgoal was feasible, then the statute and regulation provide FHFA with discretionary authority to require the Enterprise to submit a housing plan describing the specific actions the Enterprise will take to improve its housing goals performance.¹⁷

C. Housing Goals Under Conservatorship

On September 6, 2008, FHFA placed each Enterprise into conservatorship. Although the Enterprises remain in conservatorship, they continue to have the mission of supporting a stable and

¹⁵ See 12 U.S.C. 4564(b); 12 CFR 1282.14(d).

¹⁶ See 12 U.S.C. 4566(b); 12 CFR 1282.21(a) (current regulation); 12 CFR 1282.22(a) (final rule).

¹⁷ See 12 U.S.C. 4566(c); 12 CFR 1282.21(a) (current regulation); 12 CFR 1282.22(a) (final rule).

liquid national market for residential mortgage financing. FHFA has continued to establish annual housing goals for the Enterprises and assess their performance under the housing goals each year during conservatorship.

II. Discussion of Proposed Rule and Public Comments

FHFA published a notice of proposed rulemaking (NPRM or proposed rule) in the **Federal Register** on August 29, 2024, that proposed benchmark levels for the single-family and multifamily housing goals for 2025–2027.¹⁸ The public comment period on the proposed rule ended on October 28, 2024. The NPRM proposed decreasing the benchmark levels for the single-family low-income home purchase and very low-income home purchase goals from the current benchmark levels in response to recent market conditions and forecast updates. The NPRM also proposed increasing the minority census tracts home purchase subgoal benchmark level, while maintaining the existing low-income census tracts home purchase subgoal and the low-income refinancing goal benchmark levels.

With respect to the multifamily benchmark levels, the NPRM proposed maintaining the existing low-income multifamily goal benchmark level, increasing the very low-income multifamily goal benchmark level, and decreasing the small (5–50 units) multifamily subgoal benchmark level.

In response to potential future uncertainty regarding the size and composition of the single-family mortgage market, the NPRM proposed including “Enforcement Factors” that FHFA would consider in determining when a housing plan would be required if an Enterprise failed to meet certain single-family housing goals during the 2025–2027 period.

The NPRM also proposed referring to the multifamily very low-income housing subgoal as a goal instead of a subgoal. In addition, the NPRM proposed technical changes intended to better conform the regulation to statutory text and existing FHFA practices and procedures and indicated that it may include additional technical changes or corrections in the final rule based on comments received.

Overview of comments received.

FHFA received 31 comment letters from 61 organizations and individuals in response to the proposed rule. Comments were submitted by both Enterprises, as well as by a community development financial institution, two mortgage companies, and four trade

¹⁸ 89 FR 70127 (Aug. 29, 2024).

associations (one trade association submitted two letters). FHFA also received one comment letter signed by 20 Members of Congress, and seven comment letters from policy advocacy organizations, with one letter representing the views of eleven organizations and another representing the views of five organizations. Eleven individuals submitted the remaining thirteen comment letters (one individual submitted three letters). FHFA also held several meetings with stakeholders to describe the content of the proposed rule and to discuss issues raised by the proposed rule.¹⁹

FHFA has reviewed and considered all the comments. Several of the letters raised issues unrelated to the housing goals or beyond the scope of the proposed rule, and those comments are not addressed in this final rule. Specific provisions of the proposed rule, and the comments received on those provisions, are discussed below and throughout this final rule.

Proposed single-family housing goals benchmark levels.

Most of the commenters who addressed the proposed single-family goals, including the Enterprises, three individuals, three trade associations, and three nonprofit advocacy organizations, expressed overall support for the proposed benchmark levels. Many of these commenters also acknowledged the challenges associated with developing updated benchmark levels for the single-family housing goals using forecast models, particularly given recent and future mortgage market conditions. One nonprofit advocacy organization stated that while their organization has traditionally opposed reductions in the affordable housing goals, they recognize that higher interest rates and a historically low supply of affordable homes have combined to severely limit home purchase options for low-income households. The commenter also expressed support for FHFA's efforts to balance market dynamics and the desire to set single-family goals at relatively high levels. Another comment letter submitted on behalf of several nonprofit advocacy groups acknowledged the challenges posed by rising interest rates in the housing market in recent years and FHFA's ongoing commitment to navigate the complexities of a high-interest rate environment while supporting racial equity initiatives. The comment letter also noted that while the

previous housing goals were established as reasonable stretch targets based on market conditions at that time, it is vital that FHFA adopt new strategies to better address the current economic landscape. One trade association stated that the proposed goals strike the right balance between continuing to push the Enterprises to fulfill their mission to serve low- and moderate-income homebuyers and homeowners, while doing so in a financially responsible and achievable manner.

Although both Enterprises conveyed support for the proposed single-family home purchase benchmark levels, both also expressed concerns over uncertainty in the housing and loan origination market. Fannie Mae welcomed the proposed reductions in the low-income and very low-income benchmark levels but noted that uncertainty and constraints in housing supply and affordability could challenge its ability to meet the proposed benchmark levels.

Three nonprofit advocacy organizations, one trade association, and a community development financial institution disagreed with all or many of the proposed single-family goal benchmark levels, and their comments supported maintaining or increasing the benchmark levels relative to the levels established for 2022 through 2024. Some of these commenters specifically opposed the proposed reductions in the benchmark levels for the low-income home purchase and very low-income home purchase goals. A few of these commenters also recommended that the benchmark levels for the low-income refinancing goal and the low-income census tracts home purchase subgoal be increased. These commenters urged FHFA to remain aggressive and ambitious when setting the housing goal benchmark levels as a means to motivate the Enterprises to lead the market. Several of these commenters stressed the critical role the goals and subgoals play in providing access to mortgage credit for low-income and very low-income borrowers by ensuring that the Enterprises properly focus on this important aspect of their mission.

Proposed benchmark levels for single-family low-income and very low-income home purchase goals.

Three nonprofit advocacy organizations and one community development financial institution recommended that the proposed benchmark levels for the single-family low-income home purchase goal, which FHFA proposed to lower from 28 percent to 25 percent, and the single-family very low-income home purchase goal, which FHFA proposed to lower

from 7 percent to 6 percent, be increased in the final rule. These commenters maintained that the proposed benchmark levels were not aggressive enough given that interest rates had declined since the proposed rule was published. A few of these commenters pointed out that the proposed benchmark levels for the low-income and very low-income home purchase goals were set at levels lower than the midpoints of the forecasts. As noted above, several of these commenters stated that the Enterprises should be given more ambitious low-income and very low-income home purchase goals to motivate them to lead the market.

Proposed single-family low-income census tracts home purchase subgoal.

One individual commented that the proposed rule, which would maintain the current benchmark level for the single-family low-income census tracts home purchase subgoal at 4 percent, is lower than past performance as well as projected forecast performance. The commenter further noted that a higher benchmark level for this subgoal would be more consistent with past Enterprise performance and projected market performance (*i.e.*, two of the statutory factors that must be considered when establishing a goal or subgoal). Two policy advocacy groups urged FHFA to set a higher benchmark level for this subgoal and pointed out that FHFA's model forecast and Enterprise performance in recent years have been higher than the proposed benchmark level of 4 percent.

Proposed single-family minority census tracts subgoal.

Many commenters supported the proposed increase in the benchmark level for the single-family minority census tracts home purchase subgoal from 10 percent to 12 percent. A comment letter submitted on behalf of several nonprofit advocacy organizations expressed support for this proposed increase and noted that the previous benchmark level did not present a significant challenge for the Enterprises to meet. A community development financial institution also supported the proposed increase, and encouraged FHFA to further increase it over time given the critical need to close the persistent racial and ethnic homeownership gaps that perpetuate inequality. A nonprofit advocacy organization recommended that FHFA set the benchmark level at 13 percent rather than 12 percent to push the Enterprises to pursue innovations that drive the market in light of population trends that may lead to a greater share of census tracts where at least 30

¹⁹ Summaries of each of these meetings are available at <https://www.fhfa.gov/regulation/federal-register/proposed-rulemaking/2025-2027-enterprise-housing-goals>.

percent of the population identifies as non-white. Another nonprofit advocacy group stated that because the statutory definition of “minority census tract” is broad, FHFA should greatly increase the benchmark level for this subgoal to incentivize the Enterprises to close the racial homeownership gaps for specific minority groups.

Proposed single-family low-income refinance goal.

Most of the commenters who addressed the proposed low-income refinance goal supported the proposal, which would maintain the current benchmark level at 26 percent. Several of the commenters recognized the challenges associated with forecasting the refinance market. For example, one trade association noted that the refinance market is more sensitive to interest rates, making it more difficult to forecast compared to the home purchase market. A policy advocacy group acknowledged that the refinance market is more unpredictable and volatile than the home purchase market due to increased sensitivity to interest rates, but nevertheless encouraged FHFA to increase the benchmark level for this goal in response to the forecasted market. To address the challenges associated with establishing this goal, the trade association also suggested that FHFA consider establishing a secondary assessment factor based on the number of loans purchased when unique market factors drive large or unanticipated increases in the denominator²⁰ to better assess the number of low-income refinances purchased year over year.

Measurement buffers (called “Enforcement Factors” in the proposed rule).

In the proposed rule preamble, FHFA specifically requested comments on the proposed factors (referred to as “Enforcement Factors” in the NPRM) that FHFA would consider when determining if a housing plan would be required if an Enterprise failed to meet certain single-family housing goals during the 2025–2027 housing goals period. Specifically, FHFA proposed language in section 1282.22 to indicate that it would not require a housing plan if the benchmark level for a single-family housing goal is higher than the market level for the goal and the Enterprise’s performance meets or exceeds the market level minus a specified percentage point. The applicable percentage point is different for the low-income home purchase goal,

the very low-income home purchase goal, and the low-income refinance goal. FHFA did not propose similar factors for single-family subgoals. FHFA also proposed limitations so that the factors would not apply in 2027 if the Enterprise did not meet the market and the benchmark levels in 2025 and 2026.

Several commenters, including a nonprofit advocacy organization, both Enterprises, three trade associations, and a mortgage company expressed support for the proposed factors. The nonprofit advocacy organization commented that the proposed factors would offer flexibilities that will allow the Enterprises to better adapt their business activities to market changes without having to focus on meeting one static metric. One trade association noted that the proposed factors would allow the Enterprises to address unexpected market outcomes to prevent unintended consequences, including unwanted market behaviors that would not benefit the intended borrowers. A mortgage company welcomed the additional flexibility based on current market conditions that the proposed factors would provide.

Fannie Mae expressed general support for the proposed enforcement factors, indicating that the proposed factors considered the difficulties an Enterprise may experience when managing to the anticipated market share rather than the fixed benchmark levels. Fannie Mae noted that while the use of the proposed factors would not change the requirement that an Enterprise meet or surpass each of the single-family housing goals benchmark levels or market share levels, implementation of the factors would provide the Enterprises some assurance considering the uncertainty inherent in predicting market share, especially in the absence of fulsome data.

Freddie Mac expressed support for the proposed enforcement factors, noting that they would appropriately account for market fluctuations and uncertainties that cannot be adequately predicted months or years in advance due to the lack of inclusive and timely market data. Freddie Mac described the proposed factors as a “necessary safeguard” for offsetting any potential gap between the actual and forecasted market levels during the 2025–2027 housing goal period. Freddie Mac also supported the proposed limitations on the use of the proposed factors. Specifically, if an Enterprise fails to meet one of the single-family low-income housing goals in both 2025 and 2026, it would not be allowed to apply the proposed factor to the applicable housing goal in 2027. Freddie Mac

noted that the proposed limitation on the use of the proposed factors would appropriately account for the uncertainty of market conditions and forecasting while maintaining the Enterprises’ responsibility to develop strategies for achieving the housing goals.

Comment letters submitted on behalf of several policy advocacy organizations expressed opposition to the proposed enforcement factors, based on the view that they would reduce the accountability of the Enterprises and allow them to meet a share lower than the market level. As noted in the NPRM, the use of the enforcement factors would be limited and designed to balance the importance of meeting the housing goals with support for liquidity in all market segments. To balance these needs, FHFA narrowly targeted the proposed enforcement factors to apply only to certain single-family housing goals and only for 2025–2027. FHFA noted that it would consider a proposed factor only if the benchmark levels for certain single-family goals were a stretch goal (*i.e.*, above the HMDA market measure) for the year.

Two comments submitted on behalf of nonprofit advocacy organizations expressed concern that the proposed factors would relax performance requirements for the Enterprises. FHFA notes that these comments do not reflect the intent behind the proposed factors. As proposed, the factors do not modify the standards for meeting the housing goals. The Enterprises are still required to meet the lower of the benchmark level or the market level for each goal. FHFA will continue to make a final determination of each Enterprise’s performance under each single-family housing goal and subgoal and each multifamily housing goal and subgoal and will continue to notify Congress if an Enterprise fails to meet any of the goals or subgoals.

Proposed multifamily housing goals benchmark levels.

Several of the commenters that commented on the proposed multifamily housing goals benchmark levels supported the proposal to maintain the current multifamily low-income goal benchmark level at 61 percent, to increase the multifamily very low-income goal benchmark level from 12 percent to 14 percent, and to reduce the small multifamily low-income subgoal benchmark level from 2.5 to 2.0 percent. One trade association supported all the proposed multifamily goal benchmark levels, stating that they would effectively balance the role of the Enterprises in supporting affordable housing and providing liquidity to the

²⁰ For refinance mortgages, the denominator is the total number of refinancing mortgage purchases of an Enterprise in a particular year that finance owner-occupied single-family properties.

entire multifamily market. Another trade association stated that the proposed benchmark levels strike the right balance between continuing to push the Enterprises to fulfill their mission while doing so in a financially responsible and achievable manner. Another trade association referred to the proposed benchmark levels as a “reasonable” mandate for the Enterprises that would provide a critical framework for mortgage funding. A nonprofit advocacy organization supported the proposal to keep the multifamily housing goals at elevated levels. The organization particularly supported the proposed increase in the very low-income goal benchmark level from 12 percent to 14 percent, noting that very low-income renters have been disproportionately impacted by the affordable housing crisis and face a severe shortage of affordable options.

Of the remaining commenters on the multifamily housing goals, three nonprofit advocacy organizations, 20 Members of Congress, and three individuals supported one or more of the proposed multifamily goals or the subgoal benchmark levels, while two nonprofit advocacy organizations opposed all the proposed multifamily goals benchmark levels. Two letters submitted by nonprofit advocacy organizations (one submitted on behalf of 11 nonprofit advocacy organizations) encouraged FHFA to adopt a higher benchmark level for the multifamily low-income housing goal but expressed support for the proposed multifamily very low-income benchmark level. Conversely, another policy advocacy organization supported maintaining the multifamily low-income housing goal benchmark level at 61 percent but urged FHFA to adopt a benchmark level for the multifamily very low-income housing goal higher than 12 percent, not realizing that FHFA proposed increasing this goal to 14 percent. A letter submitted on behalf of 20 Members of Congress called on FHFA to increase the proposed multifamily low-income housing goal benchmark level. With respect to the proposed multifamily low-income housing goal, the letters submitted by and on behalf of policy advocacy organizations, as well as the 20 Members of Congress, stressed that the Enterprises’ previous performance highlighted their ability to lead in providing credit for multifamily mortgages that serve low-income households. For example, one of the commenters noted that because both Enterprises’ multifamily lending activity easily exceeded the 61 percent

benchmark level each year from 2020 to 2023, the multifamily low-income housing goal benchmark level should be increased to 65 percent. The letter submitted on behalf of the Members of Congress also noted that recent decreases in the target range for the federal funds rate, as well as the potential for additional decreases, coupled with individual state actions to increase housing supply pointed towards new opportunities for the Enterprises to meet higher benchmark levels.

Regarding the proposed multifamily very low-income goal, a nonprofit advocacy organization expressed support for the proposed increase in the benchmark level by highlighting the important role the Enterprises play in helping to address the affordable housing needs of very low-income renters. The commenter pointed out that both Enterprises have easily exceeded the 12 percent benchmark level in recent years. The commenter also noted that developers of very low-income rental units often struggle to access affordable capital and that the Enterprises are well-suited to address these developers’ funding needs. Another policy advocacy organization viewed a benchmark level of 12 percent to be proportionally low in comparison to the proposed multifamily low-income housing goal benchmark level as well as the past performance of the Enterprises. The commenter noted that Fannie Mae’s multifamily very low-income housing goal performance was 18.7 percent for 2023, while Freddie Mac’s was 20.6 percent. As a result, the commenter recommended that FHFA increase the multifamily very low-income housing goal benchmark level in the final rule to reflect the greater need for affordable housing as well as to make it more proportional to the relationship between performance and benchmarking.

One of the nonprofit advocacy organizations stated that FHFA is too conservative with its setting of the multifamily goal benchmark levels. The commenter noted that the recent historical performance of the Enterprises indicates that the proposed multifamily goals and subgoal benchmark levels should be more ambitious. The commenter expressed concern that the large difference between goal benchmark level setting and historical performance will encourage the Enterprises to “back slide,” which will hurt the housing supply for low-income rental units during a time when rents have been increasing significantly. Another

nonprofit advocacy organization strongly urged FHFA to set higher multifamily goal benchmark levels in response to the “fair and affordable housing crisis” to incentivize the Enterprises to lead and move the market to give renters more opportunities for fair and affordable multifamily housing.

Proposed small multifamily housing subgoal benchmark level.

There were mixed reactions among those commenters that addressed the proposal to lower the benchmark level for the small multifamily low-income subgoal (which is for properties with 5 to 50 units) from 2.5 percent to 2 percent. One trade association supported the proposed reduction in the benchmark level, stating that this sector is well-supported by private capital sources. Freddie Mac stated that the proposal was appropriate given how sensitive this segment of the market is to market conditions and noted that this market sensitivity has resulted in fewer owners of such properties seeking financing relative to the market overall. Freddie Mac also stated that while it is important for the Enterprises to play a role in this market by advancing beneficial standards and providing countercyclical liquidity, the Enterprises should not crowd out private capital providers including regional banks and small financial institutions. Fannie Mae also supported the proposed benchmark level, stating that a reduction from 2.5 percent to 2 percent is consistent with the ongoing competition for these loans in the market.

One nonprofit advocacy organization and three individuals urged FHFA to maintain the benchmark level for this subgoal at the current 2.5 percent. A nonprofit advocacy organization and a letter on behalf of 20 Members of Congress recommended that the benchmark level be raised to above 2.5 percent. The commenters argued that because the Enterprises have exceeded the 2.5 percent subgoal for the last four years, there is no need to decrease the benchmark level. The commenters emphasized that Enterprise support is crucial for these properties, noting that small multifamily properties serve as a critical source of affordable housing in rural areas and other underserved communities and owners of these properties struggle to access capital as readily as owners of larger developments.

Technical changes.

Fannie Mae commented that the proposed technical changes related to enforcement of the housing goals omit certain language in the Safety and Soundness Act at 12 U.S.C. 4566(c)(7), 4581(a)(3), and 4585(a)(3) that refers to goals established under specific sections of the statute. Fannie Mae suggested that FHFA modify the proposed rule language to avoid confusion about the enforcement options available for the housing goals. As stated in the proposed rule preamble, FHFA proposed technical changes “to better conform the regulation to statutory text” and to improve transparency by providing a more complete description of FHFA’s enforcement authority.²¹ FHFA did not intend the proposed technical changes to expand or to limit FHFA’s authority to enforce housing plans under the Safety and Soundness Act or any other applicable law.

Other issues not included in the proposed rule, but raised by commenters:

Duration of goals and opportunity for comment. One nonprofit advocacy organization urged FHFA to set two-year, rather than three-year, benchmark levels for the single-family and multifamily goals. The commenter reasoned that because forecasts are more accurate in shorter time frames, two-year goals could allow for more aggressive benchmark levels. The commenter also stated that a two-year cycle would increase the frequency of public comments and suggested that FHFA request public comments on the Enterprises’ performance under the goals, specifically with respect to housing plans.

Under the Safety and Soundness Act, FHFA is required to establish the annual housing goals benchmark levels in a regulation, which FHFA adopts through notice and comment rulemaking.²² FHFA has chosen a three-year housing goals period, as it enables the Enterprises to plan their business activities more effectively and make progress towards meeting the goals. FHFA continues to believe that the establishment of three-year housing goals better enables the Enterprises to develop and implement high-level strategies for guiding their respective organizations towards achieving all the single-family and multifamily housing goals. The establishment and implementation of three-year housing goals also allows the Enterprises to map out, develop, and invest in longer-term

strategies designed to achieve the housing goals.

In response to the commenter’s recommendation that FHFA request public comments on the Enterprises’ performance under the goals, specifically on housing plans, FHFA notes that FHFA issues an Annual Housing Report (Report) pursuant to 12 U.S.C. 4566. The Report describes the affordable and other housing activities of Fannie Mae and Freddie Mac during the preceding year and FHFA’s final review of the Enterprises’ housing goals performance, including copies of the final determination letters FHFA sends each Enterprise. The Report also indicates whether FHFA has required an Enterprise to submit a housing plan if the Enterprise fails to meet one or more of the goals and such goals were feasible. Because an Enterprise’s housing plan may contain proprietary information, FHFA does not believe it is appropriate to request public input on the strategies and initiatives the Enterprise intends to pursue to correct and improve its housing goal performance.

Enterprises’ ability to lead the market. Three nonprofit advocacy organizations argued that the Enterprises be given higher, more ambitious goals to ensure they lead and “drive up” the market to serve the needs of neglected populations and address the nation’s affordable housing crisis. As further discussed below, the Safety and Soundness Act requires FHFA to balance seven statutory factors in setting the benchmark levels for the single-family housing goals, and six statutory factors in setting the benchmark levels for the multifamily housing goals. Under the statute, FHFA must consider the *ability* of the Enterprises to lead the single-family and multifamily markets, as well as other factors such as recent Enterprise and market performance, current and expected market conditions, and the safety and soundness of the Enterprises. In setting benchmark levels, FHFA takes all the statutory factors into account to enable the Enterprises to continue to provide critical support to the different goal market segments while also supporting the rest of the market.

Publishing local data on Enterprise performance. One nonprofit advocacy organization stated that FHFA should publish local data on Enterprise performance to enable stakeholders to better identify underserved areas with many goal-qualified loans due to relatively high levels of housing affordability but are perhaps overlooked by the primary and secondary markets. The commenter suggested that FHFA create a database that would include

income to housing ratios and other indicia of affordability that could help identify the underserved areas with a high share of goal-qualified loans.

FHFA publishes state-level data from HMDA and on Enterprise performance on each single-family housing goal. Because the housing goals are set across all localities and for all Enterprise acquisitions in any given year, and because loan origination volume fluctuates depending on macroeconomic conditions, primary market activities, and Enterprise participation in the secondary market in each locality, comparisons of locality data across years may be misleading without adequate context about the extent of primary mortgage activity in the area as well as secondary market activities. FHFA will continue to conduct research and provide data that FHFA believes would be beneficial to the public.

Additional tract “criteria” for the single-family low-income census tracts home purchase subgoal. A nonprofit advocacy organization commented that FHFA could use additional census tract “criteria” to ensure mortgage credit is made available to underserved, disinvested markets (where gentrification is not happening or is less of a concern) and limit borrower income in some low-income census tracts. The commenter noted the additional criteria are necessary because mortgage credit remains scarce in rural areas, smaller post-industrial legacy cities, and poor urban neighborhoods. The commenter urged FHFA to examine tailoring the single-family low-income census tracts home purchase subgoal to better scale its impact on underserved, low-income markets.

FHFA notes that gentrification and disinvestment are measured on multiple dimensions and data series on these measures are not readily available. FHFA first established the minority census tracts subgoal and the low-income census tracts subgoal for the 2022–2024 period, and there have only been two complete performance years for these subgoals. FHFA will continue to analyze the subgoal performance as related to these issues and will publish information on FHFA’s website as appropriate.

Setting housing goals consistently. One nonprofit advocacy organization stated that the housing goals are not set consistently because some goals are set below the market forecast, while other goals are set at the market forecast. When proposing the benchmark levels, FHFA considers the most up-to-date expected market conditions as indicated by a forecast produced by Moody’s and the latest HMDA market levels for

²¹ 89 FR 70127, 70130.

²² 12 U.S.C. 4561(a).

which the loan level data series are available to include in the model when developing the proposed rule. FHFA also considers Enterprise performance for the partial year, to appropriately adjust the model-generated benchmark levels. The proposed rule's benchmark level for the low-income census tracts home purchase subgoal was set below the market forecast at that time to address displacement concerns. The proposed rule's benchmark level for the low-income refinance goal was set below the market forecast as this segment is highly sensitive to interest rate changes. In addition, there is limited economic data regarding how many borrowers are "locked in" by their current low mortgage rates, meaning that they are less likely to refinance or sell their home while prevailing mortgage rates are higher than their current rate. FHFA also notes that along with the market forecast, FHFA must consider the statutory factors in the Safety and Soundness Act that are not included in the market model when setting each benchmark level, as discussed in more detail below.

Support for market-rate units. One trade association recommended that

FHFA help the Enterprises balance their housing goals with providing liquidity support for market-rate units. FHFA considered market-rate units when setting the cap on multifamily purchase volume (the Multifamily Cap) and the percent of loans purchased that must be "mission-driven," in the Conservatorship Scorecard.²³ The proposed Enterprise housing goals, however, are focused on families at or below specific AMI levels and FHFA sought to balance these objectives.

Simplify Enterprise goals and targets. One trade association encouraged FHFA to work towards simplifying the various multifamily affordable and mission-related goals of the Enterprises (including the housing goals that are the subject of this final rule, the Conservatorship Scorecard, and the Duty to Serve requirements in 12 CFR part 1282, subpart C). Each of these requirements helps ensure that the Enterprises fulfill a different aspect of their statutory mission and charters, as well as that they serve low- and moderate-income families and underserved markets in different ways. FHFA has already taken measures to assist the Enterprises in coordinating

their efforts with respect to these requirements. For example, FHFA's 2023–2024 Multifamily Enterprise Housing Goals final rule established the benchmark levels for the multifamily goals based on a new methodology—the percentage of affordable units in multifamily properties financed by mortgages purchased by the Enterprise each year. FHFA believes that this change has simplified the multifamily housing goals in a way that complements the Multifamily Cap and enables the Enterprises to meet both targets more seamlessly. FHFA will continue to explore ways to coordinate and streamline the requirements of the various multifamily affordable and mission-related goals of the Enterprises while ensuring these goals are achieved.

III. Summary of Final Rule

A. Benchmark Levels for the Single-Family Housing Goals and Subgoals—§ 1282.12

This final rule establishes the benchmark levels for the single-family housing goals and subgoals for 2025–2027 as follows:

Goal or subgoal	Criteria	Final benchmark level for 2025–2027 (percent)
Low-Income Home Purchase Goal.	Home purchase mortgages on single-family, owner-occupied properties, to borrowers with incomes no greater than 80 percent of area median income (AMI).	25
Very Low-Income Home Purchase Goal.	Home purchase mortgages on single-family, owner-occupied properties, to borrowers with incomes no greater than 50 percent of AMI.	6
Low-Income Refinance Goal	Refinance mortgages on single-family, owner-occupied properties, to borrowers with incomes no greater than 80 percent of AMI.	26
Minority Census Tracts Home Purchase Subgoal.	Home purchase mortgages on single-family, owner-occupied properties to borrowers with incomes no greater than 100 percent of AMI in minority census tracts. ¹ .	12
Low-Income Census Tracts Home Purchase Subgoal.	(i) Home purchase mortgages on single-family, owner-occupied properties to borrowers (regardless of income) in low-income census tracts ² that are not minority census tracts, and (ii) home purchase mortgages on single-family, owner-occupied properties to borrowers with incomes greater than 100 percent of AMI in low-income census tracts that are also minority census tracts..	4

¹ Census tracts that have a minority population of at least 30 percent and a median income of less than 100 percent of AMI.

² Census tracts where the median income is no greater than 80 percent of AMI.

As in previous rulemakings, the low-income areas housing goal benchmark level is not included in this final rule. Under the existing regulation, the benchmark level will be the sum of the benchmark levels for the minority census tracts home purchase subgoal and the low-income census tracts home

purchase subgoal established in this final rule, plus an additional amount that will be determined separately by FHFA by notice that considers families in disaster areas with incomes no greater than 100 percent of AMI.²⁴

B. Benchmark Levels for the Multifamily Housing Goals and Subgoal—§ 1282.13

The final rule establishes the benchmark levels for the multifamily housing goals and subgoal for 2025–2027 as follows:

²³ In an annual Conservatorship Scorecard, FHFA establishes a cap on the multifamily purchase volume of each Enterprise. The Scorecard also establishes a percentage of multifamily purchases within the cap that must be "mission driven," a defined term that generally encompasses affordable and underserved market segments. The 2024 Scorecard sets a cap of \$70 billion on each

Enterprise and requires that at least half of Enterprise multifamily loan purchases be "mission-driven." Details are available in the fact sheet "2025 Multifamily Loan Purchase Caps for Fannie Mae and Freddie Mac," available at <https://www.fhfa.gov/news/fact-sheet/2025-multifamily-loan-purchase-caps-for-fannie-mae-and-freddie-mac>.

²⁴ See 12 CFR 1282.12(e). The benchmark level for 2024 is 19 percent. The notices setting this benchmark level can be found on FHFA's website at <https://www.fhfa.gov/sites/default/files/2024-06/2024-Low-Income-Areas-Goal-Fannie-Mae.pdf> and <https://www.fhfa.gov/sites/default/files/2024-06/2024-Low-Income-Areas-Goal-Freddie-Mac.pdf>.

Goals and subgoal	Criteria	Final benchmark level for 2025–2027 (percent)
Low-Income Goal	Percentage share of all goal-eligible units in multifamily properties financed by mortgages purchased by the Enterprise in the year that are affordable to low-income families, defined as families with incomes less than or equal to 80 percent of AMI.	61
Very Low-Income Goal	Percentage share of all goal-eligible units in multifamily properties financed by mortgages purchased by the Enterprise in the year that are affordable to very low-income families, defined as families with incomes less than or equal to 50 percent of AMI.	14
Small Multifamily Low-Income Subgoal.	Percentage share of all goal-eligible units in all multifamily properties financed by mortgages purchased by the Enterprise in the year that are units in small multifamily properties affordable to low-income families, defined as families with incomes less than or equal to 80 percent of AMI.	2

C. Measurement Buffers (Referred to as “Enforcement Factors” in the Proposed Rule)—§ 1282.22(b)

Consistent with the proposed rule, the final rule establishes new factors for the 2025–2027 housing goals period that FHFA will apply in determining whether to require a housing plan if an Enterprise fails to meet certain single-family housing goals in 2025–2027. The final rule establishes the numerical factors as proposed but changes the name to “measurement buffers.” Specifically, for 2025–2027, if the benchmark level for the single-family low-income home purchase, very low-income home purchase, or low-income refinance housing goal is higher than the market level for the goal, an Enterprise that fails to meet the goal will not be required to submit a housing plan if the Enterprise’s performance meets or exceeds: (i) the market level minus 1.3 percentage points for the low-income home purchase goal; (ii) the market level minus 0.5 percentage points for the very low-income home purchase goal; or (iii) the market level minus 1.3 percentage points for the low-income refinance goal. To ensure that an Enterprise does not rely entirely on these measurement buffers, if an Enterprise fails to meet one of the applicable goals in both 2025 and 2026, the measurement buffer will not apply to that goal in 2027.

D. Multifamily Very Low-Income Housing Goal—§§ 1282.11(a)(1); 1282.13(a) and (c); 1282.15(c) and (e)

The final rule revises the housing goals regulation to refer to the multifamily very low-income housing subgoal as a goal instead of a subgoal. This change is consistent with the Safety and Soundness Act, the reference to the single-family very low-income home purchase goal in 12 CFR 1282.12(d) as a goal and not a subgoal, and FHFA’s practice of referring to

“multifamily housing goals.”²⁵ FHFA received one comment (NDI) supporting this proposed change.

E. Technical Changes—§§ 1282.1; 1282.11(a)(1); 1282.13 (Header); 1282.20; 1282.21; 1282.22

Consistent with the proposed rule, the final rule makes minor technical changes to the housing goals regulation that are intended to better conform the regulation to statutory text and existing FHFA practices and procedures. Except as discussed in this preamble regarding proposed changes to § 1282.22(g), FHFA received no comments on the proposed technical changes.

The final rule modifies the definition of “designated disaster area” in § 1282.1 as proposed, to reflect that major disasters are designated (declared) by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*). FHFA modified the definition to add the reference to the designation by the President and deleted the reference to “declared by the Federal Government.” This change eliminates potential confusion about which disasters are associated with designated disaster areas.

Consistent with the proposed rule, the final rule modifies § 1282.11(a)(1) to correctly reference the various housing goals. That paragraph previously referred to one single-family housing subgoal and is modified in the final rule to reference the two single-family, owner-occupied, purchase money mortgage housing subgoals. The final rule also removes the words “special affordable” that until now described the multifamily goals and subgoals in § 1282.11(a)(1) and the header in § 1282.13 for simplicity and to

consistently reference single-family and multifamily goals and subgoals. Affordability remains a criterion for units to count towards meeting the goals and subgoal, however.

In addition, consistent with the proposed rule, the final rule makes non-substantive changes to the enforcement provisions in § 1282.20 and redesignates housing plan provisions in § 1282.21 as a new § 1282.22. Specifically, the final rule modifies § 1282.20 to separate and more fully describe the preliminary and final determinations of housing goals compliance. As modified, § 1282.20 addresses preliminary determinations of housing goals compliance; § 1282.21 addresses final determinations of housing goals compliance. These sections also include revised wording that conforms to FHFA’s established practices.

The final rule revises and republishes newly redesignated § 1282.22 to include the measurement buffers for the 2025–2027 single-family housing goals in paragraph (b). The final rule relocates provisions in § 1282.21(b) through (e) to § 1282.22(c) through (f). Paragraph (c)(3) includes an additional technical change inadvertently omitted in the proposed rule to add “or subgoal” for consistency with the changes to § 1282.22(a) in the proposed and final rules. Paragraph (f) includes technical changes to clarify that if a proposed amended housing plan is not acceptable to the Director, the Director may afford the Enterprise 15 days to submit additional amendments to its proposed plan for approval or disapproval, rather than requiring a “new” proposed plan. Except as noted, these changes are included in the final rule as proposed in the NPRM.

The final also rule includes the new proposed provision at § 1282.22(g) that incorporates the housing plan enforcement provisions contained in the

²⁵ 12 U.S.C. 4563(a)(2) requires FHFA to establish “additional requirements” for units affordable to very low-income families when it establishes the goal for mortgages on multifamily properties that finance dwelling units affordable to very low-income families.

Safety and Soundness Act.²⁶ That paragraph provides that if the Director requires an Enterprise to submit a housing plan and the Enterprise refuses to submit such a plan, submits an unacceptable plan, or fails to comply with the plan, the Director may issue a cease and desist order in accordance with 12 U.S.C. 4581, impose civil money penalties in accordance with 12 U.S.C. 4585, or take any other action that the Director determines to be appropriate. The Safety and Soundness Act provides authority to enforce the housing plans, but this authority was not previously described in the Enterprise housing goals regulation. Including these provisions in the final rule supports transparency by providing a more complete description of FHFA's enforcement authority. This change makes it easier for anyone unfamiliar with the Safety and Soundness Act to understand the potential consequences if an Enterprise fails to submit an acceptable housing plan or fails to comply with the plan as required. This is the only technical change addressed by a comment on the proposed rule. In response to a comment from Fannie Mae suggesting that FHFA modify the proposed rule language to provide clarity about the enforcement options available for the housing goals, FHFA is including language in § 1282.22(g) to indicate that enforcement of housing plans will be consistent with 12 U.S.C. 4566 and any other applicable requirements of the Safety and Soundness Act.

IV. Single-Family Housing Goals and Subgoals

A. Factors Considered in Setting the Single-Family Housing Goal Benchmark Levels

The Safety and Soundness Act requires FHFA to consider the following seven factors in setting the single-family housing goals:

1. National housing needs;
2. Economic, housing, and demographic conditions, including expected market developments;
3. The performance and effort of the Enterprises toward achieving the housing goals in previous years;
4. The ability of the Enterprises to lead the industry in making mortgage credit available;
5. Such other reliable mortgage data as may be available;
6. The size of the purchase money conventional mortgage market, or refinance conventional mortgage market, as applicable, serving each of

the types of families described, relative to the size of the overall purchase money mortgage market or the overall refinance mortgage market, respectively; and

7. The need to maintain the sound financial condition of the Enterprises.²⁷

FHFA has considered each of these seven statutory factors in setting the benchmark levels for each of the single-family housing goals and subgoals in the final rule.

In setting the benchmark levels for the single-family housing goals and subgoals, FHFA relied on statistical market models developed by FHFA to evaluate four of the seven factors (national housing needs; economic, housing, and demographic conditions; other reliable mortgage data; and the size of the conventional purchase money or refinance mortgage segment). These market models generate a point forecast for each goal as well as a confidence interval for the point forecast. FHFA also monitors information on market developments that are not reflected in the model. FHFA then considers the other statutory factors (performance and effort of the Enterprises to lead the industry in making mortgage credit available; the ability of the Enterprises to do so; and the need to maintain sound financial condition of the Enterprises). These factors are not explicitly modeled in the statistical forecast models. Therefore, FHFA considered these factors when setting the benchmark levels within the model generated confidence intervals for the 2025–2027 single-family housing goals.

Market forecast models. The purpose of FHFA's market forecast models is to forecast the market share of the goal-qualifying mortgage originations for the 2025–2027 period. The models are intended to generate reliable forecasts rather than to test various economic hypotheses about the housing market or to explain the relationship between variables. Therefore, following standard practice among forecasters and economists at other federal agencies, FHFA estimates a reduced-form equation for each of the housing goals and fits an Autoregressive Integrated Moving Average (or ARIMA) model to each goal share. The models look at the statistical relationship between (a) the historical market share for each single-family housing goal or subgoal, as calculated from monthly HMDA data, and (b) the historical values for various factors that may influence the market shares, such as interest rates, inflation, home prices, home sales, the

unemployment rate, and other factors. The models then project the future value of the affordable market share using forecast values of the model inputs. Separate models are developed for each of the single-family housing goals and subgoals.

FHFA has employed similar models in past Enterprise housing goals rulemaking cycles to generate market forecasts. The models are developed using monthly series generated from HMDA and other data sources, and the resulting monthly forecasts are then averaged into an annual forecast for each of the three years in the goal period. The models rely on 20 years of HMDA data, from 2004 to 2023, the latest year for which public HMDA data was available at the time of model construction. Additional discussion of the market forecast models can be found in a technical report on FHFA's official website.²⁸

Current market outlook. There are many factors that impact the affordable housing market, and changes to any of them could significantly impact the ability of the Enterprises to meet the goals. In developing the market models, FHFA used Moody's forecasts as the source for macroeconomic variables where available.²⁹ In cases where Moody's forecasts were not available (for example, the share of government-insured/guaranteed home purchases and the share of government-insured/guaranteed refinances), FHFA generated and tested its own forecasts as in past rulemakings.³⁰ Variables that impact the models and the determinations of benchmark levels, including interest rates, home prices, and the supply of affordable housing, are discussed below.

The Federal Open Market Committee (FOMC) of the Federal Reserve, at its September 2024 meeting, reiterated its commitment to seeking maximum employment and inflation at the rate of 2 percent in the long run, by lowering its target range for the federal funds rate by 0.5 percentage points to 4.75 percent to 5.0 percent.³¹ In its November 2024 meeting, the FOMC lowered the target range by an additional 0.25 percentage

²⁸ Details on FHFA's single-family market models are available in the technical report "The Size of the Affordable Mortgage Market: 2025–2027 Enterprise Single-Family Housing Goals," available at <https://www.fhfa.gov/research/papers/2025-2027-enterprise-single-family-housing-goals-12-2024>.

²⁹ *Ibid.*

³⁰ This refers to the mortgages insured or guaranteed by government agencies such as the Federal Housing Administration, Department of Veterans Affairs, and Rural Housing Service.

³¹ <https://www.federalreserve.gov/newsevents/pressreleases/monetary20240918a.htm>.

²⁶ 12 U.S.C. 4566.

²⁷ See 12 U.S.C. 4562(e)(2)(B).

points to 4.5 percent to 4.75 percent.³² Moody's August 2024 Baseline forecast does not include these cuts but assumes that the FOMC will cut rates by 0.25 percentage points in September 2024 and December 2024, with further cuts to the federal funds rate to 4 percent by the fourth quarter of 2025.

The forecast projects that the 30-year fixed mortgage rate will remain elevated, and only decline 0.3 percentage points from 6.4 percent in 2025 to 6.1 percent in 2026, and then decline to 6.0 percent in 2027. Home prices increased rapidly in 2021 and 2022 as indicated by FHFA's purchase-only House Price Index (HPI), due to a combination of high demand for housing resulting from demographic trends and limited supply of homes for sale.³³ The rapid rise in mortgage rates through 2022 and their stabilization at new elevated levels in 2023 slowed down the pace of house price growth. Although slower, house price growth was still significant, rising 4.2 percent from August 2023 to August 2024.³⁴ FHFA noted in its monthly HPI report that it was the sixth consecutive month of modest house price growth.³⁵ Moody's predicts that home price appreciation will slow down even more in 2025. Moody's August 2024 forecast of the same HPI index expects the annual rates of house price growth to be 1.0, 1.5, and 2.1 percent in 2025, 2026, and 2027, respectively.

Even though mortgage interest rates are forecast to decline modestly, many households maintain low mortgage rates that are likely to remain below the prevailing mortgage rates, and therefore they are less likely to refinance. The refinancing share of overall mortgage originations declined from 62.4 percent in 2020 to 19.2 percent in 2023. Moody's forecasts this share to decline further to 18.0 percent in 2024, but rise to 19.2, 25.7, and 33.8 percent in 2025, 2026, and 2027, respectively.

Taken together, the elevated mortgage interest rates and high home price levels will likely continue to impact the ability of low- and very low-income households to purchase homes. The median sales price for existing single-family homes to median household income ratio, which is often used to measure affordability, rose to 5.1 in

2022, up from 4.1 in 2019.³⁶ As a result, between 2019 and 2022, the number of cost-burdened homeowners increased by 3 million households.³⁷ Housing affordability in 2023, as measured by Moody's forecast of the Housing Affordability Index (HAI) provided by the National Association of Realtors (NAR), was at its lowest level since 1989. This factor is projected to rise even more modestly in the August 2024 forecast used to support the final rule than was projected in the February 2024 forecast (used to support the proposed rule).^{38 39}

The supply of affordable housing has not kept pace with the growth of demand. This has led to a shortage of homes, which became more acute during the COVID-19 pandemic. Although, for example, the October 2024 active listing count is 29.2 percent higher than it was in October 2023, it is still 21.1 percent lower than it was at the same time in 2019.⁴⁰ Single-family housing starts, or the measure of new one-to-four-unit residential construction, dropped 10.8 percent from 2021 to 2022, and continued to decline in 2023.⁴¹ For example, the Mortgage Bankers Association (MBA) estimates housing starts to have decreased about 8.8 percent from 1.55 million in 2022 to 1.42 million in 2023. MBA forecasts housing starts to decline about 4.6 percent in 2024, before rising about 3.4 percent in 2025.⁴²

³⁶ "The State of the Nation's Housing 2024," Joint Center for Housing Studies of Harvard University, 2024, p. 10, available at https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_The_State_of_the_Nations_Housing_2024.pdf.

³⁷ *Ibid.* p. 2.

³⁸ Moody's Analytics, "Economic Data and Forecasts," August 2024.

³⁹ NAR's HAI is a national index. It measures, nationally, whether an average family could qualify for a mortgage on a typical home. A typical home is defined as the national median-priced, existing single-family home as reported by NAR. An average family is defined as one earning the median family income. The calculation assumes a down payment of 20 percent of the home price and a monthly payment that does not exceed 25 percent of the median family income. An index value of 100 means that a family earning the median family income has exactly enough income to qualify for a mortgage on a median-priced home. An index value above 100 signifies that a family earning the median family income has more than enough income to qualify for a mortgage on a median-priced home. A decrease in the index value over time indicates that housing is becoming less affordable.

⁴⁰ "Housing Inventory: Active Listing Count in the United States," accessed on November 18, 2024, at <https://fred.stlouisfed.org/series/ACTLISCOUUS>.

⁴¹ Exploring 2023's Housing Trends and Challenges | Housing Matters," Urban Institute, January 31, 2024, available at <https://housingmatters.urban.org/research-summary/exploring-2023s-housing-trends-and-challenges>.

⁴² "Housing Finance: At a Glance Monthly Chartbook, October 2024," | Urban Institute

The combination of high home prices and elevated mortgage rates along with continued limited housing supply has also contributed to a sharp decline in purchase loan origination volumes, as new homes are less affordable and existing homeowners are less likely to move and relinquish their low interest rate mortgages. For example, in 2022, lenders reported a 51 percent decrease in originated closed-end home loans from 2021 volumes.⁴³ In 2023, there were further declines, with lenders reporting a 34.5 percent decrease in originated closed-end home loans from 2022 volumes.⁴⁴ Moody's Baseline scenario for August 2024 shows single-family purchase mortgage originations similarly down in 2023, when originations totaled \$1.33 trillion, compared to 2021, when originations totaled \$1.86 trillion.⁴⁵

Furthermore, this observation from Moody's February 2024 forecast is still applicable: "Life events such as divorces, deaths, and the birth of children along with moderating interest rates will prompt more homeowners to list their homes in 2024 than in 2023, but the rise in existing home sales is expected to be limited."⁴⁶

FHFA continues to monitor how these changes in the housing market, as well as other market conditions, may impact various segments of the market, including those targeted by the housing goals.

Post-model adjustments. While FHFA's models can address and forecast many of the factors referenced in the statute, including increasing interest rates and rising property values, some factors are not captured in the models. FHFA, therefore, considers additional factors when selecting the benchmark level within the model-generated confidence interval for each of the single-family housing goals.

Demographic trends. Although the model considers some demographic factors, specific demographic changes,

Housing Finance Policy Center, Urban Institute," Urban Institute, October 30, 2024, p. 22, available at <https://www.urban.org/sites/default/files/2024-10/Housing-Finance-At-A-Glance-Monthly-Chartbook-October-2024.pdf>.

⁴³ "Summary of 2022 Data on Mortgage Lending," Consumer Financial Protection Bureau, June 29, 2023, available at <https://www.consumerfinance.gov/data-research/hmda/summary-of-2022-data-on-mortgage-lending/>.

⁴⁴ "Summary of 2023 Data on Mortgage Lending," Consumer Financial Protection Bureau, July 11, 2024, available at <https://www.consumerfinance.gov/data-research/hmda/summary-of-2023-data-on-mortgage-lending/>.

⁴⁵ Moody's Analytics, "Economic Data and Forecasts," August 2024.

⁴⁶ Edward Friedman, "U.S. Macroeconomic Outlook Baseline and Alternative Scenarios," *Moody's Analytics*, 2024.

³² <https://www.federalreserve.gov/newsevents/pressreleases/monetary20241107a.htm>.

³³ FHFA, "House Price Index Datasets," available at <https://www.fhfa.gov/data/hpi/datasets?tab=hpi-datasets>.

³⁴ FHFA, "FHFA House Price Index Report—Monthly Report," October 2024, available at https://www.fhfa.gov/sites/default/files/2024-11/FHFA-HPI-Monthly_10292024.pdf.

³⁵ *Ibid.*

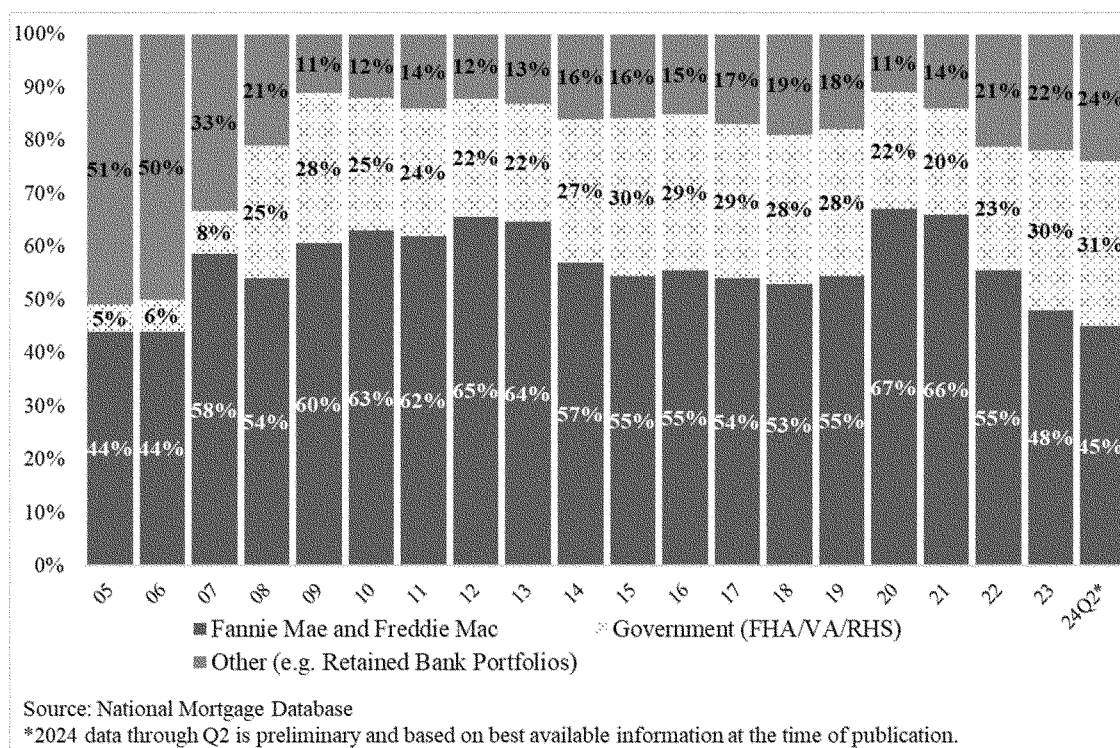
such as the housing demand patterns of Millennials or the growth of minority households, are not included explicitly in the market forecast models. FHFA considers those demographic changes that are not captured by the model, along with the other factors listed in this section, as post-model adjustments when setting the housing goals benchmark levels. According to NAR, Millennials had represented the largest share of homebuyers for almost a decade until 2022.⁴⁷ Although they lost that spot to Baby Boomers in 2022, Millennials once again represented the

largest share of homebuyers in 2023, increasing from 28 percent to 38 percent.^{48 49} Furthermore, the number of minority households is projected to grow by 22 percent, or 9.3 million, from 2018 to 2028.⁵⁰

Ability of the Enterprises to lead the mortgage market. The Enterprises' overall share of the mortgage market is subject to fluctuation, as well. In the years preceding the 2008 financial crisis, the Enterprises' share of the market dropped to about 44 percent. As shown in Graph 1, that share rose to about 65 percent in 2012, but declined

to about 55 percent in 2015. The Enterprises' share remained relatively stable until 2019, then jumped to 67 percent in 2020 as the Enterprises continued to acquire mortgages even as others in the market stepped back during the COVID-19 pandemic. Since then, the Enterprises' share has declined as the shares of government-guaranteed and government-insured loans, as well as the shares of other market participants, have grown. Government-guaranteed and government-insured loans are not eligible for housing goals credit.

Graph 1: Shares of the Conforming Mortgage Market



Graph 1 also shows that the Enterprises' share of the conforming mortgage market returned to pre-pandemic levels in 2022 but declined significantly in 2023. Preliminary data shows further declines in 2024. Over the same period, the total Government share of the mortgage market (including the Federal Housing Administration, Department of Veterans Affairs, and Rural Housing Service) and the Other

share (such as retained bank portfolios) expanded.

Need to maintain the sound financial condition of the Enterprises. During a period of affordability challenges and increased uncertainty around market conditions, setting the single-family housing goals benchmark levels too high could compromise safe and sound lending standards. FHFA carefully considered benchmark levels that would support access to mortgage lending for

low-income families, families that reside in low-income areas, and very low-income families, while still allowing the Enterprises to adequately support all other segments of the market.

Past performance and effort of the Enterprises to achieve the housing goals. Table 1 provides the annual performance of both Enterprises on the single-family housing goals between 2010 and 2023.

⁴⁷ NAR, "2023 Home Buyers and Sellers Generational Trends Report," 2023, p. 8, available at <https://www.nar.realtor/sites/default/files/documents/2023-home-buyers-and-sellers-generational-trends-report-03-28-2023.pdf>.

⁴⁸ *Ibid.*

⁴⁹ NAR, "2024 Home Buyers and Sellers Generational Trends Report," 2024, p. 8, available at <https://www.nar.realtor/sites/default/files/documents/2024-home-buyers-and-sellers-generational-trends-04-03-2024.pdf>.

⁵⁰ Daniel McCue, "Number of U.S. Households Projected to Increase by 12.2 Million in the Next

Decade," Joint Center for Housing Studies of Harvard University, December 20, 2018, available at <https://www.jchs.harvard.edu/blog/number-of-u-s-households-projected-to-increase-by-12-2-million-in-the-next-decade>.

TABLE 1—ENTERPRISE SINGLE-FAMILY HOUSING GOALS PERFORMANCE
[2010–2023]

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Low-Income Home Purchase Goal														
Actual Market	27.2	26.5	26.6	24.0	22.8	23.6	22.9	24.3	25.5	26.6	27.6	26.7	26.8	26.3
Benchmark	27.0	27.0	23.0	23.0	23.0	24.0	24.0	24.0	24.0	24.0	24.0	24.0	28.0	28.0
Fannie Mae Performance	* 25.1	* 25.8	25.6	23.8	23.5	* 23.5	22.9	25.5	28.2	27.8	29.0	28.7	27.4	+ 26.1
Freddie Mac Performance	27.8	* 23.3	24.4	* 21.8	* 21.0	* 22.3	23.8	* 23.2	25.8	27.4	28.5	27.4	29.0	28.5
Very Low-Income Home Purchase Goal														
Actual Market	8.1	8.0	7.7	6.3	5.7	5.8	5.4	5.9	6.5	6.6	7.0	6.8	6.8	6.5
Benchmark	8.0	8.0	7.0	7.0	7.0	6.0	6.0	6.0	6.0	6.0	6.0	6.0	7.0	7.0
Fannie Mae Performance	* 7.2	* 7.6	7.3	* 6.0	5.7	* 5.6	* 5.2	5.9	6.7	6.5	7.3	7.4	6.9	+ 6.0
Freddie Mac Performance	8.4	* 6.6	7.1	* 5.5	* 4.9	* 5.4	5.7	* 5.7	6.3	6.8	6.9	6.3	7.1	6.8
Low-Income Areas Home Purchase Goal														
Actual Market	24.0	22.0	23.2	22.1	22.1	19.8	19.7	21.5	22.6	22.9	22.4	19.1	28.0	28.1
Benchmark	24.0	24.0	20.0	21.0	18.0	19.0	17.0	18.0	18.0	19.0	18.0	14.0	20.0	20.0
Fannie Mae Performance	24.1	22.4	22.3	21.6	22.7	20.4	20.2	22.9	25.1	24.5	23.6	20.3	29.6	28.1
Freddie Mac Performance	* 23.8	* 19.2	20.6	* 20	20.1	19.0	19.9	20.9	22.6	22.9	21.8	18.0	28.7	29.5
Low-Income Census Tracts Home Purchase Subgoal														
Actual Market .....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	9.7	9.8
Benchmark .....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	4.0	4.0
Fannie Mae Performance .....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	9.3	9.3
Freddie Mac Performance .....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	9.1	9.4
Minority Census Tracts Home Purchase Subgoal														
Actual Market .....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	12.1	12.5
Benchmark .....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	10.0	10.0
Fannie Mae Performance .....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	13.5	12.6
Freddie Mac Performance .....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	12.8	13.2
Low-Income Refinance Goal														
Actual Market	20.2	21.5	22.3	24.3	25.0	22.5	19.8	25.4	30.7	24.0	21.0	26.1	37.3	40.3
Benchmark	21.0	21.0	20.0	20.0	20.0	21.0	21.0	21.0	21.0	21.0	21.0	21.0	26.0	26.0
Fannie Mae Performance	20.9	23.1	21.8	24.3	26.5	22.1	* 19.5	24.8	31.2	23.8	21.2	26.2	34.7	38.4
Freddie Mac Performance	22.0	23.4	22.4	24.1	26.4	22.8	21.0	24.8	27.3	22.4	* 19.7	24.8	37.1	43.2

* Numbers marked with an asterisk indicate that the Enterprise failed to meet the goal.

+ Numbers marked with a plus sign indicate that FHFA determined the goal to be infeasible.

B. Benchmark Levels for the Single-Family Housing Goals for 2025–2027 in the Final Rule

The final rule establishes the following benchmark levels for the single-family housing goals and subgoals for 2025–2027:

1. Low-Income Home Purchase Goal

The low-income home purchase goal is based on the percentage share of all conventional, conforming, single-family, owner-occupied home purchase

mortgages purchased by an Enterprise that are made to low-income families, defined as families with incomes less than or equal to 80 percent of AMI. Consistent with the proposed rule and FHFA's market model, the final rule sets the annual low-income home purchase housing goal benchmark level for 2025–2027 at 25 percent. While this benchmark level is below the current benchmark level of 28 percent for 2022–2024, it is above the 24 percent benchmark level that was in place from 2015 through 2021 and is consistent

with the updated forecast using Moody's August 2024 baseline forecast and 2023 HMDA data. As explained further below, FHFA believes that this benchmark level is appropriate to enable the Enterprises to fulfill their statutory duty to facilitate the financing of affordable housing for all low-income families without compromising safe and sound lending standards during a period of affordability challenges and increased uncertainty around market conditions.

TABLE 2—SINGLE-FAMILY LOW-INCOME HOME PURCHASE GOAL

Year	Historical performance				Projected forecast			
	2020	2021	2022	2023	2024	2025	2026	2027
Actual Market Level	27.6%	26.7%	26.8%	26.3%	.....	.....	.....	.....
Benchmark Level	24.0%	24.0%	28.0%	28.0%	28.0%	25.0%	25.0%	25.0%
Current Market Forecast .....	.....	.....	.....	.....	26.3%	26.2%	25.9%	25.7%
					+/- 2.6%	+/- 4.4%	+/- 5.7%	+/- 6.7%
Fannie Mae Performance								
Low-Income Home Purchase Mortgages	374,376	375,569	278,799	189,439	.....	.....	.....	.....
Total Home Purchase Mortgages	1,288,806	1,306,459	1,016,371	726,139	.....	.....	.....	.....

TABLE 2—SINGLE-FAMILY LOW-INCOME HOME PURCHASE GOAL—Continued

Year	Historical performance				Projected forecast			
	2020	2021	2022	2023	2024	2025	2026	2027
Low-Income % of Home Purchase Mortgages	29.0%	28.7%	27.4%	26.1%	.....	.....	.....	.....
Freddie Mac Performance								
Low-Income Home Purchase Mortgages	280,561	329,426	264,118	209,432	.....	.....	.....	.....
Total Home Purchase Mortgages	982,888	1,201,540	911,037	735,932	.....	.....	.....	.....
Low-Income % of Home Purchase Mortgages	28.5%	27.4%	29.0%	28.5%	.....	.....	.....	.....

Recent performance and forecasts. As shown in Table 2, between 2020 and 2023, the low-income purchase market level, as measured by HMDA data, declined from 27.6 percent to 26.3 percent. FHFA's current model forecasts that market level to continue declining and end below 26 percent in 2027 with an average forecast midpoint value of 25.9 percent. Freddie Mac's performance on this goal was 29.0 percent in 2022 and 28.5 percent in 2023, which was above both the benchmark and the market levels in those two years. Fannie Mae's performance in 2022 was 27.4 percent, which was below the benchmark level but above the market level. However, in 2023, Fannie Mae's performance was 26.1 percent, which was below both the benchmark and the market levels. FHFA determined that while Fannie Mae had missed the goal, the goal itself was not feasible for the Enterprise in 2023.⁵¹

FHFA rationale. As FHFA noted in the proposed rule preamble, "[t]he combination of high home prices and elevated mortgage rates along with continued limited housing supply has also contributed to a sharp decline in purchase loan origination volumes, as new homes are less affordable and existing homeowners are less likely to give up their low interest rate mortgage. For example, in 2022, lenders reported

a 51 percent decrease in closed-end, site-built, single-family mortgage originations from 2021 volumes. Home prices grew by 43 percent between 2019 and 2022, while incomes grew by just 7 percent over the same time."⁵² These trends are reflected in the declining market share for the low-income home purchase goal segment as measured by HMDA data. Table 2 shows the decline from 26.8 percent in 2022 to 26.3 percent in 2023 amidst a sharp contraction in mortgage origination volume. Taking the market forecast average and current and forecast market conditions into consideration, the benchmark level in the final rule is set at 25 percent to encourage the Enterprises to continue to find ways to support low-income borrowers under current and forecast market conditions while not compromising safe and sound lending standards. Some commenters on the proposed rule supported the proposal to lower the benchmark level for this goal from the current 28 percent to 25 percent, recognizing the impact of a variety of market challenges and describing the proposed benchmark level as appropriate. Other commenters disagreed with the proposed lowered benchmark level, arguing that the Enterprises should be leading the market. Both Enterprises were supportive of the proposed benchmark

level of 25 percent, describing it as meaningful, prudent, and consistent with the Safety and Soundness Act. After considering the comments and updated economic data that became available after FHFA issued the proposed rule, FHFA is adopting the proposed benchmark level of 25 percent in the final rule.

2. Very Low-Income Home Purchase Goal

The very low-income home purchase goal is based on the percentage share of all conventional, conforming, single-family, owner-occupied home purchase mortgages purchased by an Enterprise that are for very low-income families, defined as families with incomes less than or equal to 50 percent of AMI. Consistent with the proposed rule and FHFA's market model, the final rule sets the annual very low-income home purchase housing goal benchmark level for 2025–2027 at 6 percent. While this benchmark level is below the current benchmark level of 7 percent, it is in line with the benchmark level in place from 2015–2021 and the most recent market forecast midpoint average of 6.0 percent. FHFA has determined that a 6 percent benchmark level will serve as an appropriate target that will promote Enterprise efforts in this market segment.

TABLE 3—SINGLE-FAMILY VERY LOW-INCOME HOME PURCHASE GOAL

Year	Historical performance				Projected forecast			
	2020	2021	2022	2023	2024	2025	2026	2027
Actual Market Level	7.0%	6.8%	6.8%	6.5%	.....	.....	.....	.....
Benchmark Level	6.0%	6.0%	7.0%	7.0%	7.0%	6.0%	6.0%	6.0%
Current Market Forecast .....	.....	.....	.....	.....	6.2% +/- 1.1%	6.1% +/- 2.0%	6.0% +/- 2.5%	5.9% +/- 3.0%
Fannie Mae Performance								
Very Low-Income Home Purchase Mortgages	93,909	97,154	69,919	43,792	.....	.....	.....	.....
Total Home Purchase Mortgages	1,288,806	1,306,459	1,016,371	726,139	.....	.....	.....	.....

⁵¹ FHFA's final determination of Fannie Mae's performance for 2023, available at <https://www.fhfa.gov/sites/default/files/2024-11/2023-Final-Determination-Letter-Fannie-Mae.pdf>.

⁵² 89 FR 70127, 70133 (citing "Data Point: 2022 Mortgage Market Activity and Trends," Consumer

Financial Protection Bureau, 2023, p.8, available at https://files.consumerfinance.gov/f/documents/cfpb_data-point-mortgage-market-activity-trends-report_2023-09.pdf; Alexander Hermann and Peyton Whitney, "Home Price-To-Income Ratio Reaches Record High," Joint Center for Housing

Studies of Harvard University, January 22, 2024, available at <https://www.jchs.harvard.edu/blog/home-price-income-ratio-reaches-record-high-0>; and Moody's Analytics, "Economic Data and Forecasts," February 2024).

TABLE 3—SINGLE-FAMILY VERY LOW-INCOME HOME PURCHASE GOAL—Continued

Year	Historical performance				Projected forecast			
	2020	2021	2022	2023	2024	2025	2026	2027
Very Low-Income % of Home Purchase Mortgages	7.3%	7.4%	6.9%	6.0%	.....	.....	.....	.....
Freddie Mac Performance								
Very Low-Income Home Purchase Mortgages	68,216	75,945	64,850	50,244	.....	.....	.....	.....
Total Home Purchase Mortgages	982,888	1,201,540	911,037	735,932	.....	.....	.....	.....
Very Low-Income % of Home Purchase Mortgages	6.9%	6.3%	7.1%	6.8%	.....	.....	.....	.....

Recent performance and forecasts. As shown in Table 3, between 2020 and 2023, the very low-income purchase market level, as measured using HMDA data, declined from 7.0 percent to 6.5 percent. FHFA's current model forecasts that the market for this goal will fall from 6.1 percent to 5.9 percent for the 2025–2027 period. While Freddie Mac's performance in 2022 and 2023 was above both the benchmark and market levels, Fannie Mae's performance in 2022 was above the market level but below the benchmark level. In 2023, Fannie Mae's performance was below both the market and the benchmark levels. FHFA determined that the goal was not feasible for the Enterprise in 2023.

FHFA rationale. The 6 percent benchmark level in the final rule should encourage the Enterprises to continue their efforts to promote safe and sustainable lending to very low-income families. FHFA believes that setting the benchmark level at 6 percent is

appropriate, reasonable, and supported by the current market forecast. As noted in section II, some commenters on the proposed rule supported the proposal to lower the benchmark level for this goal from the current 7 percent to 6 percent, recognizing the market challenges, and describing it as appropriate. Other commenters disagreed with the proposed lowered benchmark level, arguing that the Enterprises should be leading the market. Both Enterprises supported the proposed benchmark level of 6 percent, describing it as meaningful, prudent, and consistent with the Safety and Soundness Act, while also noting that it will be challenging to meet. After considering the comments and updated economic data that became available after FHFA issued the proposed rule, FHFA is adopting the proposed benchmark level of 6 percent in the final rule.

3. Minority Census Tracts Home Purchase Subgoal

The minority census tracts home purchase subgoal is based on the percentage share of home purchase mortgages on conventional, conforming, single-family, owner-occupied properties to borrowers with incomes no greater than 100 percent of AMI in minority census tracts. The Safety and Soundness Act defines minority census tracts as those with a minority population of 30 percent or more and median census tract income of less than 100 percent of AMI. Consistent with the proposed rule and FHFA's market model, the final rule increases the annual benchmark level for this subgoal for 2025–2027 from the current 10 percent to 12 percent. This benchmark level is slightly below the average market forecast of 12.7 percent. FHFA has determined that this benchmark level will serve as an appropriate target that will promote Enterprise efforts in this market segment.

TABLE 4—SINGLE-FAMILY MINORITY CENSUS TRACTS HOME PURCHASE SUBGOAL

Year	Historical performance				Projected forecast			
	2020	2021	2022	2023	2024	2025	2026	2027
Actual Market Level	9.2%	9.5%	12.1%	12.2%	.....	.....	.....	.....
Benchmark Level	N/A	N/A	10.0%	10.0%	10.0%	12.0%	12.0%	12.0%
Current Market Forecast .....	.....	.....	.....	.....	12.3%	12.5%	12.7%	13.0%
					+/- 1.4%	+/- 2.3%	+/- 3.0%	+/- 3.5%
Fannie Mae Performance								
Minority Census Tracts Home Purchase Mortgages	129,996	143,340	137,474	91,202	.....	.....	.....	.....
Total Home Purchase Mortgages	1,288,806	1,306,459	1,016,371	726,139	.....	.....	.....	.....
Minority Census Tracts % of Home Purchase Mortgages	10.1%	11.0%	13.5%	12.6%	.....	.....	.....	.....
Freddie Mac Performance								
Minority Census Tracts Home Purchase Mortgages	89,998	111,691	116,223	97,378	.....	.....	.....	.....
Total Home Purchase Mortgages	982,888	1,201,540	911,037	735,932	.....	.....	.....	.....
Minority Census Tracts % of Home Purchase Mortgages	9.2%	9.3%	12.8%	13.2%	.....	.....	.....	.....

The numbers in italics refer to FHFA's tabulations of the market and Enterprise performance had this goal been in place before 2022.

Recent performance and forecasts. Table 4 shows the implied market levels and Enterprise performance in 2020 and 2021 (before FHFA established this subgoal), as well as market levels and Enterprise performance since this subgoal was established. Both

Enterprises exceeded the benchmark and market levels for this subgoal in 2022 and 2023. The table also shows a pronounced increase in the market levels and in both Enterprises' performance on this subgoal beginning in 2022, which was the first year of the

new subgoal as well as the first year of new census tract boundaries based on the 2020 census. The average AMI increase in 2022 was unusually high, which led to more borrowers qualifying

for this subgoal.⁵³ The number of census tracts rose from about 74,000 to 85,000 in the 2020 census, and the share of minority census tracts rose from 32.9 percent to 35.2 percent with this census update, leading to more loans qualifying for this subgoal.⁵⁴ The imposition of the new subgoal also meant additional attention and effort at the Enterprises to meet the new subgoal's benchmark level. With changes in the census tract boundaries, unusually high AMI increases, and the imposition of the new subgoal all occurring in 2022, it is difficult to isolate and conclusively determine the specific effect of each of these factors on the higher performance of the market and the Enterprises. FHFA will continue to analyze this trend.

FHFA rationale. One commenter suggested that FHFA greatly increase the benchmark level for this subgoal given that the statutory definition of "minority census tract" is broad. As noted, the definition of "minority census tract" is statutory, and FHFA first established this subgoal in the 2022–2024 housing goals final rule.⁵⁶ For the 2022–2024 housing goals, FHFA set the benchmark level for this subgoal at 10 percent.⁵⁷ Given that the subgoal is still relatively new, an incremental increase over the benchmark level in the

previous housing goals period will further the same purposes without being disruptive to the market. The 12 percent benchmark level is an appropriate level given the recent market and Enterprise performance, and the updated model forecast. FHFA believes that this benchmark level emphasizes the importance of providing access to mortgage credit for borrowers with incomes at or below 100 percent of AMI who reside or seek to reside in minority census tracts while taking current market conditions into consideration. Commenters strongly supported the proposed increase in the benchmark level to 12 percent. Several commenters highlighted the positive impact the proposed benchmark level would have on ensuring the Enterprises fulfill their statutory duty to facilitate the financing of affordable housing for low- and moderate-income families, including families of color. After considering the comments and updated economic data that became available after FHFA issued the proposed rule, FHFA is adopting the proposed benchmark level of 12 percent in the final rule.

4. Low-Income Census Tracts Home Purchase Subgoal

The low-income census tracts home purchase subgoal is based on the

percentage share of conventional, conforming, single-family, owner-occupied home purchase mortgages that are: (1) to borrowers (regardless of income) in low-income census tracts that are not minority census tracts; and (2) to borrowers with incomes greater than 100 percent of AMI in low-income census tracts that are also minority census tracts. Consistent with the proposed rule, the final rule sets the annual benchmark level for this subgoal for 2025–2027 at 4 percent, which is the same as the benchmark level for the 2022–2024 housing goals period. FHFA recognizes that this benchmark level is significantly lower than both the midpoint of the confidence intervals of the market forecast and the recent performance of the Enterprises. However, FHFA has determined that a relatively low benchmark level for this subgoal is appropriate because the subgoal includes housing goals credit for higher-income borrowers (higher than 100 percent of AMI) that may have ready access to mortgage credit even when purchasing homes in low-income census tracts. FHFA's tabulation of 2023 HMDA data shows that 70 percent of the loans that qualified for credit under this subgoal were made to borrowers at or above 100 percent of AMI.

TABLE 5—SINGLE-FAMILY LOW-INCOME CENSUS TRACTS HOME PURCHASE SUBGOAL

Year	Historical performance				Projected forecast			
	2020	2021	2022	2023	2024	2025	2026	2027
Actual Market Level	8.5%	9.6%	9.7%	9.8%	.....	.....	.....	.....
Benchmark Level	N/A	N/A	4.0%	4.0%	4.0%	4.0%	4.0%	4.0%
Current Market Forecast .....	.....	.....	.....	.....	10.1%	10.1%	10.1%	10.1%
					+/-	+/-	+/-	+/-
					0.7%	1.1%	1.5%	1.7%
Fannie Mae Performance								
Low-Income Census Tracts Home Purchase Mortgages	106,362	122,177	94,864	67,844	.....	.....	.....	.....
Total Home Purchase Mortgages	1,288,806	1,306,459	1,016,371	726,139	.....	.....	.....	.....
Low-Income Census Tracts % of Home Purchase Mortgages	8.3%	9.4%	9.3%	9.3%	.....	.....	.....	.....
Freddie Mac Performance								
Low-Income Census Tracts Home Purchase Mortgages	78,436	104,401	82,883	69,459	.....	.....	.....	.....
Total Home Purchase Mortgages	982,888	1,201,540	911,037	735,932	.....	.....	.....	.....
Low-Income Census Tracts % of Home Purchase Mortgages	8.0%	8.7%	9.1%	9.4%	.....	.....	.....	.....

The numbers in italics refer to FHFA's tabulations of the market and Enterprise performance had this goal been in place before 2022.

Recent performance and forecasts. Table 5 shows that both Enterprises exceeded the benchmark level for this subgoal in 2022 and 2023. FHFA's current model forecasts that the market for this subgoal will remain around 10.1 percent for 2025–2027.

FHFA rationale. The comments on this subgoal summarized in section II indicate that some commenters were unclear about the structure of this subgoal as well as FHFA's intent in setting a benchmark level well below its forecasted share. The benchmark is set at a level that balances the need for

access to credit in low-income census tracts with the concern that a higher benchmark level could result in an incentive for the Enterprises to purchase loans made to higher-income borrowers in low-income census tracts, leading to displacement of low-income families in both low-income and minority census

⁵³ "HUD Publishes FY 2022 Income Limits; 99% of Counties Will See Increase," Novogradac, April 19, 2022, available at <https://www.novoco.com/>

notes-from-novogradac/hud-publishes-fy-2022-income-limits-99-counties-will-see-increase.

⁵⁴ See https://transition.fcc.gov/form477/Geo/more_about_2020_census_tracts.pdf.

⁵⁵ FHFA's tabulations of census tracts data.

⁵⁶ 12 U.S.C. 4502(29).

⁵⁷ 86 FR 73641, 73651 (Dec. 28, 2021).

tracts. As FHFA explained when it first proposed implementing the minority census tracts home purchase subgoal in 2021, “[u]nder the proposed rule, for loans purchased from areas that meet the criteria for both minority and low-income census tracts, the borrower’s AMI would determine under which subgoal the loan would be eligible. If the borrower’s income is less than or equal

to 100 percent of AMI, the loan would be counted towards the minority census tracts [home purchase] subgoal, and if the borrower’s income is above 100 percent of AMI, the loan would be counted towards the low-income census tracts [home purchase] subgoal.”⁵⁸ FHFA notes that the single-family low-income census tracts home purchase subgoal is not defined to cap the

borrower’s income relative to AMI. For instance, as displayed in Table 6, FHFA’s analysis of HMDA data shows that approximately 68.7 percent of the loans that were made in 2023 that met the criteria for the subgoal were made to borrowers at or above 100 percent of AMI.

TABLE 6—LOW-INCOME CENSUS TRACTS SUBGOAL: BORROWER INCOME DISTRIBUTION

Borrower incomes relative to AMI (HMDA)	2019 (%)	2020 (%)	2021 (%)	2022 (%)	2023 (%)
Borrower Income ≤50% AMI	9.1	10.1	9.2	7.3	7.4
Borrower Income >50% and ≤80% AMI	16.8	17.6	16.7	14.0	15.1
Borrower Income >80% and ≤100% AMI	7.6	7.6	7.7	6.8	7.2
Borrower Income >100% and ≤120% AMI	17.5	16.9	17.4	19.2	19.1
Borrower Income >120% AMI	47.2	45.8	47.3	50.7	49.6
Income Missing	1.9	1.9	1.8	2.1	1.6
Total	100	100	100	100	100

Source: FHFA tabulation of HMDA data.

As noted in the proposed rule preamble, FHFA is selecting a benchmark level lower than its model forecast midpoint and lower than recent Enterprise performance to avoid exacerbating the displacement of low-income residents in these low-income, non-minority census tracts as well as in low-income, minority census tracts. Setting this lower benchmark level addresses concerns about incentivizing purchases of loans to higher-income borrowers in low-income census tracts. However, this benchmark level is also intended to encourage the Enterprises to continue providing critically needed access to mortgage credit in low-income census tracts. After considering the comments and updated economic data that became available after FHFA issued the proposed rule, FHFA is adopting the proposed benchmark level of 4 percent in the final rule.

5. Low-Income Areas Home Purchase Goal

The benchmark level for the overall low-income areas housing goal is set annually by FHFA notice based on the sum of the benchmark levels for the low-income census tracts housing subgoal and the minority census tracts housing subgoal, plus an adjustment factor reflecting the additional incremental share of mortgages for low- and moderate-income families in designated disaster areas. FHFA will continue to set a benchmark level for the overall low-income areas housing goal that will reflect the adjustment factor for mortgages to families with incomes less than or equal to 100 percent of AMI who are located in federally declared disaster areas.⁵⁹ Accordingly, the low-income areas home purchase goal benchmark level is not included in the final rule. During the 2025–2027 housing goals period, FHFA will continue its annual practice

to notify the Enterprises by letter of the benchmark level for the overall low-income areas housing goal for each year.

6. Low-Income Refinance Goal

The low-income refinance goal is based on the percentage share of all conventional, conforming, single-family, owner-occupied refinance mortgages purchased by an Enterprise that are for low-income families, defined as families with incomes less than or equal to 80 percent of AMI. Consistent with the proposed rule and the updated FHFA market model, the final rule sets the annual benchmark level for this goal for 2025–2027 at 26 percent, which is the same as the benchmark level for the 2022–2024 housing goals period. FHFA has determined that given the market challenges and the uncertainty of future mortgage rates, a 26 percent benchmark level will serve as an appropriate target that will promote Enterprise efforts in this segment.

TABLE 7—SINGLE-FAMILY LOW-INCOME REFINANCE GOAL

Year	Historical performance				Projected forecast			
	2020	2021	2022	2023	2024	2025	2026	2027
Actual Market Level	21.0%	26.1%	37.3%	40.3%	.....	.....	.....	.....
Benchmark Level	21.0%	21.0%	26.0%	26.0%	26.0%	26.0%	26.0%	26.0%
Current Market Forecast .....	.....	.....	.....	.....	38.5%	38.1%	36.4%	34.3%
					+/-	+/-	+/-	+/-
					3.1%	5.5%	7.0%	8.3%
Fannie Mae Performance								
Low-Income Refinance Mortgages	663,667	809,452	279,020	60,682	.....	.....	.....	.....
Total Refinance Mortgages	3,133,931	3,089,529	803,634	157,984	.....	.....	.....	.....

⁵⁸ 86 FR 47398, 47408 (Aug. 25, 2021).

⁵⁹ Disaster declarations are listed on the Federal Emergency Management Agency (FEMA) website at <https://www.fema.gov/disasters>.

TABLE 7—SINGLE-FAMILY LOW-INCOME REFINANCE GOAL—Continued

Year	Historical performance				Projected forecast			
	2020	2021	2022	2023	2024	2025	2026	2027
Low-Income % of Refinance Mortgages	21.2%	26.2%	34.7%	38.4%	.....	.....	.....	.....
Freddie Mac Performance								
Low-Income Refinance Mortgages	490,176	658,845	254,332	54,906	.....	.....	.....	.....
Total Refinance Mortgages	2,485,748	2,651,858	686,394	127,043	.....	.....	.....	.....
Low-Income % of Refinance Mortgages	19.7%	24.8%	37.1%	43.2%	.....	.....	.....	.....

When measured in percentage terms, annual performance in the overall market and by the Enterprises on low-income refinance mortgages tends to be inversely proportional to the volume of low-income refinance loans the market produces and the Enterprises purchase during a given year. For example, during the refinance boom of 2020, when mortgage rates were low, low-income refinance volume in the overall market soared to over 1.3 million loans, but the volume of all refinances in the market reached over 6.3 million.⁶⁰ This equated to a low-income refinance market performance of 21.0 percent. In contrast, in 2023, with higher mortgage rates, low-income refinance volume in the overall market contracted to roughly 160,000 loans and refinance volume overall fell to about 397,000 loans.⁶¹ This equated to a low-income refinance market performance of 40.3 percent. The Enterprises' performance on the low-income refinance goal followed the same pattern. Low-income refinance performance for both Enterprises increased significantly during this later period, even as the volume of their purchases of low-income refinance mortgages fell.

Recent performance and forecasts. As shown in Table 7, the market for low-income refinance loans rose sharply from 2020 to 2023, as reflected in the HMDA data. For example, the market level for low-income refinance loans was 21.0 percent in 2020 with low mortgage rates and was 40.3 percent in 2023 with elevated mortgage rates. At 19.7 percent, Freddie Mac was below the 21 percent benchmark level in 2020, but has met the goal since then, with performance rising to 43.2 percent in 2023. Fannie Mae has met the goal since 2020, with performance rising from 21.2 percent to 38.4 percent during that period.

FHFA rationale. Some commenters supported the proposed benchmark level of 26 percent, noting that the refinance market is highly sensitive to fluctuations in interest rates. One

commenter asked FHFA to raise the benchmark level given the recent strong performance of the market and the Enterprises. As noted above, the Enterprises' annual performance on the low-income refinance goal tends to be inversely proportional to the volume of low-income refinance loans the market produces and the Enterprises purchase during a given year. Although mortgage rates are expected to decline during the 2025–2027 housing goals period, FHFA's model cannot forecast the low-income refinance market with a high degree of confidence due to the unpredictability of future interest rates and the strong sensitivity of refinance originations to interest rates. FHFA believes that the 26 percent benchmark level in the final rule is reasonable given these forecasting challenges. Many current mortgage holders are unlikely to refinance without a substantial reduction in mortgage rates. FHFA is not aware of any long-term data series that captures this impact that can be used in the forecast model. FHFA also recognizes that if interest rates were to decline significantly, the benchmark level of 26 percent could be difficult for the Enterprises to achieve based on market conditions. It is for this reason that the final rule establishes the benchmark level of 26 percent for this goal, as proposed, and establishes measurement buffers for this goal, which are further discussed below.

V. Measurement Buffers

For the three single-family housing goals subject to the measurement buffers, FHFA proposed numerical factors to encourage each Enterprise to focus on achieving the housing goal by meeting the market level if the benchmark level is higher than the market level, despite the uncertainty regarding the final market level throughout the course of the year.⁶² Specifically, for 2025–2027, as proposed, the final rule provides that if the benchmark level for the single-

family low-income home purchase, very low-income home purchase, or low-income refinance housing goal is higher than the market level for the goal, an Enterprise that fails to meet the goal will not be required to submit a housing plan if the Enterprise's performance meets or exceeds: (i) the market level minus 1.3 percentage points for the low-income home purchase goal; (ii) the market level minus 0.5 percentage points for the very low-income home purchase goal; or (iii) the market level minus 1.3 percentage points for the low-income refinance goal. To ensure that an Enterprise does not rely entirely on these measurement buffers, if an Enterprise fails to meet one of the applicable goals in both 2025 and 2026, the measurement buffer will not apply to that goal in 2027.

Fannie Mae commented that FHFA should establish similar factors for the single-family housing subgoals. The final rule does not include a measurement buffer for the single-family minority census tracts home purchase subgoal or the single-family low-income census tracts home purchase subgoal. FHFA is not adopting a measurement buffer for the minority census tracts home purchase subgoal due to the Enterprises' recent performance on this subgoal. A measurement buffer is unnecessary for the low-income census tracts home purchase subgoal because the benchmark level for the subgoal is being established below historic Enterprise performance to address potentially unintended consequences of Enterprise purchases in those areas.

FHFA considers the measurement buffers to be a transparent and fair means to encourage each Enterprise to achieve these three single-family housing goals by meeting the market level despite uncertainty about the market level during the measurement period. FHFA also notes, as it did in the NPRM, that these measurement buffers will be in place for the 2025–2027 housing goals period due to the heightened uncertainty in macroeconomic conditions and the difficult mortgage market that is

⁶⁰ FHFA's tabulation of HMDA data.

⁶¹ *Ibid.*

⁶² As previously noted, the proposed rule referred to the measurement buffers as "Enforcement Factors".

currently forecast for 2025–2027. Additionally, if an Enterprise fails to meet one of the applicable single-family housing goals in both 2025 and 2026, the measurement buffer for that goal will not apply in 2027.

VI. Multifamily Housing Goals and Subgoal

A. Factors Considered in Setting the Multifamily Housing Goal Benchmark Levels

The Safety and Soundness Act requires FHFA to consider the following six factors in setting the multifamily housing goals:

1. National multifamily mortgage credit needs and the ability of the Enterprises to provide additional liquidity and stability for the multifamily mortgage market;
2. The performance and effort of the Enterprises in making mortgage credit available for multifamily housing in previous years;
3. The size of the multifamily mortgage market for housing affordable to low-income and very low-income families, including the size of the multifamily markets for housing of a smaller or limited size;
4. The ability of the Enterprises to lead the market in making multifamily mortgage credit available, especially for multifamily housing affordable to low-income and very low-income families;
5. The availability of public subsidies; and
6. The need to maintain the sound financial condition of the Enterprises.⁶³

Unlike the single-family housing goals, performance on the multifamily housing goals is measured solely against benchmark levels set by FHFA in the regulation, without any retrospective market measure. The absence of a retrospective market measure for the multifamily housing goals results, in part, from the lack of comprehensive data about the multifamily mortgage market. Unlike the single-family mortgage market, where HMDA provides a reasonably comprehensive dataset about single-family mortgage originations each year, the multifamily mortgage market (and the affordable multifamily mortgage market segment) has no comparable single, unified source with coverage extending across many years. As a result, it is difficult to correlate different datasets that rely on different reporting metrics.

The lack of comprehensive data for the multifamily mortgage market is even more acute with respect to the segments of the market that are targeted to low-

income families, defined as families with incomes at or below 80 percent of AMI, and very low-income families, defined as families with incomes at or below 50 percent of AMI.

Unlike the single-family housing goals, which set separate benchmark levels for home purchase and refinance mortgages, the multifamily housing goals include all Enterprise multifamily mortgage purchases, regardless of the purpose of the loan.

In consideration of public comments and to improve the responsiveness of the multifamily housing goals to market conditions, in 2023, FHFA revised the housing goals regulation to change the multifamily housing goals benchmark levels from a numeric benchmark level for units to a percentage of affordable units in multifamily properties financed by mortgages purchased by the Enterprise each year. This ensures that the multifamily housing goals remain meaningful in different market conditions and enables the Enterprises to respond to those conditions while continuing to serve affordable segments.⁶⁴

FHFA has considered each of the six statutory factors in setting the benchmark levels for each of the multifamily housing goals in the final rule. Five of the factors relate to the multifamily mortgage market and the Enterprises' role in that market. Those factors generally have similar impacts on each of the multifamily housing goals and are discussed below. The past performance of the Enterprises is discussed separately for each of the multifamily housing goals.

Multifamily mortgage market. FHFA's consideration of the multifamily mortgage market credit needs addresses the size and competitiveness of the overall multifamily mortgage market as well as the subset that is affordable to low-income and very low-income families. In August 2024, MBA forecasted that multifamily mortgage originations would increase from the \$246 billion estimated in 2023 to \$297 billion in 2024, then to \$390 billion in 2025.⁶⁵ MBA noted that the moderation in interest rates along with the large volume of loans maturing should result in an increase in borrowing relative to 2023 and 2024, but the timing of this borrowing is uncertain.⁶⁶

⁶⁴ 12 CFR 1282.13.

⁶⁵ "MBA Forecast: Commercial/Multifamily Borrowing and Lending to Increase 26 Percent to \$539 Billion in 2024," Mortgage Bankers Association, August 29, 2024, available at <https://www.mba.org/news-and-research/newsroom/news/2024/08/29/mba-forecast-commercial-multifamily-borrowing-and-lending-to-increase-26-percent-to-539-billion-in-2024>.

⁶⁶ *Ibid.*

According to the National Multifamily Housing Council's tabulation of American Community Survey microdata, in 2023, about 47 percent of renter households (22 million households) lived in multifamily properties.^{67 68}

Affordability in the multifamily mortgage market. In its *America's Rental Housing 2024* report, Harvard University's Joint Center for Housing Studies (JCHS) found that rent growth had moderated following historically high rent growth in 2021 and 2022.⁶⁹ For instance, in the third quarter of 2023, rent growth for professionally managed apartments was 0.4 percent, compared to 15.3 percent in early 2022.⁷⁰ Despite the recent slowdown in rent growth, the extended period of rising rents corresponds to the continued stress on renters, with the share of cost-burdened renters continuing to remain elevated.

For purposes of the Enterprise housing goals, the Safety and Soundness Act requires FHFA to determine affordability based on whether rent levels are affordable. The Safety and Soundness Act defines a rent level as affordable if a family's rent and utility expenses do not exceed 30 percent of the maximum income level for each income category, with appropriate adjustments for unit size as measured by the number of bedrooms.⁷¹ The JCHS report found that the share of cost-burdened renters, particularly among low-income and very low-income households, continues to grow.⁷² A household is considered cost-burdened if it spends more than 30 percent of its income on housing, and severely cost-burdened if it spends more than 50 percent of its income on housing. The JCHS report shows that the share of cost-burdened renters across all income segments rose by 3.2 percentage points to 50 percent from 2019 to 2022.⁷³ The

⁶⁷ Single-family properties are defined as structures with one to four units. Multifamily properties are defined as structures with five or more units.

⁶⁸ "Review of Household Characteristics, (n.d.)," National Multifamily Housing Council, available at <https://www.nmhc.org/research-insight/quick-facts-figures/quick-facts-resident-demographics/household-characteristics>.

⁶⁹ "America's Rental Housing 2024," Joint Center for Housing Studies of Harvard University, 2024, p. 1, available at https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2024.pdf.

⁷⁰ *Ibid.*

⁷¹ 12 U.S.C. 4563(c).

⁷² "America's Rental Housing 2024," Joint Center for Housing Studies of Harvard University, 2024, p. 2, available at https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2024.pdf.

⁷³ *Ibid.*

⁶³ 12 U.S.C. 4563(a)(4).

share of cost-burdened renters earning between \$45,000 and \$74,999 increased the most, rising by 5.4 percentage points.⁷⁴

In *The State of the Nation's Housing 2024* report, JCHS noted the significant rise in new rental supply as 449,900 units were added in 2023, a 22 percent rise from 2022 and the highest number of completions in more than 30 years.⁷⁵ However, the growth in new rental supply is expected to slow down as multifamily starts fell by 14 percent in 2023, and this decline has accelerated.⁷⁶ While the addition of rental units may limit rent growth, the JCHS report found that new rental units are primarily targeted towards the upper end of the market, with a median asking rent of \$1,710 in the third quarter of 2023, compared to \$1,440 in 2014.⁷⁷

Role of the Enterprises. In adopting the multifamily housing goal benchmark levels for 2025–2027 in the final rule, FHFA has considered the ability of the Enterprises to lead the market in making multifamily mortgage credit available. The Enterprises' share of the overall multifamily mortgage market increased in the years immediately following the 2008 financial crisis but has declined more recently in response to growing private sector participation. The Enterprises' share of the multifamily market was over 70 percent in 2008 and 2009, compared to 36 percent in 2015.^{78 79} The total share was 40 percent or higher from 2016 to 2020. However, in 2021 and 2022, when multifamily origination volume was relatively robust, the combined Enterprise share was estimated to be below 30 percent before increasing to 41 percent in 2023.⁸⁰ Through the second quarter of 2024, the combined Enterprise share is estimated to be 35 percent.⁸¹

FHFA recognizes that the multifamily housing goals are just one measure of how the Enterprises contribute to and participate in the multifamily market. Other Enterprise multifamily activities

include those under their Duty to Serve Underserved Markets Plans, Low-Income Housing Tax Credit (LIHTC) equity financing, and the mission-driven elements of FHFA's Conservatorship Scorecard. Together with the housing goals, these programmatic activities provide support to renter households, including low-income families spending more than 30 percent of their income on housing. FHFA will continue to monitor these initiatives and priorities to maintain appropriate focus by the Enterprises, including compliance with the Enterprises' charter acts and safety and soundness considerations.

FHFA expects the Enterprises to continue to demonstrate leadership in supporting affordable housing in the multifamily market by providing liquidity for housing for tenants at different income levels in various geographies and market segments. This support should continue throughout the economic cycle, even as the overall size of the multifamily mortgage market fluctuates.

Availability of public subsidies. Multifamily housing assistance is primarily available in two forms—demand-side public subsidies that either directly assist low-income tenants (e.g., Section 8 vouchers) or provide project-based rental assistance (e.g., Section 8 contracts), and supply-side public subsidies that support the creation and preservation of affordable housing (e.g., public housing and LIHTCs). The availability of public subsidies impacts the overall affordable multifamily housing market, and significant changes to long-standing public subsidy programs could impact the ability of the Enterprises to meet the housing goals. The Enterprises also provide liquidity to facilitate the preservation of public subsidies through their purchases of mortgages that finance the preservation of existing affordable housing units (especially for restructurings of older properties that reach the end of their initial 15-year LIHTC compliance periods) and for refinancing properties with expiring Section 8 Housing Assistance Payment contracts.

The need for public subsidies persists as the number of cost-burdened renters remains high, at over 22.4 million renter households in 2022.⁸² The Center on Budget and Policy Priorities estimates that only one in four eligible households

currently receive Federal housing assistance.⁸³

In 2025 and beyond, there should continue to be opportunities in the multifamily mortgage market to provide permanent financing for properties with LIHTCs and to preserve existing affordable units, as described above.

Maintaining the sound financial condition of the Enterprises. In establishing multifamily housing goals benchmark levels for 2025–2027 in the final rule, FHFA must balance the role of the Enterprises in providing liquidity and supporting various multifamily mortgage market segments with the need to maintain the Enterprises' sound and solvent financial condition. The Enterprises have served as a stabilizing force in the multifamily mortgage market across economic cycles, and their loans on affordable multifamily properties have experienced low levels of delinquency and default that are similar to those of market rate properties.

FHFA continues to monitor the activities of the Enterprises in this market. As discussed above and consistent with the authorities described in the Enterprise housing goals regulation, FHFA may take any steps it determines necessary and appropriate after adoption of this final rule to address the multifamily housing goals benchmark levels to ensure the Enterprises' continued safety and soundness.

Past performance of the Enterprises. Before finalizing the benchmark levels for the multifamily housing goals in this final rule, FHFA reviewed any additional data (including Enterprise performance after the proposed rule was published) that became available about the performance of the Enterprises with regard to the multifamily housing goals. For each multifamily housing goals benchmark level, FHFA summarized the relevant performance of the Enterprises in the context of that goal or subgoal discussed in section B. *Multifamily Housing Goals Benchmark Levels in the Final Rule—§ 1282.13.*

Based on FHFA's consideration of the statutory factors described above, any developments in the multifamily mortgage market, and comments received on the proposed multifamily housing goals benchmark levels, the final rule establishes the benchmark levels for the multifamily housing goals, as further discussed below.

⁷⁴ *Ibid.*

⁷⁵ "The State of the Nation's Housing 2024," Joint Center for Housing Studies of Harvard University, 2024, p. 13, available at https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_The_State_of_the_Nations_Housing_2024.pdf.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ "The GSE's Shrinking Role in the Multifamily Market," Urban Institute, April 2015, p. 4, available at <https://www.urban.org/sites/default/files/publication/48986/2000174-The-GSEs-Shrinking-Role-in-the-Multifamily-Market.pdf>.

⁷⁹ "Multifamily Business Information Presentation," Fannie Mae, November 2024, p. 3, available at <https://multifamily.fanniemae.com/media/37196/display>.

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² "America's Rental Housing 2024," Joint Center for Housing Studies of Harvard University, 2024, p. 2, available at https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2024.pdf.

⁸³ Sonya Acosta, "Final 2023 Funding Bill Should Support, Expand Housing Vouchers. Center on Budget and Policy Priorities", December 2022, available at <https://www.cbpp.org/blog/final-2023-funding-bill-should-support-expand-housing-vouchers>.

1. Multifamily Low-Income Housing Goal

The multifamily low-income housing goal is the percentage share of all goal-eligible units in multifamily properties financed by mortgages purchased by the Enterprises that are affordable to low-

income families in any given year. Low-income families are defined as those with incomes less than or equal to 80 percent of AMI. The final rule sets the annual benchmark level for this goal for 2025–2027 at 61 percent of goal-eligible units acquired. This is the same benchmark level as in the proposed rule

and that was in place for the 2023–2024 housing goals period. It is consistent with FHFA’s analysis of the current and expected multifamily market, which indicates fewer affordable units to support, rising price per unit, and uncertain market conditions.

TABLE 8—MULTIFAMILY LOW-INCOME HOUSING GOAL

Year	Historical performance							
	2020	2021	2022	2023	2024	2025	2026	2027
Low-Income Multifamily Benchmark Level	315,000	315,000	415,000	61%	61%	61%	61%	61%
Fannie Mae Performance								
Low-Income Multifamily Units	441,773	384,488	419,361	317,032	.....	.....	.....	.....
Total Multifamily Units	637,696	557,152	542,347	415,513	.....	.....	.....	.....
Low-Income % Total Units	69.3%	69.0%	77.3%	76.3%	.....	.....	.....	.....
Freddie Mac Performance								
Low-Income Multifamily Units	473,338	373,225	420,107	231,968	.....	.....	.....	.....
Total Multifamily Units	664,638	540,541	567,249	345,702	.....	.....	.....	.....
Low-Income % of Total Units	71.2%	69.0%	74.1%	67.1%	.....	.....	.....	.....

Recent performance. Table 8 shows the annual share of goal-qualifying low-income multifamily units in properties backing mortgages acquired by each Enterprise from 2020 through 2023.⁸⁴ In addition, the historical performance share average for the pre-pandemic years of 2017–2019 would have been 65.1 percent for Fannie Mae and 67.3 percent for Freddie Mac.⁸⁵

FHFA rationale. FHFA has considered the statutory factors for the multifamily housing goals, including current market conditions, the Enterprises’ performance, and the Enterprises’ role in the market, as well as the public comments received (summarized in section II). Several commenters supported the proposed benchmark level of 61 percent for this goal, while other commenters recommended that FHFA establish a higher benchmark

level. FHFA remains concerned that elevated interest rates are continuing to contribute to the increasing costs of owning low-income multifamily units. FHFA also remains concerned that expected declines in affordable originations and increases in rents are likely to cause fewer units to qualify as affordable for low-income families. These challenges are expected to persist in 2025–2027, as rent increases and insufficient supply of affordable housing are likely to result in more low-income families paying more than 30 percent of their incomes for rent.⁸⁶ In light of FHFA’s consideration of the statutory factors and the comments on the proposed goal, FHFA is adopting the proposed benchmark level of 61 percent for this goal for 2025–2027 in the final rule.

2. Multifamily Very Low-Income Housing Goal

The multifamily very low-income housing goal is the percentage share of all goal-eligible units in multifamily properties financed by mortgages purchased by the Enterprises that are affordable to very low-income families in any given year. Very low-income families are defined as those with incomes less than or equal to 50 percent of AMI. The final rule sets the annual benchmark level for this goal for 2025–2027 at 14 percent of goal-eligible units acquired, which is the same as the proposed benchmark level but higher than the current 12 percent benchmark level applicable for the 2023–2024 housing goals period.

TABLE 9—MULTIFAMILY VERY LOW-INCOME HOUSING GOAL

Year	Historical performance							
	2020	2021	2022	2023	2024	2025	2026	2027
Very Low-Income Multifamily Benchmark Level	60,000	60,000	88,000	12%	12%	14%	14%	14%
Fannie Mae Performance								
Very Low-Income Multifamily Units	95,416	83,459	127,905	77,509	.....	.....	.....	.....
Total Multifamily Units	637,696	557,152	542,347	415,513	.....	.....	.....	.....
Very Low-Income % of Total Units	15.0%	15.0%	23.6%	18.7%	.....	.....	.....	.....
Freddie Mac Performance								
Very Low-Income Multifamily Units	107,105	87,854	127,733	71,217	.....	.....	.....	.....
Total Multifamily Units	664,638	540,541	567,249	345,702	.....	.....	.....	.....
Very Low-Income % of Total Units	16.1%	16.3%	22.5%	20.6%	.....	.....	.....	.....

⁸⁴ 12 CFR 1282.16 (Special Counting Requirements).

⁸⁵ See 87 FR 50800 (Aug. 18, 2022).

⁸⁶ See “The State of the Nation’s Housing 2024,” Joint Center for Housing Studies of Harvard

University, June 2024, available at <https://www.jchs.harvard.edu/state-nations-housing-2024>.

Recent performance. Table 9 shows the number and share of goal-qualifying very low-income multifamily units as a percentage of the total goal-eligible units in properties backing mortgages acquired by each Enterprise. In addition, the historical performance share average for the pre-pandemic years of 2017–2019 would have been 13.1 percent for Fannie Mae and 15.6 percent for Freddie Mac.⁸⁷

FHFA rationale. FHFA has considered the statutory factors for the multifamily housing goals, including current market conditions and the Enterprises' role in the market. FHFA has also considered the comments received in response to the proposed benchmark level for this goal that are summarized in section II. As with the multifamily low-income housing goal, several commenters thought that FHFA could slightly increase the benchmark level for the multifamily very low-income housing goal. As discussed above, FHFA remains concerned that elevated interest rates and the severe disparity between demand and supply of units affordable

to very low-income renters are continuing to contribute to the increasing costs of owning very low-income multifamily units. These factors are expected to result in fewer units that qualify as affordable for very low-income families. As a result, FHFA believes that a benchmark level of 14 percent for this goal will encourage the Enterprises to continue to adequately serve very low-income families, while accounting for the challenges associated with elevated interest rates, lower volume of loan transactions, and the lack of affordable units in the multifamily market, as well as continued uncertain economic conditions.

FHFA believes that raising the benchmark level for this goal from the current 12 percent to 14 percent is appropriate and achievable considering the past performance of the Enterprises on this goal. Accordingly, FHFA is adopting the proposed benchmark level of 14 percent for this goal for 2025–2027 in the final rule.

3. Small Multifamily Low-Income Housing Subgoal

The current Enterprise housing goals regulation defines a small multifamily property as having 5 to 50 units. The small multifamily low-income housing subgoal is based on the share of units in small multifamily properties affordable to low-income families as a percentage of all goal-eligible units in all multifamily properties financed by mortgages purchased by the Enterprises in a given year. Low-income families are defined as those with incomes less than or equal to 80 percent of AMI. The final rule sets the annual benchmark level for this subgoal for 2025–2027 at 2 percent of goal-eligible units acquired, as proposed, which is slightly lower than the current 2.5 percent benchmark level for the 2023–2024 housing goals period. FHFA believes that with a 2 percent benchmark level, the Enterprises will remain positioned to support this market when needed without crowding out other sources of financing for small multifamily properties.

TABLE 10—SMALL (5–50 UNITS) MULTIFAMILY LOW-INCOME SUBGOAL

Year	Historical performance							
	2020	2021	2022	2023	2024	2025	2026	2027
Fannie Mae Small Low-Income Multifamily Benchmark Level	10,000	10,000	17,000	2.5%	2.5%	2.0%	2.0%	2.0%
Freddie Mac Small Low-Income Multifamily Benchmark Level	10,000	10,000	23,000	2.5%	2.5%	2.0%	2.0%	2.0%
Fannie Mae Performance								
Small Low-Income Multifamily Units	21,797	14,409	21,436	13,241	.....	.....	.....	.....
Total Multifamily Units	637,696	557,152	542,347	415,513	.....	.....	.....	.....
Small Low-Income % of Total Units	3.4%	2.6%	4.0%	3.2%	.....	.....	.....	.....
Freddie Mac Performance								
Small Low-Income Multifamily Units	28,142	31,913	27,103	14,006	.....	.....	.....	.....
Total Multifamily Units	664,638	540,541	567,249	345,702	.....	.....	.....	.....
Small Low-Income % of Total Units	4.2%	5.9%	4.8%	4.1%	.....	.....	.....	.....

Recent performance. Table 10 shows Enterprise performance on this subgoal, including the previous numeric benchmark levels applicable through 2022 and the percentage-based metric that began in 2023. FHFA recognizes that the Enterprises have different business approaches to the small multifamily market segment, and that each Enterprise sets its own credit risk tolerance for these products. As a result, each Enterprise has performed very differently on this subgoal. Since 2020, Freddie Mac has exceeded Fannie Mae in terms of percentage share of total units and volume of low-income units in small (5–50) multifamily properties.

FHFA rationale. FHFA has considered the statutory factors for the multifamily housing goals, the purpose of this

subgoal, and the comments received on the proposed benchmark level for this subgoal. As noted in section II, several commenters supported the proposed benchmark level of 2 percent, with one commenter noting that this market segment is well-supported by private capital sources. Other commenters disagreed with the proposed benchmark level, recommending that FHFA raise or maintain the existing benchmark level. Both Enterprises supported the proposed benchmark level, recognizing that their role is to provide liquidity without crowding out the private capital sources that have historically served this market segment.

FHFA has observed increased private sector financing for small multifamily properties in recent years, and as a

result, less activity among secondary mortgage market participants. Therefore, FHFA believes that a benchmark level of 2 percent should be adequate for the Enterprises to support this market segment when needed without crowding out other sources of financing for small multifamily properties. Accordingly, FHFA is adopting the proposed benchmark level of 2 percent for this goal for 2025–2027 in the final rule.

VII. Paperwork Reduction Act

The final rule does not contain any information collection requirement that requires the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not

⁸⁷ See 87 FR 50801 (Aug. 18, 2022).

submitted the final rule to OMB for review.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. 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. 5 U.S.C. 605(b). FHFA has considered the impact of the final rule under the Regulatory Flexibility Act. FHFA certifies that the final rule will not have a significant economic impact on a substantial number of small entities because the final rule applies to Fannie Mae and Freddie Mac, which are not small entities for purposes of the Regulatory Flexibility Act.

IX. Congressional Review Act

In accordance with the Congressional Review Act (5 U.S.C. 801 *et seq.*), FHFA has determined that this final rule is a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 12 CFR Part 1282

Mortgages, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the Preamble, FHFA amends part 1282 of title 12 of the Code of Federal Regulations as follows:

PART 1282—ENTERPRISE HOUSING GOALS AND MISSION

■ 1. The authority citation for part 1282 continues to read as follows:

Authority: 12 U.S.C. 4501, 4502, 4511, 4513, 4526, 4561–4566.

■ 2. Amend § 1282.1 by revising the definition of “Designated disaster area” to read as follows:

§ 1282.1 Definitions.

* * * * *

Designated disaster area means any census tract that is located in a county designated by the President as adversely affected by a declared major disaster administered by FEMA under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), where housing assistance payments were authorized by FEMA. A census tract shall be treated as a “designated disaster area” for purposes

of this part beginning on the January 1 after the major disaster declaration of the county, or such earlier date as determined by FHFA, and continuing through December 31 of the third full calendar year following the major disaster declaration. This time period may be adjusted for a particular disaster area by notice from FHFA to the Enterprises.

* * * * *

■ 3. Amend § 1282.11 by revising paragraph (a)(1) to read as follows:

§ 1282.11 General.

(a) * * *

(1) Three single-family owner-occupied purchase money mortgage housing goals, two single-family owner-occupied purchase money mortgage housing subgoals, a single-family refinancing mortgage housing goal, two multifamily housing goals, and a multifamily housing subgoal;

* * * * *

■ 4. Amend § 1282.12 by revising paragraphs (c)(2), (d)(2), (f)(2)(ii), (g)(2), and (h)(2) to read as follows:

§ 1282.12 Single-family housing goals and subgoals.

* * * * *

(c) * * *

(2) The benchmark level, which for 2025, 2026, and 2027 shall be 25 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(d) * * *

(2) The benchmark level, which for 2025, 2026, and 2027 shall be 6 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

* * * * *

(f) * * *

(2) * * *

(ii) The benchmark level, which for 2025, 2026, and 2027 shall be 4 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(g) * * *

(2) The benchmark level, which for 2025, 2026, and 2027 shall be 12 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(h) * * *

(2) The benchmark level, which for 2025, 2026, and 2027 shall be 26 percent of the total number of

refinancing mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

■ 5. Revise § 1282.13 to read as follows:

§ 1282.13 Multifamily housing goals and subgoal.

(a) *Multifamily housing goals and subgoal.* An Enterprise shall be in compliance with a multifamily housing goal or subgoal if its performance under the housing goal or subgoal meets or exceeds the benchmark level for the goal or subgoal, respectively.

(b) *Multifamily low-income housing goal.* The percentage share of dwelling units in multifamily residential housing financed by mortgages purchased by each Enterprise that consists of dwelling units affordable to low-income families shall meet or exceed 61 percent of the total number of dwelling units in multifamily residential housing financed by mortgages purchased by the Enterprise in each year for 2025, 2026, and 2027.

(c) *Multifamily very low-income housing goal.* The percentage share of dwelling units in multifamily residential housing financed by mortgages purchased by each Enterprise that consists of dwelling units affordable to very low-income families shall meet or exceed 14 percent of the total number of dwelling units in multifamily residential housing financed by mortgages purchased by the Enterprise in each year for 2025, 2026, and 2027.

(d) *Small multifamily low-income housing subgoal.* The percentage share of dwelling units in small multifamily properties financed by mortgages purchased by each Enterprise that consists of dwelling units affordable to low-income families shall meet or exceed 2 percent of the total number of dwelling units in all multifamily residential housing financed by mortgages purchased by the Enterprise in each year for 2025, 2026, and 2027.

■ 6. Amend § 1282.15 by:

■ a. In paragraph (b)(2), remove the first instance of “subgoal” and add, in its place, “subgoals”;

■ b. Revise the heading and the first sentence of paragraph (c);

■ c. In paragraphs (d)(1), (3), and (4) and (e)(3), remove the phrase “housing goal and subgoals” wherever it appears and add in its place the phrase “housing goals and subgoal”;

■ d. Revise the heading to paragraph (e); and

■ e. In paragraph (e)(2), remove the phrase “housing goal or subgoals” and add in its place the phrase “housing goals or subgoal”.

The revisions read as follows:

§ 1282.15 General counting requirements.

* * * * *

(c) *Calculating the numerator and denominator for multifamily housing goals and subgoal.* Performance under the multifamily housing goals and subgoal shall be measured using a fraction that is converted into a percentage. * * *

* * * * *

(e) *Missing data or information for multifamily housing goals and subgoal.* * * *

* * * * *

■ 7. Revise § 1282.20 to read as follows:

§ 1282.20 Preliminary determination of compliance with housing goals; notice of preliminary determination.

(a) *Preliminary determination.* On an annual basis, the Director will evaluate each Enterprise's performance under each single-family housing goal and subgoal and each multifamily housing goal and subgoal. The Director will make a preliminary determination of whether an Enterprise has failed, or there is a substantial probability that an Enterprise will fail, to meet each housing goal or subgoal established by this subpart.

(b) *Notice of preliminary determination.* The Director will provide written notice to each Enterprise of the preliminary determination of its performance under each housing goal and subgoal established by this subpart, the reasons for such determination, and the information on which the Director based the determination.

(c) *Response by Enterprise.* Any notification to an Enterprise of a preliminary determination under this section will provide the Enterprise with an opportunity to respond in writing in accordance with the procedures at 12 U.S.C. 4566(b). Relevant information in a timely written response from an Enterprise will be included in the information the Director considers when making a final determination of housing goals compliance under § 1282.21.

§ 1282.21 [Redesignated as § 1282.22]

■ 8. Redesignate § 1282.21 as § 1282.22.

■ 9. Add new § 1282.21 to read as follows:

§ 1282.21 Final determination of compliance with housing goals; notice of final determination.

(a) *Final determination.* On an annual basis, the Director will make a final determination of each Enterprise's

performance under each single-family housing goal and subgoal and each multifamily housing goal and subgoal. The final determination will address whether an Enterprise has failed, or there is a substantial probability that an Enterprise will fail, to meet any housing goal or subgoal and whether the achievement of that housing goal or subgoal was or is feasible.

(b) *Notice of final determination.* The Director will provide each Enterprise with written notification of the final determination. If the Enterprise fails to meet any housing goal or subgoal, the notification will specify whether the Enterprise is required to submit a housing plan for approval under § 1282.22.

■ 10. Revise newly redesignated § 1282.22 to read as follows:

§ 1282.22 Housing plans.

(a) *General.* If the Director determines that an Enterprise has failed, or that there is a substantial probability that an Enterprise will fail, to meet any housing goal or subgoal, and that the achievement of the housing goal or subgoal was or is feasible, the Director may require the Enterprise to submit a housing plan for approval by the Director.

(b) *Measurement buffers for 2025–2027.* (1) Except as provided in paragraph (b)(3) of this section, the Director will not require an Enterprise to submit a housing plan based on the Enterprise's failure to meet the single-family low-income families housing goal, the single-family very low-income families housing goal, or the single-family refinancing housing goal for the years 2025, 2026, or 2027, if:

(i) The share of the market as defined in § 1282.12(b) for the applicable goal is lower than the benchmark level for the goal; and

(ii) The Enterprise's performance meets or exceeds the share of the market minus the measurement buffer for the applicable goal as defined in paragraph (b)(2) of this section.

(2) The following measurement buffers apply for the years 2025, 2026, and 2027:

(i) For the single-family low-income families housing goal, 1.3 percentage points;

(ii) For the single-family very low-income families housing goal, 0.5 percentage points; and

(iii) For the single-family refinancing housing goal, 1.3 percentage points.

(3) The measurement buffers in this paragraph (b) will not apply to a goal in

2027 if the Enterprise failed to meet that goal for each of the previous two years.

(c) *Nature of plan.* If the Director requires a housing plan, the housing plan must:

(1) Be feasible;

(2) Be sufficiently specific to enable the Director to monitor compliance periodically;

(3) Describe the specific actions that the Enterprise will take in a time period determined by the Director to improve the Enterprise's performance under the housing goal or subgoal; and

(4) Address any additional matters relevant to the plan as required, in writing, by the Director.

(d) *Deadline for submission.* The Enterprise shall submit the housing plan to the Director within 45 days after issuance of a notice requiring the Enterprise to submit a housing plan. The Director may extend the deadline for submission of a plan, in writing and for a time certain, to the extent the Director determines an extension is necessary.

(e) *Review of housing plans.* The Director shall review and approve or disapprove housing plans in accordance with 12 U.S.C. 4566(c)(4) and (c)(5).

(f) *Resubmission.* If the Director disapproves an initial housing plan submitted by an Enterprise, the Enterprise shall submit an amended plan for approval or disapproval not later than 15 days after the Director's disapproval of the initial plan; the Director may extend the deadline if the Director determines an extension is in the public interest. If an amended plan is not acceptable to the Director, the Director may afford the Enterprise 15 days to submit additional amendments to its plan for approval or disapproval.

(g) *Enforcement of housing plans.* If the Director requires an Enterprise to submit a housing plan and the Enterprise refuses to submit such a plan, submits an unacceptable plan, or fails to comply with the plan, the Director may issue a cease and desist order in accordance with 12 U.S.C. 4581, impose civil money penalties in accordance with 12 U.S.C. 4585, or take any other action that the Director determines to be appropriate, consistent with the Safety and Soundness Act.

Sandra L. Thompson,

Director, Federal Housing Finance Agency.

[FR Doc. 2024–30793 Filed 12–27–24; 8:45 am]

BILLING CODE 8070–01–P

CONSUMER FINANCIAL PROTECTION BUREAU**12 CFR Chapter X****Consumer Financial Protection Circular 2024–07: Design, Marketing, and Administration of Credit Card Rewards Programs**

AGENCY: Consumer Financial Protection Bureau.

ACTION: Consumer financial protection circular.

SUMMARY: The Consumer Financial Protection Bureau (Bureau or CFPB) has issued Consumer Financial Protection Circular 2024–07 titled, “Design, marketing, and administration of credit card rewards programs.” In this circular, the CFPB responds to the question, “Can credit card issuers violate the law if they or their rewards partners devalue earned rewards or otherwise inhibit consumers from obtaining or redeeming promised rewards?”

DATES: The CFPB released this circular on its website on December 18, 2024.

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

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

SUPPLEMENTARY INFORMATION:**Question Presented**

Can credit card issuers violate the law if they or their rewards partners devalue earned rewards or otherwise inhibit consumers from obtaining or redeeming promised rewards?

Response

Yes. Covered persons that offer, provide, or operate credit card rewards programs, and their service providers, may violate the prohibition against unfair, deceptive, or abusive acts or practices in a variety of circumstances, including instances where some of the conduct in question may be attributable to a third party, such as a merchant partner, and regardless of whether covered persons or service providers are taking actions consistent with rewards program terms. This circular provides some examples where covered persons that offer, provide, or operate credit card rewards programs, and their service providers, may violate the prohibition against unfair, deceptive, and abusive

acts or practices, where: (1) the redemption values of rewards that consumers have already earned or purchased are devalued; (2) consumers’ receipt of rewards is revoked, canceled, or prevented based on buried or vague conditions, such as criteria disclosed only in fine print or up to the operator’s discretion; or (3) consumers have reward points deducted from their balance without receiving the corresponding benefit of the rewards, including due to technical failures when redeeming rewards points on merchant partners’ systems.

Background on Credit Card Rewards Programs

Rewards programs are increasingly used to encourage consumers to apply for and use specific credit cards.¹ As of 2019, more than 90 percent of general purpose credit card spending occurred on rewards cards, and by the end of 2022, 75 percent of general purpose credit cards were rewards cards.² While rewards cards are more common for consumers with higher credit scores, the use of rewards cards is growing fastest among deep subprime, subprime, and near-prime consumers.³ The amount of

money or value that consumers earn and maintain in credit card rewards programs is also large and has increased substantially in recent years. For example, in 2022, consumers earned more than \$40 billion in rewards from major general-purpose credit cards, more than a 50 percent increase from 2019.⁴ Consumer rewards balances at the end of 2022 were more than \$33 billion, up 40 percent relative to the fourth quarter of 2019.⁵ More consumers are also using rewards to make payments, including for day-to-day purchases and necessary expenses.⁶

Credit card rewards programs are typically structured around earning rewards “currencies”—most commonly “miles” or other units of value issued by a co-brand partner (such as an airline or hospitality chain) or, alternatively, a credit card issuer’s own “points.”⁷ Consumers typically earn miles or points through credit card spending or by directly purchasing them in accordance with pre-determined formulas, or “earn rates.”⁸ Many issuers also offer promotional rewards through things like sign-up bonuses and referrals.⁹

Once earned or purchased by consumers, points can be redeemed for rewards like “cash back” (statement

¹ See CFPB, *The Consumer Credit Card Market* (Oct. 2023) (hereinafter “2023 Report”) at 98, https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2023.pdf. An industry survey found that rewards and cash back programs were the top reason why consumers chose one card over another, as well as the top reason consumers cited for increasing spending on credit cards over the last six months. PYMNTS and Elan, *Credit Card Use During Economic Turbulence* (Dec. 2023), <https://www.pymnts.com/wp-content/uploads/2023/05/PYMNTS-Credit-Card-Use-During-Economic-Turbulence-May-2023.pdf>. See also Arielle Feger, *Cash-back rewards drive consumers to open new credit cards*, eMarketer (Mar. 26, 2024), <https://www.emarketer.com/content/cash-back-rewards-drive-consumers-open-new-credit-cards>; Drazen Prelec, *How credit cards activate the reward center of our brains and drive spending*, MIT Sloan (June 9, 2021), <https://mitsloan.mit.edu/experts/how-credit-cards-activate-reward-center-of-brains-and-drive-spending>.

² 2023 Report at 99. One study also found that between 2021 and 2023, while total credit card applications decreased by 2 percent, applications for rewards cards and rewards cards with tiered earnings grew by 5 percent and 8 percent, respectively. Marketa Canayaz, *Consumer Demand for Rich Rewards Rises*, Comscore (July 17, 2024), <https://www.comscore.com/Insights/Blog/Consumer-Demand-for-Rich-Rewards-Rises>.

³ 2023 Report at 100. See also Electronic Payments Coalition, *New Study Shows LMI Households Rely on Credit Card Rewards*, Electronic Payments Coalition (Apr. 30, 2024), <https://electronicpaymentscoalition.org/2024/04/30/new-study-data-shows-credit-card-rewards-are-a-lifeline-for-working-class-americans/>. Despite the growth in the use of rewards cards among consumers with lower credit scores, in many cases, these consumers do not benefit from these rewards programs, and research has shown that consumers with higher credit scores generally benefit from credit card rewards programs at the expense of consumers with lower credit scores. See Sumit

Agarwal, et al., *Who Pays for Your Rewards? Redistribution in the Credit Card Market* (Dec. 5, 2022), <http://dx.doi.org/10.2139/ssrn.4126641>.

⁴ CFPB, *Credit Card Rewards* (May 2024) (hereinafter “Credit Card Rewards Issue Spotlight”) at 9, https://files.consumerfinance.gov/f/documents/cfpb_credit-card-rewards_issue-spotlight_2024-05.pdf.

⁵ 2023 Report at 100. Notably, consumers also forfeit about \$500 million in rewards each year. *Id.* at 102.

⁶ See Rimma Kats, *Survey Highlights Growing Consumer Appetite for Paying with Points*, Payments Journal (Jan. 3, 2024), <https://www.paymentsjournal.com/survey-highlights-growing-consumer-appetite-for-paying-with-points/> (noting that a majority of consumers favor redeeming their points at grocery stores, online retail outlets, and at gas stations). See also Chase Survey Reveals How Credit Card Rewards Are Enhancing The Holiday Season, Chase Media Center (Nov. 20, 2023), <https://media.chase.com/news/chase-holiday-rewards-survey> (noting that during the holiday season, 33 percent of consumers planned to use rewards to pay for gifts and 25 percent on groceries for holiday meals). See, e.g., Bilt, *How do I redeem points towards a down payment?*, <https://support.biltrewards.com/hc/en-us/articles/10377953401869-How-do-I-redeem-points-towards-a-down-payment>.

⁷ See Agarwal *supra* note 4, at 8. In 2021, more than one in three general purpose credit cards offered were co-branded. See 2023 Report at 25. In addition to rewards currencies and cash back, rewards programs also increasingly offer other affiliated benefits or lifestyle rewards, such as access to airport lounges and priority boarding. *Credit Card Rewards Issue Spotlight* at 8.

⁸ See CFPB, *The Consumer Credit Card Market* at 212–13 (Dec. 2015), https://files.consumerfinance.gov/f/201512_cfpb_report-the-consumer-credit-card-market.pdf.

⁹ See *id.* at 213.

credits or direct deposits) or transfers to a co-brand or merchant partner (e.g., miles or merchant-specific gift cards), and also for other types of goods or services, like buying merchandise, donating to charities, applying to purchases at check out, and others.¹⁰ However, both credit card issuers and loyalty programs generally reserve, and often assert a right to, unilaterally change the value of rewards, including at the point of redemption.¹¹ Reward points or miles valuation changes can sometimes be tied to price changes in the underlying product or service for which the reward is being redeemed (e.g., changes in flight pricing), but program operators also adjust rewards redemption rates distinct from underlying prices, apparently as a means to “preserve” or “maintain” profit margins.¹²

¹⁰ *Credit Card Rewards Issue Spotlight*, *supra* note 4, at 7. Both quantitative and qualitative evidence indicate consumers spend across months or years to earn sufficient points or miles for infrequent large purchases. *See, e.g., id.* at 15; 2023 Report at 100.

¹¹ *See, e.g., American Express, Membership Rewards Program Terms and Conditions*, <https://rewards.americanexpress.com/myca/loyalty/us/catalog/tandc> (last accessed Sept. 4, 2024); Citi, *Citi ThankYou Rewards Terms & Conditions*, <https://www.thankyou.com/cms/thankyou/tc.page?pageName=tc> (last accessed Sept. 4, 2024); Chase, *Chase Sapphire Preferred® with Ultimate Rewards® Program Agreement*, <https://www.chase.com/sapphire/rewardsagreement> (last accessed Sept. 4, 2024); Wells Fargo, *Wells Fargo Rewards® Program Terms and Conditions and Addendum*, <https://consumercard.wellsfargorewards.com/#/tnc> (last accessed Sept. 4, 2024); Southwest, *What are the Rapid Rewards Rules and Regulations*, <https://support.southwest.com/helpcenter/s/article/rapid-rewards-rules-and-regulations> (last accessed Sept. 4, 2024) Emily McNutt, *Delta is making it more expensive to earn elite status—here’s how you can bypass the new requirements*, CNN (Aug. 28, 2023), <https://www.cnn.com/cnn-underscored/travel/delta-airlines-status-requirements-update>; Sean Cudahy, *Alaska Airlines raises lounge membership prices, tightens access*, The Points Guy (Nov. 9, 2023), <https://thepointsguy.com/news/alaska-lounge-restrictions/>; Zach Griff, *Why United’s increased status thresholds might not be as bad as they seem*, The Points Guy (Nov. 11, 2022), <https://thepointsguy.com/news/united-premier-changes-not-so-bad/>.

¹² *See, e.g., United Airlines, MileagePlus Investor Presentation*, at 23 (June 15, 2020) (MileagePlus program can “adjust[] award pricing based on expected foregone revenue for United”), <https://ir.united.com/static-files/1c0f0c79-23ca-4fd2-80c1-cf975348bab9>; Delta Airlines, *Delta Air Lines SkyMiles Investor Presentation*, at 17 (Sept. 14, 2020) (dynamic pricing model of SkyMiles rewards program allows “flexibility to control costs and preserve margins”), <https://www.sec.gov/Archives/edgar/data/27904/000119312520244688/d27099dxdex991.htm>; American Airlines, *American Airlines AAdvantage Investor Presentation*, at 22, 35 (Mar. 2021) (AAdvantage “control[s] the ‘exchange rate’ between miles and dollars,” which provides flexibility to “manage costs” and “steer reward demand to optimal flights based on cash displacement risk.”), <https://www.sec.gov/Archives/edgar/data/6201/000000620121000022/aainvestorpresentation.htm>.

As the market for credit card rewards programs has grown, so too has their complexity.¹³ Rewards program operators often assert their ability to unilaterally modify credit card rewards programs, which has caused at least one State to take action to provide consumers with additional protections against such unilateral program modifications.¹⁴ Additionally, the number of consumer complaints that the CFPB receives about credit card rewards programs has also risen dramatically in recent years.¹⁵ Many consumers’ complaints describe how the marketing or initial offering of a rewards program is inconsistent with their actual, later experiences earning and redeeming credit card rewards. For instance, consumers have complained to the CFPB about companies devaluing their rewards relative to what they were marketed, or increasing barriers to redeeming cash or cash-equivalent rewards, such as eliminating the ability for consumers to redeem points for a statement credit.¹⁶

Consumers have also complained about being denied access to promotional or other rewards because of terms or other requirements hidden in their cardholder or rewards program agreements, including instances of unexpectedly being found ineligible after applying for a credit card¹⁷ or being forced to return a promotional offer because they closed their account within a certain period.¹⁸ For many of these types of complaints, companies and merchant partners justified revoking, canceling, or preventing consumer access to rewards through requirements and guidelines absent from their marketing materials and only found buried in their cardholder or rewards program agreements.

Consumers have also repeatedly alerted the CFPB about difficulties redeeming their rewards or inexplicably seeing their points disappear. These reported challenges include issues with

customer service,¹⁹ technical failures,²⁰ and dispute resolution,²¹ all of which can be further compounded when neither the issuer nor its merchant partner accept responsibility and both refer consumers to the other.²² Because of these issues, some consumers have seen their rewards disappear when being transferred or applied to a merchant partner, with little recourse to resolve such problems.²³

Analysis

The CFPB prohibits any “covered person” or “service provider” from “committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with . . . the offering of a consumer financial product or service.”²⁴ An act or practice is unfair when: (1) it causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers and (2) such injury is not outweighed by countervailing benefits to consumers or to competition.²⁵ Substantial injury includes monetary harm, and may be based on likely rather than actual injury.²⁶ In general, an injury is not reasonably avoidable if consumers cannot reasonably anticipate the injury, or when there is no way to avoid the injury even if it is anticipated.²⁷

Under the CFPB, a representation, omission, or practice is deceptive if it is likely to mislead a reasonable consumer and is material.²⁸ Representations, omissions, or practices are “material” if they “involve[] information that is important to consumers and, hence, likely to affect their choice of, or conduct regarding, a product.”²⁹ In assessing the meaning of a communication, the CFPB looks to its overall, net impression; in other words, the CFPB considers the entire advertisement, transaction, or course of dealing rather than evaluating

¹⁹ *See, e.g., id.* at 17.

²⁰ *See, e.g., id.* at 18.

²¹ *See, e.g., id.*

²² *See, e.g., id.*

²³ *See, e.g., id.* at 19.

²⁴ 12 U.S.C. 5531(a); *see also* 12 U.S.C. 5536(a)(1)(B).

²⁵ 12 U.S.C. 5531(c)(1).

²⁶ *See, e.g., FTC v. Wyndham Worldwide Corp.*, 799 F.3d 236, 246 (3d Cir. 2015).

²⁷ *See FTC v. Neovi, Inc.*, 604 F.3d 1150, 1158 (9th Cir. 2010) (interpreting whether consumer’s injuries were reasonably avoidable under the FTC Act); *Orkin Exterminating Co. v. FTC*, 849 F.2d 1354, 1365–66 (11th Cir. 1988) (same); *Am. Fin. Servs. Ass’n v. FTC*, 767 F.2d 957, 976 (D.C. Cir. 1985) (same).

²⁸ *See CFPB v. Gordon*, 819 F.3d 1179, 1192–93 (9th Cir. 2016).

²⁹ *Novartis Corp. v. FTC*, 223 F.3d 783, 786 (D.C. Cir. 2000) (quoting *In re Cliffdale Assocs., Inc.*, 103 FTC 110, 165 (1984)).

¹³ *See Jamie Lauren Keiles, The Man Who Turned Credit-Card Points Into an Empire*, The New York Times (Jan. 5, 2021), <https://www.nytimes.com/2021/01/05/magazine/points-guy-travel-rewards.html> (how “as rewards programs have multiplied, the earned point has grown increasingly complex and fungible”); *Credit Card Rewards Issue Spotlight*, *supra* note 4, at 6.

¹⁴ *See Credit Card Rewards Issue Spotlight*, *supra* note 4, at 11, 20; New York General Business Law § 520–e (2023).

¹⁵ In 2023, there was a more than 70 percent increase in complaints involving credit card rewards over pre-pandemic levels. *Credit Card Rewards Issue Spotlight*, *supra* note 4, at 2.

¹⁶ *See, e.g., id.* at 15, 16.

¹⁷ *See, e.g., id.* at 13.

¹⁸ *See, e.g., id.* at 15.

statements in isolation.³⁰ A misrepresentation can be “an express or implied statement [that is] contrary to fact.”³¹ It may also be deceptive, for example, when a seller partially discloses information about the nature of a product or service, but fails to disclose other material information.³² Further, “[w]ritten disclosures or fine print may be insufficient to correct a misleading representation.”³³

Rewards programs are a feature common to many credit cards, and tend to both be prominently marketed by issuers and widely used by consumers.³⁴ Credit card rewards programs also play a major role in consumer’s choices on which cards to apply for and use for any given transaction.³⁵

The CFPB is issuing this circular to underscore that the CFPB’s prohibition on unfair or deceptive acts or practices applies to the design, marketing, and administration of credit card rewards programs.³⁶ Rewards program operators

may violate this prohibition in a variety of circumstances regardless of whether they are taking actions consistent with rewards program terms. In particular, rewards program operators risk committing unfair or deceptive acts or practices when (1) rewards that consumers have already earned are devalued; (2) consumers’ receipt of rewards is revoked, cancelled, or prevented based on buried or vague conditions; and (3) rewards points are deducted without consumers receiving the corresponding benefit of the rewards. These examples are illustrative and non-exhaustive.

As described further below, the CFPB emphasizes that covered persons that offer, provide, or operate credit card rewards programs may be liable for an unfair or deceptive act or practice where some of the conduct in question may be attributable to a third party or service provider, such as a merchant partner.³⁷

Devaluation of Rewards Already Earned or Purchased

Rewards program operators may commit an unfair or deceptive act or practice when they materially reduce the overall value of rewards that consumers have already earned or purchased. Consumers make decisions on whether to open or use a credit card based on the explicit and implicit representations about the value of card benefits and rewards. For instance, consumers’ reasonable expectations about the value of rewards may be informed by advertisements at account opening, as well as by redemption values of rewards communicated to consumers on or around the time the consumer makes decisions to purchase goods with the card and accrue rewards benefits. Furthermore, fine print disclaimers or contract terms stating that rewards program operators have the right to adjust rewards offerings often will not be sufficient to correct

consumers’ net impression about the expected value of rewards.

When rewards operators influence consumers’ expectations about the value of rewards in their product or marketing efforts (e.g., to support customer acquisition, retention, or increased purchase volume), but later make decisions to deflate the overall value of accrued rewards, they may have engaged in actions that resemble a traditional “bait-and-switch” scheme.³⁸ These activities may constitute unfair or deceptive acts or practices under the CFPB.³⁹

Enforcers investigating potentially unfair or deceptive acts or practice should consider a variety of different devaluation tactics by rewards program operators. Unfair or deceptive devaluations are easier to detect when the rewards program involves simple, fixed redemption rates with one retailer or merchant partner. But such schemes may be harder to detect where there are numerous potential rewards available or rewards program operators implement more complex program changes. For example, if a rewards program operator uses dynamic pricing for rewards redemptions, enforcers can examine whether the firm is unfairly or deceptively devaluing points over time by considering, for example, whether the dynamic prices in points have increased, in aggregate, relative to dynamic cash prices for the same products or services. Similarly, if a rewards program includes redemption options from multiple participating merchant partners, and the rewards program operator loses a major merchant partner or a major partner materially downgrades the service provided, enforcers can look to whether the rewards program operator is taking reasonable measures to generally maintain the value of rewards, such as by increasing points usable at other merchant partners, allowing customers to cash out points, replacing lost rewards with other rewards, or by other

³⁰ See, e.g., *CFPB v. Aria*, 54 F.4th 1168, 1173 (9th Cir. 2022); *Gordon*, 819 F.3d at 1193; *FTC v. E.M.A. Nationwide, Inc.*, 767 F.3d 611, 631 (6th Cir. 2014); *Fanning v. FTC*, 821 F.3d 164, 170 (1st Cir. 2016).

³¹ FTC, Policy Statement on Deception (Oct. 14, 1983).

³² See, e.g., *Sterling Drug, Inc. v. FTC*, 741 F.2d 1146, 1154 (9th Cir. 1984) (advertisements referring to “unique formula” were deceptive because they could lead consumers to infer that pain reliever’s formulation was something other than ordinary aspirin); see also *FTC v. Bay Area Business Council, Inc.*, 423 F.3d 627, 635 (7th Cir. 2005) (“[T]he omission of a material fact, without an affirmative misrepresentation, may give rise to an FTC Act violation.”).

³³ FTC, Policy Statement on Deception (Oct. 14, 1983).

³⁴ In 2022, rewards card spending was 90 percent of all consumer spending on general purpose credit cards. CFPB, *The Consumer Credit Card Market*, at 99 (Oct. 2023), https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2023.pdf. See also *Background on Credit Card Rewards Programs*, *supra*.

³⁵ *Id.* at 98. Because credit card rewards programs are offered or provided “in connection” with a consumer financial product or service (the extension of credit to consumers), the “covered persons” or “service providers” who offer, provide, or support such programs (hereinafter “rewards program operators”) must comply with the CFPB, including its prohibitions against unfair, deceptive or abusive acts or practices, as well as other applicable consumer financial protection laws. In the typical case, a credit card issuer providing the rewards program would be a “covered person,” while “service providers” could include the partners or vendors that provide material services on the rewards program in connection with the credit card program, such as co-brand or merchant partners that deliver applicable rewards, or vendors who operate the key infrastructure or platforms for consumers to view, manage, and use their rewards earnings. See 12 U.S.C. 5481(6), 5481(26)(A).

³⁶ While not specifically discussed in this circular, rewards program operators must also comply with the CFPB’s prohibition on abusive acts or practices, 12 U.S.C. 5531(d), which provides that an act or practice is abusive if it (1) materially interferes with a consumer’s ability to understand

a term or condition of a consumer financial product or service or (2) takes unreasonable advantage of the consumer’s (a) lack of understanding of the material risks, costs, or conditions of the product or service; (b) inability to protect their interests in selecting or using a consumer financial product or service; or (c) reasonable reliance on a covered person to act in the consumer’s interests.

³⁷ See, e.g., *CFPB v. Ocwen Fin. Corp.*, No. 17–80495–CIV, 2019 WL 13203853 at *30 (S.D. Fla. Sept. 5, 2019) (finding that the CFPB sufficiently alleged CFPB violations regarding add-on products even where add-on vendor was responsible for enrolling borrowers to such add-on products); see also, e.g., *FTC v. Bay Area Bus. Council, Inc.*, 423 F.3d at 630 (affirming district court ruling that multiple interrelated corporate and individual defendants were liable under section 5 of FTC Act for deceptive telemarketing scheme); *FTC v. Neovi, Inc.*, 604 F.3d 1150, 1155 (9th Cir. 2010) (“a single violation of the [FTC] Act may have more than one perpetrator”) (citing *Bay Area*).

³⁸ See 16 CFR 238 *et seq.*, FTC Guides Against Bait Advertising. Cf. *Rossman v. Fleet Card (R.I.) Nat. Ass’n*, 280 F.3d 384, 396–400 (3d Cir. 2002) (credit card issuer soliciting business with no-annual-fee offer while intending to later impose fee constitutes a bait-and-switch scheme).

³⁹ Cf. 24 FR 9755 (Dec. 4, 1959) (noting that FTC enforcement actions with respect to bait-and-switch schemes are brought under the FTC Act’s prohibition on “unfair or deceptive acts or practices”); 32 FR 15540 (Nov. 8, 1967) (similar); *Synopsis of Federal Trade Commission Decisions Concerning “Bait and Switch” Sales Practices* (Sept. 23, 1975) (“The Federal Trade Commission has determined that ‘bait and switch’ practices are unfair or deceptive trade practices and are unlawful under Section 5(a)(1) of Federal Trade Commission Act.”), https://www.ftc.gov/system/files/ftc_gov/pdf/NOPO-Bait-and-Switch.pdf.

means. Additionally, when two firms merge, resulting in a conversion of one firm's customers into a new rewards program, enforcers can look at whether the resulting firm took actions to convert customers' points to the new system without a reduction in points value.⁴⁰

In any investigation into whether a rewards program operator has engaged in an unfair or deceptive devaluation scheme, enforcers are encouraged to collect and consider accounting or other metrics maintained by program operators or others regarding rewards values. For example, many companies maintain internal figures on the dollar value of outstanding rewards for accounting purposes, including an estimated cost-per-point or weighted average redemption cost.⁴¹ If a firm's cost-per-point or weighted average redemption cost decreases over time, that could suggest a firm has engaged in a bait-and-switch or similar unfair or deceptive act or practice.

The CFPB emphasizes that covered persons that offer, provide, or operate credit card rewards programs may be liable for an unfair or deceptive act or practice even when the material devaluation of rewards could arguably be attributed to the actions of a third party. In other words, if a covered person that offers, provides, or operates a credit card rewards program makes explicit or implicit representations about, and thereby induces consumer expectations regarding, the value of the card benefits or rewards, and the value of those benefits or rewards is subsequently materially reduced by actions that may be attributable to the covered person's merchant partner, the

covered person may be liable for an unfair or deceptive act or practice.

Hidden Conditions

Rewards program operators also risk committing unfair or deceptive acts or practices when they revoke or cancel rewards, or prevent the award of rewards, based on buried or vague conditions.⁴² Rewards programs have become increasingly complex, with lengthy terms and unintuitive restrictions that consumers may not be aware of as they use their credit cards day to day. These lengthy terms may use buried or vague conditions set by rewards program operators that are non-negotiable and may not be consistent with prominent promotional language advertising the rewards that consumers can earn. As noted above, consumer complaints received by the CFPB suggest that, despite descriptions in the fine print of rewards program terms, consumers often do not understand the basis of many rewards forfeitures or denials.

The following are illustrative examples of potentially unfair rewards program practices:

- Revoking or canceling rewards based on vague catch-all language in program terms, such as “gaming” or “abuse.” This can be especially problematic when those terms are also subject to the rewards program operator's discretion.⁴³
- Revoking previously earned rewards based on policies that tie revocation to actions that are not within the consumer's control and do not constitute fraud or misconduct by the consumer, like an issuer unilaterally closing an account.⁴⁴
- Promotional “sign-up” offers that are denied based on hidden conditions that consumers were not reasonably aware of, such as “churning” conditions that restrict how frequently a consumer can earn sign-up rewards, time periods to earn rewards that are effectively shortened by the hidden and unavoidable period of time needed to receive and activate a card, or promotional offers that are unavailable for applicants through certain channels.

These sorts of dark patterns and fine print will often constitute deceptive representations, omissions, or practices about material concerns, and thus violate the prohibition on deceptive practices.⁴⁵ In addition, denying or preventing rewards based on buried or vague terms could cause a substantial monetary injury in the form of lost rewards value and may be unfair.⁴⁶ These injuries may not be reasonably avoidable by consumers where conditions are buried or vague, and accordingly hinder consumers' ability to make a “free and informed choice.”⁴⁷ Specifically, consumers cannot reasonably avoid injuries where they are not “adequately informed” of key conditions or presented such information in a confusing way.⁴⁸ As noted above, rewards program operators typically promote most prominently the availability of rewards, even more so than other key credit card terms, such as APR or annual fees, while putting conditions around rewards in fine print.⁴⁹ Consumers may not understand the restrictive eligibility criteria buried in the fine print where program operators send marketing materials that target rewards promotions to the specific consumers.⁵⁰ Similarly, a consumer may be confused by the way a rewards program operator interprets vague catch-all language, such as terms restricting rewards based on impermissible “gaming” or “abuse,”

⁴⁵ See FTC, *Bringing Dark Patterns to Light*, at 7 (Sept. 2022) (“Some dark patterns operate by hiding or obscuring material information from consumers, such as burying key limitations of the product or service in dense Terms of Service documents that consumers don't see before purchase.”), https://www.ftc.gov/system/files/ftc_gov/pdf/P214800%20Dark%20Patterns%20Report%209.14.2022%20-%20FINAL.pdf. Cf. *FTC v. Amazon.com*, 2024 WL 2723812 at *1 (W.D. Wash. 2024) (denying motion to dismiss of claims brought under Section 5 of the FTC Act and the Restore Online Shoppers' Confidence Act based on defendants' “trick[ing], coer[ce], and manipul[at]ing consumers . . . by failing to disclose the material terms of the subscription clearly and conspicuously and by failing to obtain consumers' informed consent before enrolling them”); *FTC v. Publishers Clearing House LLC*, No. 23–CV–4735 (E.D.N.Y. June 6, 2023) (complaint) (alleging defendant “employs dark patterns throughout the consumer's experience by, among other things . . . placing disclosures in small and light font and in places where a consumer is unlikely to see them”).

⁴⁶ CFPB research suggests consumers lose hundreds of millions of dollars in earned rewards each year. 2023 Report, at 102.

⁴⁷ See *FTC v. Neovi*, 604 F.3d at 1158; *Am. Fin. Servs. Ass'n v. FTC*, 767 F.2d at 976.

⁴⁸ See, e.g., *FTC v. Commerce Planet, Inc.*, 878 F. Supp. 2d 1048, 1079 (C.D. Cal. 2012) (consumers could not reasonably avoid injury where sign-up pages did not adequately disclose negative option plan by burying in separate fine print disclosures).

⁴⁹ *Credit Card Rewards Issue Spotlight*, supra note 4, at 4, 11.

⁵⁰ *Id.* at 12–13.

⁴⁰ See, e.g., U.S. DOT, USDOT Requires Alaska and Hawaiian Airlines to Preserve Rewards Value, Critical Flight Service as Merger Moves Forward (Sept. 2024), <https://www.transportation.gov/briefing-room/usdot-requires-alaska-and-hawaiian-airlines-preserve-rewards-value-critical-flight> (in connection with regulatory merger approvals, Department of Transportation imposed “rewards protections against devaluation,” including requiring each earned loyalty program be converted to new program miles at 1:1 ratio and prohibiting “any actions that would devalue HawaiianMiles miles”). The merger approval and requirements were based on “[p]ublic interest criteria [that] include preventing unfair, deceptive, predatory or anticompetitive practices. . . .” *Id.*

⁴¹ See, e.g., Capital One Financial Corporation, Annual Report (Form 10–K) (Feb. 24, 2023) (“We use the weighted-average redemption cost during the previous twelve months, adjusted as appropriate for recent changes in redemption costs, . . . to estimate future redemption costs.”). Similarly, informational websites aimed at consumers may also estimate rewards point values. See, e.g., The Points Guy, *TPG launches new data-driven valuations for 6 major US airlines—and updates methodology for credit card currencies* (Sept. 8, 2023), <https://thepointsguy.com/news/new-data-driven-valuations/>.

⁴² Additionally, rewards program terms that include unlawful or unenforceable conditions may violate the CFPA's prohibition on deceptive acts or practices. CFPB Circular 2024–03, Unlawful and unenforceable contract terms and conditions (June 2024), <https://www.consumerfinance.gov/compliance/circulars/consumer-financial-protection-circular-2024-03/>. For example, the recently enacted New York statute referenced above may render certain terms in rewards program deceptive with respect to New York residents.

⁴³ See *Credit Card Rewards Issue Spotlight*, supra note 4, at 14.

⁴⁴ *Id.* at 20.

when those interpretations conflict with prominent promotional language or other representations.⁵¹ There are no countervailing benefits that outweigh the injury to consumers or competition of inducing consumers to use credit cards with vague or fine-print conditions that consumers cannot reasonably understand.⁵²

Inability To Redeem Rewards

Rewards program operators can also commit unfair or deceptive acts or practices when their customers lose their points because redemption procedures do not function properly. In offering rewards programs, operators make representations to consumers about how rewards can be redeemed, often developing online interfaces for consumers to use to redeem rewards. A rewards program operator is accordingly responsible for administering the rewards program it offers, including coordinating with its merchant partners or vendors, so that consumers can redeem the rewards that they have earned and selected in accordance with the rewards program.⁵³

If systems failures result in consumers losing points when attempting to redeem, it may result in a deceptive practice because consumers would typically have a basis to reasonably believe they were purchasing products or services with their points, which would be false as a result of the failure. It would likely also be unfair because

consumers would incur injury as a result of the loss of rewards, with no ability to avoid the harm and no countervailing benefits that outweigh the injury. Even if a rewards program operator ultimately refunds unredeemed points to a consumer, the consumer may be harmed by the consumer's inability to redeem points in the interim,⁵⁴ and often consumers end up expending significant time and resources trying to obtain the refund.⁵⁵ Consumers cannot reasonably avoid these harms as they do not have control over operators' rewards program administration, including procedures for redeeming points or converting them for use with co-brand or merchant partners.

Again, the CFPB emphasizes that covered persons that offer, provide, or operate credit card rewards programs may commit an unfair or deceptive act or practice when the loss of points due to failures of redemption procedures could arguably be attributed to a merchant partner or service provider. For instance, a covered person may be liable for an unfair or deceptive act or practice when a consumer attempts to transfer rewards points from the online portal of such covered person to the points portal of a merchant partner (e.g., requests a "conversion" of credit card rewards points to points at a travel partner), but technical failures on the merchant partner's system result in the consumer losing the points.

About Consumer Financial Protection Circulars

Consumer Financial Protection Circulars are issued to all parties with authority to enforce Federal consumer financial law. The CFPB is the principal Federal regulator responsible for administering Federal consumer financial law, *see* 12 U.S.C. 5511, including the Consumer Financial Protection Act's prohibition on unfair, deceptive, and abusive acts or practices, 12 U.S.C. 5536(a)(1)(B), and 18 other "enumerated consumer laws," 12 U.S.C. 5481(12). However, these laws are also enforced by State attorneys general and State regulators, 12 U.S.C. 5552, and prudential regulators including the Federal Deposit Insurance Corporation,

the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the National Credit Union Administration. *See, e.g.*, 12 U.S.C. 5516(d), 5581(c)(2) (exclusive enforcement authority for banks and credit unions with \$10 billion or less in assets). Some Federal consumer financial laws are also enforceable by other Federal agencies, including the Department of Justice and the Federal Trade Commission, the Farm Credit Administration, the Department of Transportation, and the Department of Agriculture. In addition, some of these laws provide for private enforcement.

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

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

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

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

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BILLING CODE 4810-AM-P

⁵¹ For instance, consumer complaints indicate rewards program operators may interpret as impermissible "gaming" or "churning" consumer card usage behaviors that are otherwise permissible under cardholder agreements and satisfy objective sign-up promotion criteria, such as closing an account after spending the required amount for a promotional rewards bonus. *See id.* at 14.

⁵² Notably, as with devaluation, the rewards program operators have already benefitted from the consumer spending on the relevant card by the time they deny the rewards benefits.

⁵³ *Cf. In re UniRush and Mastercard Int'l Inc.*, No. 2017–CFPB–0010 (Feb. 1, 2017) (consent order) (finding that failures to adequately test and administer prepaid card program conversion were unfair acts or practices), https://files.consumerfinance.gov/f/documents/201702_cfpb_UniRush-Mastercard-consent-order.pdf. *See also* CFPB v. Ocwen Financial Corp., No. 17–80495–CIV, 2019 WL 13203853 at *30 (S.D. Fla. Sept. 5, 2019) (finding that the CFPB sufficiently alleged CFPA violations regarding add-on products even where add-on vendor was responsible for enrolling borrowers to such add-on products); *see also, e.g., FTC v. Bay Area Bus. Council, Inc.*, 423 F.3d at 630 (affirming district court ruling that multiple interrelated corporate and individual defendants were liable under section 5 of FTC Act for deceptive telemarketing scheme); *FTC v. Neovi*, 604 F.3d at 1155 ("a single violation of the [FTC] Act may have more than one perpetrator") (citing *Bay Area*).

⁵⁴ *See Credit Card Rewards Issue Spotlight*, *supra* note 4, at 19 ("the ultimate value to consumers [of converting rewards points to miles or hotel points] depends on a quick and accurate conversion").

⁵⁵ *See id.* at 17 (complaints received by CFPB indicate consumers spend time trying to resolve rewards issues through "repeated calls, hours on hold, and thorough documentation of the problem at hand").

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 13 and 406****Office of the Secretary****14 CFR Part 383****Great Lakes St. Lawrence Seaway Development Corporation****33 CFR Part 401****Maritime Administration****46 CFR Parts 221, 307, 340, and 356****Pipeline and Hazardous Materials Safety Administration****49 CFR Parts 107, 171, and 190****Federal Railroad Administration****49 CFR Parts 209, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 227, 228, 229, 230, 231, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, and 272****Federal Motor Carrier Safety Administration****49 CFR Part 386****National Highway Traffic Safety Administration****49 CFR Part 578**

RIN 2105–AF16

Revisions to Civil Penalty Amounts, 2025**AGENCY:** Department of Transportation (DOT or the Department).**ACTION:** Final rule.**SUMMARY:** This final rule provides the statutorily prescribed 2025 adjustment to civil penalty amounts that may be imposed for violations of certain DOT regulations.**DATES:** This rule is effective December 30, 2024.**FOR FURTHER INFORMATION CONTACT:** Elizabeth Kohl, Attorney-Advisor, Office of the General Counsel, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, 202–366–7253; elizabeth.kohl@dot.gov.**SUPPLEMENTARY INFORMATION:****Authority for This Rulemaking**

This rule implements the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), Public Law 101–410, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), Public Law 114–74, 129 Stat. 599, codified at 28 U.S.C. 2461 note. The FCPIAA and the 2015 Act require Federal agencies to adjust minimum and maximum civil penalty amounts to preserve their deterrent impact. The 2015 Act amended the formula and frequency of the adjustments. It required an initial catch-up adjustment in the form of an interim final rule, followed by annual adjustments of civil penalty amounts using a statutorily mandated formula. Section 4(b)(2) of the 2015 Act specifically directs that the annual adjustment be accomplished through final rule without notice and comment. This rule is effective immediately.

The Department's authorities over the specific civil penalty regulations being amended by this rule are provided in the preamble discussion below.

I. Background

On November 2, 2015, the President signed into law the 2015 Act, which amended the FCPIAA, to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The 2015 Act requires Federal agencies to: (1) adjust the level of civil monetary penalties with an initial “catch-up” adjustment through an interim final rule (IFR); and (2) make subsequent annual adjustments.

The 2015 Act directed the Office of Management and Budget (OMB) to issue guidance on implementing the required annual adjustment no later than December 15 of each year.¹ OMB released this required guidance in OMB Memorandum M–25–02, available at <https://www.whitehouse.gov/omb/information-for-agencies/memoranda/>, which provides instructions on how to calculate the 2025 annual adjustment. To derive the 2025 adjustment, the Department must multiply the maximum or minimum penalty amount by the percent change between the October 2024 Consumer Price Index for All Urban Consumers (CPI–U) and the October 2023 CPI–U. In this case, as explained in OMB Memorandum M–25–02, the percent change between the October 2024 CPI–U and the October 2023 CPI–U is 1.02598.²

¹ 28 U.S.C. 2461 note.

² Agencies may calculate the percent change using the CPI–U numbers, which are typically issued in November each year, and confirm their

On May 16, 2024, the President signed the FAA Reauthorization Act of 2024 (2024 Reauthorization Act) (Pub. L. 118–63) into law. Updates to the Department's civil penalties authority in the 2024 Reauthorization Act are reflected, as appropriate, in this final rule.

II. Issuance of a Final Rule

This final rule is being published without notice and comment and with an immediate effective date. The 2015 Act provides clear direction for how to adjust the civil penalties, and clearly states at section 4(b)(2) that this adjustment shall be made “notwithstanding section 553 of title 5, United States Code.” By operation of the 2015 Act, DOT must publish an annual adjustment by January 15 of every year, and the new levels take effect upon publication of the rule. Accordingly, DOT is publishing this final rule without prior notice and comment, and with an immediate effective date.

III. Discussion of the Final Rule

In 2016, OST and DOT's operating administrations with civil monetary penalties promulgated the “catch up” IFR required by the 2015 Act. All DOT operating administrations have finalized their “catch up” IFRs, and this rule makes the annual adjustment required by the 2015 Act.

The Department emphasizes that this rule adjusts penalties prospectively, and therefore the penalty adjustments made by this rule will apply only to violations that take place after this rule becomes effective. This rule also does not change previously assessed or enforced penalties that DOT is actively collecting or has collected.

A. Office of the Secretary (OST) 2025 Adjustments

OST's 2025 civil penalty adjustments are summarized in the chart below. Pursuant to section 507 of the 2024 Reauthorization Act, the Department increased the maximum civil penalty in 49 U.S.C. 46301(a)(1) to \$75,000 for persons who are not individuals or small business concerns.³ The maximum penalty for individuals and small business concerns was not

calculations upon issuance of the annual OMB guidance.

³ The 2015 Act specifies that if a civil penalty is increased by an amount greater than the amount of the required adjustment during the 12-month period preceding the required adjustment, the Secretary is not required to make the adjustment for that year. Consistent with this provision, the \$75,000 amount will not be increased in this 2025 adjustment.

changed by the 2024 Reauthorization Act.

Also, subsection 542(a) of the 2024 Reauthorization Act requires DOT to issue a notice of proposed rulemaking to develop requirements for minimum training standards related to stowing on an aircraft wheelchairs and scooters used by passengers with disabilities. Subsections (b) and (c) specify requirements of the rule and considerations that the Department must make in conducting the rulemaking. Subsection (d) requires issuance of a final rule, and subsection (e) authorizes DOT to assess a civil

penalty in accordance with 49 U.S.C. 46301 against any air carrier or foreign air carrier who does not meet the requirements established in the rulemaking. In addition, subsection 543(a) of the 2024 Reauthorization Act requires DOT to issue a notice of proposed rulemaking to develop requirements for minimum training standards for airline personnel or contractors who assist wheelchair users who board or deplane using an aisle chair or other boarding device. Subsections (b) and (c) specify requirements of the rule and

considerations that the Department must make in conducting the rulemaking. Subsection (d) requires issuance of a final rule, and subsection (e) authorizes DOT to assess a civil penalty in accordance with 49 U.S.C. 46301 against any air carrier or foreign air carrier who does not meet the requirements established in the rulemaking. DOT will conduct the rulemakings as required by the 2024 Reauthorization Act. Any penalties would subsequently be included and updated in the Department's annual civil penalties update rulemaking.

Description	Citation	Existing penalty	New penalty (existing penalty × 1.02598)
General civil penalty for violations of certain aviation economic regulations and statutes.	49 U.S.C. 46301(a)(1)	\$41,577	\$75,000
General civil penalty for violations of certain aviation economic regulations and statutes involving an individual or small business concern.	49 U.S.C. 46301(a)(1)	1,828	1,875
Civil penalties for individuals or small businesses for violations of most provisions of Chapter 401 of Title 49, including the anti-discrimination provisions of sections 40127 and 41705 and rules and orders issued pursuant to these provisions.	49 U.S.C. 46301(a)(5)(A)	16,630	17,062
Civil penalties for individuals or small businesses for violations of 49 U.S.C. 41719 and rules and orders issued pursuant to that provision.	49 U.S.C. 46301(a)(5)(C)	8,315	8,531
Civil penalties for individuals or small businesses for violations of 49 U.S.C. 41712 or consumer protection rules and orders issued pursuant to that provision.	49 U.S.C. 46301(a)(5)(D)	4,159	4,267

B. Federal Aviation Administration (FAA) 2025 Adjustments

FAA's 2025 civil penalty adjustments are summarized in the chart below. Pursuant to section 507 of the 2024 Reauthorization Act, the Department

increased the maximum civil penalty in 49 U.S.C. 46301(a)(1) to \$75,000 for persons who are not individuals or small business concerns. The Department also added the civil penalty specified in section 770 of the 2024

Reauthorization Act for violations of 47 U.S.C. 47107(a)(22) related to the restriction or prohibition of the sale or self-fueling of any 100-octane low lead aviation gasoline, including any grant assurances made under that section.⁴

Description	Citation	Existing penalty	New penalty (existing penalty × 1.02598)
Violation of hazardous materials transportation law	49 U.S.C. 5123(a)(1)	\$99,756	\$102,348
Violation of hazardous materials transportation law resulting in death, serious illness, severe injury, or substantial property destruction.	49 U.S.C. 5123(a)(2)	232,762	238,809
Minimum penalty for violation of hazardous materials transportation law relating to training.	49 U.S.C. 5123(a)(3)	601	617
Maximum penalty for violation of hazardous materials transportation law relating to training.	49 U.S.C. 5123(a)(3)	99,756	102,348
Knowing presentation of a nonconforming aircraft for issuance of an initial airworthiness certificate by a production certificate holder.	49 U.S.C. 44704(d)(3)(B)	1,181,581	1,212,278
Knowing failure by an applicant for or holder of a type certificate to submit safety critical information or include certain such information in an airplane flight manual or flight crew operating manual contrary to 49 U.S.C. 44704(e)(1)–(3).	49 U.S.C. 44704(e)(4)(A)	1,181,582	1,212,278
Operation of an unmanned aircraft or unmanned aircraft system equipped or armed with a dangerous weapon.	49 U.S.C. 44802 note	30,417	31,207
Violation by a person other than an individual or small business concern under 49 U.S.C. 46301(a)(1)(A) or (B).	49 U.S.C. 46301(a)(1)	41,577	75,000
Violation by an airman serving as an airman under 49 U.S.C. 46301(a)(1)(A) or (B) (but not covered by 46301(a)(5)(A) or (B)).	49 U.S.C. 46301(a)(1)	1,828	1,875
Violation by an individual or small business concern under 49 U.S.C. 46301(a)(1)(A) or (B) (but not covered in 49 U.S.C. 46301(a)(5)).	49 U.S.C. 46301(a)(1)	1,828	1,875

⁴ As noted in footnote 3, the 2015 Act specifies that if a civil penalty is increased by an amount greater than the amount of the required adjustment

during the 12-month period preceding the required adjustment, the Secretary is not required to make the adjustment for that year. Consistent with this

provision, the \$5,000 amount will not be increased in this 2025 adjustment.

Description	Citation	Existing penalty	New penalty (existing penalty × 1.02598)
Violation by an individual or small business concern (except an airman serving as an airman) under 49 U.S.C. 46301(a)(5)(A)(i) or (ii).	49 U.S.C. 46301(a)(5)(A)	16,630	17,062
Violation by an individual or small business concern related to the transportation of hazardous materials.	49 U.S.C. 46301(a)(5)(B)(i) ..	16,630	17,062
Violation by an individual or small business concern related to the registration or recordation under 49 U.S.C. chapter 441, of an aircraft not used to provide air transportation.	49 U.S.C. 46301(a)(5)(B)(ii)	16,630	17,062
Violation by an individual or small business concern of 49 U.S.C. 44718(d), relating to limitation on construction or establishment of landfills.	49 U.S.C. 46301(a)(5)(B)(iii)	16,630	17,062
Violation by an individual or small business concern of 49 U.S.C. 44725, relating to the safe disposal of life-limited aircraft parts.	49 U.S.C. 46301(a)(5)(B)(iv)	16,630	17,062
Individual who aims the beam of a laser pointer at an aircraft in the airspace jurisdiction of the United States, or at the flight path of such an aircraft.	49 U.S.C. 46301 note	31,819	32,646
Tampering with a smoke alarm device	49 U.S.C. 46301(b)	5,339	5,478
Knowingly providing false information about alleged violation involving the special aircraft jurisdiction of the United States.	49 U.S.C. 46302	28,995	29,748
Physical or sexual assault or threat to physically or sexually assault crewmember or other individual on an aircraft, or action that poses an imminent threat to the safety of the aircraft or individuals on board.	49 U.S.C. 46318	43,658	44,792
Permanent closure of an airport without providing sufficient notice	49 U.S.C. 46319	16,630	17,062
Operating an unmanned aircraft and in so doing knowingly or recklessly interfering with a wildfire suppression, law enforcement, or emergency response effort.	49 U.S.C. 46320	25,455	26,116
Violation of 49 U.S.C. 41707(a)(22), including any grant assurances made under that section.	49 U.S.C. 46301(a)(8)	N/A	5,000
Violation of 51 U.S.C. 50901–50923, a regulation issued under these statutes, or any term or condition of a license or permit issued or transferred under these statutes.	51 U.S.C. 50917(c)	292,181	299,772

C. National Highway Traffic Safety Administration (NHTSA) 2025 Adjustments

NHTSA's 2025 civil penalty adjustments are summarized in the chart below.

Description	Citation	Existing penalty	New penalty (existing penalty × 1.02598)
Maximum penalty amount for each violation of: 49 U.S.C. 30112, 30115, 30117–30122, 30123(a), 30125(c), 30127, 30141–30147, 30166 or 31137, or a regulation prescribed under any of these sections.	49 U.S.C. 30165(a)(1), 30165(a)(3).	\$27,168	\$27,874
Maximum penalty amount for a related series of violations of: 49 U.S.C. 30112, 30115, 30117–30122, 30123(a), 30125(c), 30127, 30141–30147, 30166 or 31137, or a regulation prescribed under any of these sections.	49 U.S.C. 30165(a)(1), 30165(a)(3).	135,828,178	139,356,994
Maximum penalty per school bus related violation of 49 U.S.C. 30112(a)(1) or 30112(a)(2).	49 U.S.C. 30165(a)(2)(A)	15,445	15,846
Maximum penalty amount for a series of school bus related violations of 49 U.S.C. 30112(a)(1) or 30112(a)(2).	49 U.S.C. 30165(a)(2)(B)	23,167,823	23,769,723
Maximum penalty per violation for filing false or misleading reports	49 U.S.C. 30165(a)(4)	6,650	6,823
Maximum penalty amount for a series of violations related to filing false or misleading reports.	49 U.S.C. 30165(a)(4)	1,330,069	1,364,624
Maximum penalty amount for each violation of the reporting requirements related to maintaining the National Motor Vehicle Title Information System.	49 U.S.C. 30505	2,168	2,224
Maximum penalty amount for each violation of a bumper standard under 49 U.S.C. 32506.	49 U.S.C. 32507(a)	3,558	3,650
Maximum penalty amount for a series of violations of a bumper standard under 49 U.S.C. 32506.	49 U.S.C. 32507(a)	3,961,763	4,064,690
Maximum penalty amount for each violation of 49 U.S.C. 32308(a) related to providing information on crashworthiness and damage susceptibility.	49 U.S.C. 32308(b)	3,558	3,650
Maximum penalty amount for a series of violations of 49 U.S.C. 32308(a) related to providing information on crashworthiness and damage susceptibility.	49 U.S.C. 32308(b)	1,940,403	1,990,815

Description	Citation	Existing penalty	New penalty (existing penalty × 1.02598)
Maximum penalty for each violation related to the tire fuel efficiency information program.	49 U.S.C. 32308(c)	73,628	75,541
Maximum civil penalty for willfully failing to affix, or failing to maintain, the label required in 49 U.S.C. 32304.	49 U.S.C. 32309	2,168	2,224
Maximum penalty amount per violation related to odometer tampering and disclosure.	49 U.S.C. 32709	13,300	13,676
Maximum penalty amount for a related series of violations related to odometer tampering and disclosure.	49 U.S.C. 32709	1,330,069	1,364,624
Maximum penalty amount per violation related to odometer tampering and disclosure with intent to defraud.	49 U.S.C. 32710	13,330	13,676
Maximum penalty amount for each violation of 49 U.S.C. 33114(a)(1)–(4)	49 U.S.C. 33115(a)	2,922	2,998
Maximum penalty amount for a related series of violations of 49 U.S.C. 33114(a)(1)–(4).	49 U.S.C. 33115(a)	730,455	749,432
Maximum civil penalty for violations of 49 U.S.C. 33114(a)(5)	49 U.S.C. 33115(b)	216,972	222,609
Maximum civil penalty for violations under 49 U.S.C. 32911(a) related to automobile fuel economy.	49 U.S.C. 32912(a)	51,139	52,468
Civil penalty factor for violations of fuel economy standards prescribed for a model year under 49 U.S.C. 32902. ⁵	49 U.S.C. 32912(b)	17	17
Maximum civil penalty factor that may be prescribed for fuel economy standards under 49 U.S.C. 32912(c)(1)(A).	49 U.S.C. 32912(c)(1)(B)	32	33
Maximum civil penalty for a violation under the medium- and heavy-duty vehicle fuel efficiency program.	49 U.S.C. 32902	50,360	51,668

D. Federal Motor Carrier Safety Administration (FMCSA) 2025 Adjustments

FMCSA's civil penalties affected by this rule are all located in appendices A and B to 49 CFR part 386. The 2025 adjustments to these civil penalties are

summarized in the chart below. Note that in the regulatory text for the 2023 update, the penalty for violations of Appendix A IV (i) Out-of-service order (conducting operations during suspension or revocation for failure to pay penalties) and the penalty for Appendix B (a)(3) Non-recordkeeping

violations were incorrectly stated as \$18,758. The correct dollar amount, as stated in the preamble of the 2023 update, was \$18,759. The error in the regulatory text has been corrected in this 2024 update, reflecting a penalty for this 2025 update of \$19,246.

Description	Citation	Existing penalty	New penalty (existing penalty × 1.02598)
Appendix A II Subpoena	49 U.S.C. 525	\$1,330	\$1,365
Appendix A II Subpoena	49 U.S.C. 525	13,300	13,676
Appendix A IV (a) Out-of-service order (operation of commercial motor vehicle (CMV) by driver).	49 U.S.C. 521(b)(7)	2,304	2,364
Appendix A IV (b) Out-of-service order (requiring or permitting operation of CMV by driver).	49 U.S.C. 521(b)(7)	23,048	23,647
Appendix A IV (c) Out-of-service order (operation by driver of CMV or intermodal equipment that was placed out of service).	49 U.S.C. 521(b)(7)	2,304	2,364
Appendix A IV (d) Out-of-service order (requiring or permitting operation of CMV or intermodal equipment that was placed out of service).	49 U.S.C. 521(b)(7)	23,048	23,647
Appendix A IV (e) Out-of-service order (failure to return written certification of correction).	49 U.S.C. 521(b)(2)(B)	1,152	1,182
Appendix A IV (g) Out-of-service order (failure to cease operations as ordered).	49 U.S.C. 521(b)(2)(F)	33,252	34,116
Appendix A IV (h) Out-of-service order (operating in violation of order).	49 U.S.C. 521(b)(7)	29,221	29,980
Appendix A IV (i) Out-of-service order (conducting operations during suspension or revocation for failure to pay penalties).	49 U.S.C. 521(b)(2)(A) and (b)(7)	18,759	19,246
Appendix A IV (j) (conducting operations during suspension or revocation).	49 U.S.C. 521(b)(7)	29,221	29,980
Appendix B (a)(1) Recordkeeping—maximum penalty per day.	49 U.S.C. 521(b)(2)(B)(i)	1,544	1,584
Appendix B (a)(1) Recordkeeping—maximum total penalty.	49 U.S.C. 521(b)(2)(B)(i)	15,445	15,846
Appendix B (a)(2) Knowing falsification of records	49 U.S.C. 521(b)(2)(B)(ii)	15,445	15,846
Appendix B (a)(3) Non- recordkeeping violations	49 U.S.C. 521(b)(2)(A)	18,759	19,246

⁵ For model years before model year 2019, the civil penalty is \$5.50; for model years 2019 through

2021, the civil penalty is \$14; for model year 2022, the civil penalty is \$15; for model year 2023, the

civil penalty is \$16; for model years 2024 and 2025, the civil penalty is \$17.

Description	Citation	Existing penalty	New penalty (existing penalty × 1.02598)
Appendix B (a)(4) Non- recordkeeping violations by drivers.	49 U.S.C. 521(b)(2)(A)	4,690	4,812
Appendix B (a)(5) Violation of 49 CFR 392.5 (first conviction).	49 U.S.C. 31310(i)(2)(A)	3,861	3,961
Appendix B (a)(5) Violation of 49 CFR 392.5 (second or subsequent conviction).	49 U.S.C. 31310(i)(2)(A)	7,723	7,924
Appendix B (b) Commercial driver's license (CDL) violations.	49 U.S.C. 521(b)(2)(C)	6,974	7,155
Appendix B (b)(1): Special penalties pertaining to violation of out-of-service orders (first conviction).	49 U.S.C. 31310(i)(2)(A)	3,861	3,961
Appendix B (b)(1) Special penalties pertaining to violation of out-of-service orders (second or subsequent conviction).	49 U.S.C. 31310(i)(2)(A)	7,723	7,924
Appendix B (b)(2) Employer violations pertaining to knowingly allowing, authorizing employee violations of out-of-service order (minimum penalty).	49 U.S.C. 521(b)(2)(C)	6,974	7,155
Appendix B (b)(2) Employer violations pertaining to knowingly allowing, authorizing employee violations of out-of-service order (maximum penalty).	49 U.S.C. 31310(i)(2)(C)	38,612	39,615
Appendix B (b)(3) Special penalties pertaining to railroad-highway grade crossing violations.	49 U.S.C. 31310(j)(2)(B)	20,017	20,537
Appendix B (d) Financial responsibility violations	49 U.S.C. 31138(d)(1), 31139(g)(1)	20,579	21,114
Appendix B (e)(1) Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (transportation or shipment of hazardous materials).	49 U.S.C. 5123(a)(1)	99,756	102,348
Appendix B (e)(2) Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (training)—minimum penalty.	49 U.S.C. 5123(a)(3)	601	617
Appendix B (e)(2): Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (training)—maximum penalty.	49 U.S.C. 5123(a)(1)	99,756	102,348
Appendix B (e)(3) Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (packaging or container).	49 U.S.C. 5123(a)(1)	99,756	102,348
Appendix B (e)(4): Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (compliance with FMCSRs).	49 U.S.C. 5123(a)(1)	99,756	102,348
Appendix B (e)(5) Violations of Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations (death, serious illness, severe injury to persons; destruction of property).	49 U.S.C. 5123(a)(2)	232,762	238,809
Appendix B (f)(1) Operating after being declared unfit by assignment of a final "unsatisfactory" safety rating (generally).	49 U.S.C. 521(b)(2)(F)	33,252	34,116
Appendix B (f)(2) Operating after being declared unfit by assignment of a final "unsatisfactory" safety rating (hazardous materials)-maximum penalty.	49 U.S.C. 5123(a)(1)	99,756	102,348
Appendix B (f)(2): Operating after being declared unfit by assignment of a final "unsatisfactory" safety rating (hazardous materials)-maximum penalty if death, serious illness, severe injury to persons; destruction of property.	49 U.S.C. 5123(a)(2)	232,762	238,809
Appendix B (g)(1): Violations of the commercial regulations (CRs) (property carriers).	49 U.S.C. 14901(a)	13,300	13,676
Appendix B (g)(2) Violations of the CRs (brokers)	49 U.S.C. 14916(c)	13,300	13,676
Appendix B (g)(3) Violations of the CRs (passenger carriers).	49 U.S.C. 14901(a)	33,252	34,116
Appendix B (g)(4) Violations of the CRs (foreign motor carriers, foreign motor private carriers).	49 U.S.C. 14901(a)	13,300	13,676
Appendix B (g)(5) Violations of the operating authority requirement (foreign motor carriers, foreign motor private carriers)—maximum penalty for intentional violation.	49 U.S.C. 14901 note	18,291	18,766
Appendix B (g)(5) Violations of the operating authority requirement (foreign motor carriers, foreign motor private carriers)—maximum penalty for a pattern of intentional violations.	49 U.S.C. 14901 note	45,730	46,918
Appendix B (g)(6) Violations of the CRs (motor carrier or broker for transportation of hazardous wastes)—minimum penalty.	49 U.S.C. 14901(b)	26,602	27,293

Description	Citation	Existing penalty	New penalty (existing penalty × 1.02598)
Appendix B (g)(6) Violations of the CRs (motor carrier or broker for transportation of hazardous wastes)—maximum penalty.	49 U.S.C. 14901(b)	53,203	54,585
Appendix B (g)(7): Violations of the CRs (household goods (HHG) carrier or freight forwarder, or their receiver or trustee).	49 U.S.C. 14901(d)(1)	2,000	2,052
Appendix B (g)(8) Violation of the CRs (weight of HHG shipment, charging for services)—minimum penalty for first violation.	49 U.S.C. 14901(e)	4,005	4,109
Appendix B (g)(8) Violation of the CRs (weight of HHG shipment, charging for services)—minimum penalty for subsequent violation.	49 U.S.C. 14901(e)	10,009	10,269
Appendix B (g)(10) Tariff violations	49 U.S.C. 13702, 14903	200,174	205,375
Appendix B (g)(11) Additional tariff violations (rebates or concessions)—first violation.	49 U.S.C. 14904(a)	400	410
Appendix B (g)(11) Additional tariff violations (rebates or concessions)—subsequent violations.	49 U.S.C. 14904(a)	500	513
Appendix B (g)(12): Tariff violations (freight forwarders)—maximum penalty for first violation.	49 U.S.C. 14904(b)(1)	1,002	1,028
Appendix B (g)(12): Tariff violations (freight forwarders)—maximum penalty for subsequent violations.	49 U.S.C. 14904(b)(1)	4,005	4,109
Appendix B (g)(13): service from freight forwarder at less than rate in effect—maximum penalty for first violation.	49 U.S.C. 14904(b)(2)	1,002	1,028
Appendix B (g)(13): service from freight forwarder at less than rate in effect—maximum penalty for subsequent violation(s).	49 U.S.C. 14904(b)(2)	4,005	4,109
Appendix B (g)(14): Violations related to loading and unloading motor vehicles.	49 U.S.C. 14905	20,017	20,537
Appendix B (g)(16): Reporting and recordkeeping under 49 U.S.C. subtitle IV, part B (except 13901 and 13902(c))—minimum penalty.	49 U.S.C. 14901	1,330	1,365
Appendix B (g)(16): Reporting and recordkeeping under 49 U.S.C. subtitle IV, part B—maximum penalty.	49 U.S.C. 14907	10,009	10,269
Appendix B (g)(17): Unauthorized disclosure of information.	49 U.S.C. 14908	4,005	4,109
Appendix B (g)(18): Violation of 49 U.S.C. subtitle IV, part B, or condition of registration.	49 U.S.C. 14910	1,002	1,028
Appendix B (g)(21)(i): Knowingly and willfully fails to deliver or unload HHG at destination.	49 U.S.C. 14915	20,017	20,537
Appendix B (g)(22): HHG broker estimate before entering into an agreement with a motor carrier.	49 U.S.C. 14901(d)(2)	15,445	15,846
Appendix B (g)(23): HHG transportation or broker services—registration requirement.	49 U.S.C. 14901 (d)(3)	38,612	39,615
Appendix B (h): Copying of records and access to equipment, lands, and buildings—maximum penalty per day.	49 U.S.C. 521(b)(2)(E)	1,544	1,584
Appendix B (h): Copying of records and access to equipment, lands, and buildings—maximum total penalty.	49 U.S.C. 521(b)(2)(E)	15,445	15,846
Appendix B (i)(1): Evasion of regulations under 49 U.S.C. ch. 5, 51, subchapter III of ch. 311 (except 31138 and 31139), 31302–31304, 31305(b), 31310(g)(1)(A), or 31502—minimum penalty for first violation.	49 U.S.C. 524	2,661	2,730
Appendix B (i)(1): Evasion of regulations under 49 U.S.C. ch. 5, 51, subchapter III of ch. 311 (except 31138 and 31139), 31302–31304, 31305(b), 31310(g)(1)(A), or 31502—maximum penalty for first violation.	49 U.S.C. 524	6,650	6,823
Appendix B (i)(1): Evasion of regulations under 49 U.S.C. ch. 5, 51, subchapter III of ch. 311 (except 31138 and 31139), 31302–31304, 31305(b), 31310(g)(1)(A), or 31502—minimum penalty for subsequent violation(s).	49 U.S.C. 524	3,323	3,409

Description	Citation	Existing penalty	New penalty (existing penalty $\times$ 1.02598)
Appendix B (i)(1): Evasion of regulations under 49 U.S.C. ch. 5, 51, subchapter III of ch. 311 (except 31138 and 31139), 31302–31304, 31305(b), 31310(g)(1)(A), or 31502—maximum penalty for subsequent violation(s).	49 U.S.C. 524	9,965	10,224
Appendix B (i)(2): Evasion of regulations under 49 U.S.C. subtitle IV, part B—minimum penalty for first violation.	49 U.S.C. 14906	2,661	2,730
Appendix B (i)(2): Evasion of regulations under 49 U.S.C. subtitle IV, part B—minimum penalty for subsequent violation(s).	49 U.S.C. 14906	6,650	6,823

E. Federal Railroad Administration (FRA) 2025 Adjustments

FRA's 2025 civil penalty adjustments are summarized in the chart below.

Description	Citation	Existing penalty	New penalty (existing penalty $\times$ 1.02598)
Minimum rail safety penalty	49 U.S.C. ch. 213	\$1,086	\$1,114
Ordinary maximum rail safety penalty	49 U.S.C. ch. 213	35,516	36,439
Maximum penalty for an aggravated rail safety violation.	49 U.S.C. ch. 213	142,063	145,754
Minimum penalty for hazardous materials training violations.	49 U.S.C. 5123	601	617
Maximum penalty for ordinary hazardous materials violations.	49 U.S.C. 5123	99,756	102,348
Maximum penalty for aggravated hazardous materials violations.	49 U.S.C. 5123	232,762	238,809

F. Pipeline and Hazardous Materials Safety Administration (PHMSA) 2025 Adjustments

PHMSA's civil penalties affected by this rule for hazardous materials

violations are located in 49 CFR 107.329, appendix A to subpart D of 49 CFR part 107, and § 171.1. The civil penalties affected by this rule for pipeline safety violations are located in

§ 190.223. PHMSA's 2025 civil penalty adjustments are summarized in the chart below.

Description	Citation	Existing penalty	New penalty (existing penalty $\times$ 1.02598)
Maximum penalty for hazardous materials violation	49 U.S.C. 5123	\$99,756	\$102,348
Maximum penalty for hazardous materials violation that results in death, serious illness, or severe injury to any person or substantial destruction of property.	49 U.S.C. 5123	232,762	238,809
Minimum penalty for hazardous materials training violations.	49 U.S.C. 5123	601	617
Maximum penalty for each pipeline safety violation	49 U.S.C. 60122(a)(1)	266,015	272,926
Maximum penalty for a related series of pipeline safety violations.	49 U.S.C. 60122(a)(1)	2,660,135	2,729,245
Maximum additional penalty for each liquefied natural gas pipeline facility violation.	49 U.S.C. 60122(a)(2)	97,179	99,704
Maximum penalty for discrimination against employees providing pipeline safety information.	49 U.S.C. 60122(a)(3)	1,544	1,584

*G. Maritime Administration (MARAD)
2025 Adjustments*

MARAD's 2025 civil penalty adjustments are summarized in the chart below.

Description	Citation	Existing penalty	New penalty (existing penalty × 1.02598)
Maximum civil penalty for a single violation of any provision under 46 U.S.C. Chapter 313 and all of Subtitle III related MARAD regulations, except for violations of 46 U.S.C. 31329.	46 U.S.C. 31309	\$25,548	\$26,212
Maximum civil penalty for a single violation of 46 U.S.C. 31329 as it relates to the court sales of documented vessels.	46 U.S.C. 31330	63,991	65,653
Maximum civil penalty for a single violation of 46 U.S.C. 56101 as it relates to approvals required to transfer a vessel to a noncitizen.	46 U.S.C. 56101(e)	25,712	26,380
Maximum civil penalty for failure to file an Automated Mutual Assistance Vessel Rescue System (AMVER) report.	46 U.S.C. 50113(b)	162	166
Maximum civil penalty for violating procedures for the use and allocation of shipping services, port facilities and services for national security and national defense operations.	50 U.S.C. 4513	32,341	33,181
Maximum civil penalty for violations in applying for or renewing a vessel's fishery endorsement.	46 U.S.C. 12151	187,602	192,476

*H. Great Lakes St. Lawrence Seaway
Development Corporation (GLS) 2025
Adjustments*

The 2025 civil penalty adjustment for GLS is as follows:

Description	Citation	Existing penalty	New penalty (existing penalty × 1.02598)
Maximum civil penalty for each violation of the Seaway Rules and Regulations at 33 CFR part 401.	33 U.S.C. 1232	\$114,630	\$117,608

Regulatory Analysis and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures and is considered not significant under Executive Order 12866 and DOT's Regulatory Policies and Procedures; therefore, the rule has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

B. Regulatory Flexibility Analysis

The Department has determined the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601, *et seq.*) does not apply to this rulemaking. The RFA applies, in pertinent part, only when "an agency is required. . . to publish general notice of proposed rulemaking." 5 U.S.C. 604(a). The Small Business Administration's *A Guide for Government Agencies: How to*

Comply with the Regulatory Flexibility Act (2012), explains that:

If, under the [Administrative Procedure Act (APA)] or any rule of general applicability governing federal grants to state and local governments, the agency is required to publish a general notice of proposed rulemaking (NPRM), the RFA must be considered [citing 5 U.S.C. 604(a)]. . . . If an NPRM is not required, the RFA does not apply.

As stated above, DOT has determined that good cause exists to publish this final rule without notice and comment procedures under the APA. Therefore, the analytical requirements of the RFA do not apply.

C. Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This regulation has no substantial direct effects on the States, the relationship between the

National Government and the States, or the distribution of power and responsibilities among the various levels of government. It does not contain any provision that imposes substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Because none of the measures in the rule have tribal implications or impose substantial direct compliance costs on Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing notice of and a 60-day comment period on, and otherwise consult with members of the public and affected agencies concerning, each proposed collection of information. This final rule imposes no new information reporting or record keeping necessitating clearance by OMB.

F. National Environmental Policy Act

The Department has analyzed the environmental impacts of this final rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979, as amended July 13, 1982, and July 30, 1985). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.1. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. *Id.* Paragraph 4(c)(5) of DOT Order 5610.1C incorporates the categorical exclusions for all DOT Operating Administrations. This action qualifies for a categorical exclusion in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures (80 FR 44208, July 24, 2015), paragraph 5–6.6.f, which covers regulations not expected to cause any potentially significant environmental impacts. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this final rule.

G. Unfunded Mandates Reform Act

The Department analyzed the final rule under the factors in the Unfunded Mandates Reform Act of 1995. The Department considered whether the rule includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year. The Department has determined that this final rule will not result in such expenditures. Accordingly, no further assessment or

analysis is required under the Unfunded Mandates Reform Act.

List of Subjects in*14 CFR Part 13*

Administrative practice and procedure, Air transportation, Hazardous materials transportation, Investigations, Law enforcement, Penalties.

14 CFR Part 383

Administrative practice and procedure, Penalties.

14 CFR Part 406

Administrative procedure and review, Commercial space transportation, Enforcement, Investigations, Penalties, Rules of adjudication.

33 CFR Part 401

Hazardous materials transportation, Navigation (water), Penalties, Radio, Reporting and recordkeeping requirements, Vessels, Waterways.

46 CFR Part 221

Administrative practice and procedure, Maritime carriers, Mortgages, Penalties, Reporting and recordkeeping requirements, Trusts and trustees.

46 CFR Part 307

Marine safety, Maritime carriers, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 340

Harbors, Maritime carriers, National defense, Packaging and containers.

46 CFR Part 356

Citizenship and naturalization, Fishing vessels, Mortgages, Penalties, Reporting and recordkeeping requirements, Vessels.

49 CFR Part 107

Administrative practices and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Administrative practice and procedure, Exports, Hazardous materials transportation, Hazardous waste, Imports, Information, Reporting and recordkeeping requirements.

49 CFR Part 190

Administrative practice and procedure, Penalties, Pipeline safety.

49 CFR Part 209

Administrative practice and procedure, Hazardous materials

transportation, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Parts 213, 216, 217, 221, 224, 229, 230, 232, 233, and 239

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 214

Bridges, Occupational safety and health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 215

Freight, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 218

Locomotives, Occupational safety and health, Penalties, Railroad employees, Railroad safety, Tampering.

49 CFR Part 219

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 220

Penalties, Radio, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Parts 222, 235, 240, 242, 243, and 244

Administrative practice and procedure, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 223

Glazing standards, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 225

Investigations, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 227

Hazardous materials transportation, Locomotive noise control, Occupational safety and health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 228

Penalties, Railroad employees, Reporting and recordkeeping requirements.

49 CFR Part 231

Penalties, Railroad safety.

49 CFR Part 234

Highway safety, Penalties, Railroad safety, Reporting and recordkeeping

requirements, State and local governments.

49 CFR Part 236

Penalties, Positive train control, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 237

Bridges, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 238

Fire prevention, Passenger equipment, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 241

Communications, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 272

Penalties, Railroad employees, Railroad safety, Railroads, Safety, Transportation.

49 CFR Part 386

Administrative procedures, Commercial motor vehicle safety, Highways and roads, Motor carriers, Penalties.

49 CFR Part 578

Imports, Motor vehicle safety, Motor vehicles, Penalties, Rubber and rubber products, Tires.

Accordingly, the Department of Transportation amends 14 CFR chapters I, II, and III, 33 CFR chapter IV, 46 CFR chapter II, and 49 CFR chapters I, II, III, and V as follows:

Title 14—Aeronautics and Space

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

■ 1. The authority citation for part 13 is revised to read as follows:

Authority: 18 U.S.C. 6002; 28 U.S.C. 2461 note; 49 U.S.C. 106(g), 5121–5124, 40113–40114, 44103–44106, 44701–44704, 44709–44710, 44713, 44725, 44742, 44802 (note),

46101–46111, 46301, 46302 (for a violation of 49 U.S.C. 46504), 46304–46316, 46318–46320, 46501–46502, 46504, 46507, 47106, 47107, 47111, 47122, 47306, 47531–47532; 49 CFR 1.83.

■ 2. Amend § 13.301 by revising paragraphs (b) and (c) to read as follows:

§ 13.301 Inflation adjustments of civil monetary penalties.

* * * * *

(b) Each adjustment to a maximum civil monetary penalty or to minimum and maximum civil monetary penalties that establish a civil monetary penalty range applies to actions initiated under this part for violations occurring on or after December 30, 2024, notwithstanding references to specific civil penalty amounts elsewhere in this part.

(c) Minimum and maximum civil monetary penalties are as follows:

TABLE 1 TO § 13.301(c)—MINIMUM AND MAXIMUM CIVIL MONETARY PENALTY AMOUNTS FOR CERTAIN VIOLATIONS

United States Code citation	Civil monetary penalty description	2024 minimum penalty amount	New adjusted minimum penalty amount for violations occurring on or after December 30, 2024	2024 maximum penalty amount	New adjusted maximum penalty amount for violations occurring on or after December 30, 2024
49 U.S.C. 5123(a)(1)	Violation of hazardous materials transportation law	N/A	N/A	\$99,756	\$102,348.
49 U.S.C. 5123(a)(2)	Violation of hazardous materials transportation law resulting in death, serious illness, severe injury, or substantial property destruction.	N/A	N/A	\$232,762	\$238,809.
49 U.S.C. 5123(a)(3)	Violation of hazardous materials transportation law relating to training.	\$601	\$617	\$99,756	\$102,348.
49 U.S.C. 44704(d)(3)	Knowing presentation of a nonconforming aircraft for issuance of an initial airworthiness certificate by a production certificate holder.	N/A	N/A	\$1,181,581	\$1,212, 278.
49 U.S.C. 44704(e)(4)	Knowing failure by an applicant for or holder of a type certificate to submit safety critical information or include certain such information in an airplane flight manual or flight crew operating manual.	N/A	N/A	\$1,181,581	\$1,212,278.
49 U.S.C. 44704(e)(5)	Knowing false statement by an airline transport pilot (ATP) certificate holder with respect to the submission of certain safety critical information.	N/A	N/A	See entries for 49 U.S.C. 46301(a)(1) and (a)(5).	See entries for 49 U.S.C. 46301(a)(1) and (a)(5).
49 U.S.C. 44742	Interference by a supervisory employee of an organization designation authorization (ODA) holder that manufactures a transport category airplane with an ODA unit member's performance of authorized functions.	N/A	N/A	See entries for 49 U.S.C. 46301(a)(1).	See entries for 49 U.S.C. 46301(a)(1).
49 U.S.C. 44802 note	Operation of an unmanned aircraft or unmanned aircraft system equipped or armed with a dangerous weapon.	N/A	N/A	\$30,417	\$31,207.
49 U.S.C. 46301(a)(1)	Violation by a person other than an individual or small business concern under 49 U.S.C. 46301(a)(1)(A) or (B).	N/A	N/A	\$41,577	\$75,000.
49 U.S.C. 46301(a)(1)	Violation by an airman serving as an airman under 49 U.S.C. 46301(a)(1)(A) or (B) (but not covered by 46301(a)(5)(A) or (B)).	N/A	N/A	\$1,828	\$1,875.
49 U.S.C. 46301(a)(1)	Violation by an individual or small business concern under 49 U.S.C. 46301(a)(1)(A) or (B) (but not covered in 49 U.S.C. 46301(a)(5)).	N/A	N/A	\$1,828	\$1,875.
49 U.S.C. 46301(a)(3)	Violation of 49 U.S.C. 47107(b) (or any assurance made under such section) or 49 U.S.C. 47133.	N/A	N/A	Increase above otherwise applicable maximum amount not to exceed 3 times the amount of revenues used in violation of such section.	No change.

TABLE 1 TO § 13.301(c)—MINIMUM AND MAXIMUM CIVIL MONETARY PENALTY AMOUNTS FOR CERTAIN VIOLATIONS—
Continued

United States Code citation	Civil monetary penalty description	2024 minimum penalty amount	New adjusted minimum penalty amount for violations occurring on or after December 30, 2024	2024 maximum penalty amount	New adjusted maximum penalty amount for violations occurring on or after December 30, 2024
49 U.S.C. 46301(a)(5)(A)	Violation by an individual or small business concern (except an airman serving as an airman) under 49 U.S.C. 46301(a)(5)(A)(i) or (ii).	N/A	N/A	\$16,630	\$17,062.
49 U.S.C. 46301(a)(5)(B)(i).	Violation by an individual or small business concern related to the transportation of hazardous materials.	N/A	N/A	\$16,630	\$17,062.
49 U.S.C. 46301(a)(5)(B)(ii).	Violation by an individual or small business concern related to the registration or recordation under 49 U.S.C. chapter 441, of an aircraft not used to provide air transportation.	N/A	N/A	\$16,630	\$17,062.
49 U.S.C. 46301(a)(5)(B)(iii).	Violation by an individual or small business concern of 49 U.S.C. 44718(d), relating to limitation on construction or establishment of landfills.	N/A	N/A	\$16,630	\$17,062.
49 U.S.C. 46301(a)(5)(B)(iv).	Violation by an individual or small business concern of 49 U.S.C. 44725, relating to the safe disposal of life-limited aircraft parts.	N/A	N/A	\$16,630	\$17,062.
49 U.S.C. 46301(a)(8)	Violation of 49 U.S.C. 41707(a)(22), including any grant assurances made under that section.	N/A	N/A	N/A	\$5,000.
49 U.S.C. 46301 note	Individual who aims the beam of a laser pointer at an aircraft in the airspace jurisdiction of the United States, or at the flight path of such an aircraft.	N/A	N/A	\$31,819	\$32,646.
49 U.S.C. 46301(b)	Tampering with a smoke alarm device	N/A	N/A	\$5,339	\$5,478.
49 U.S.C. 46302	Knowingly providing false information about alleged violation involving the special aircraft jurisdiction of the United States.	N/A	N/A	\$28,995	\$29,748.
49 U.S.C. 46318	Physical or sexual assault or threat to physically or sexually assault crewmember or other individual on an aircraft, or action that poses an imminent threat to the safety of the aircraft or individuals on board.	N/A	N/A	\$43,658	\$44,792.
49 U.S.C. 46319	Permanent closure of an airport without providing sufficient notice.	N/A	N/A	\$16,630	\$17,062.
49 U.S.C. 46320	Operating an unmanned aircraft and in so doing knowingly or recklessly interfering with a wildfire suppression, law enforcement, or emergency response effort.	N/A	N/A	\$25,455	\$26,116.
49 U.S.C. 47531	Violation of 49 U.S.C. 47528–47530 or 47534, relating to the prohibition of operating certain aircraft not complying with stage 3 noise levels.	N/A	N/A	See entries for 49 U.S.C. 46301(a)(1) and (a)(5).	See entries for 49 U.S.C. 46301(a)(1) and (a)(5).

PART 383—CIVIL PENALTIES

■ 3. The authority citation for part 383 continues to read as follows:

Authority: Sec. 701, Pub. L. 114–74, 129 Stat. 584; Sec. 503, Pub. L. 108–176, 117 Stat. 2490; Pub. L. 101–410, 104 Stat. 890; Sec. 31001, Pub. L. 104–134.

■ 4. Section 383.2 is revised to read as follows:

§ 383.2 Amount of penalty.

Civil penalties payable to the U.S. Government for violations of Title 49, Chapters 401 through 421, pursuant to 49 U.S.C. 46301(a), are as follows:

(a) A general civil penalty of not more than \$75,000 (or \$1,875 for individuals or small businesses) applies to violations of statutory provisions and rules or orders issued under those provisions, other than those listed in paragraph (b) of this section (*see* 49 U.S.C. 46301(a)(1)); and

(b) With respect to small businesses and individuals, notwithstanding the general civil penalty specified in paragraph (a) of this section, the following civil penalty limits apply:

(1) A maximum civil penalty of \$17,062 applies for violations of most provisions of Chapter 401, including the anti-discrimination provisions of sections 40127 (general provision), and 41705 (discrimination against the disabled) and rules and orders issued pursuant to those provisions (*see* 49 U.S.C. 46301(a)(5)(A));

(2) A maximum civil penalty of \$8,531 applies for violations of section 41719 and rules and orders issued pursuant to that provision (*see* 49 U.S.C. 46301(a)(5)(C)); and

(3) A maximum civil penalty of \$4,267 applies for violations of section 41712 or consumer protection rules or orders (*see* 49 U.S.C. 46301(a)(5)(D)).

PART 406—INVESTIGATIONS, ENFORCEMENT, AND ADMINISTRATIVE REVIEW

■ 5. The authority citation for part 406 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 6. Amend § 406.9 by revising paragraph (a) to read as follows:

§ 406.9 Civil penalties.

(a) *Civil penalty liability.* Under 51 U.S.C. 50917(c), a person found by the Federal Aviation Administration (FAA) to have violated a requirement of the Act, a regulation issued under the Act, or any term or condition of a license or permit issued or transferred under the Act, is liable to the United States for a civil penalty of not more than \$299,772 for each violation. A separate violation

occurs for each day the violation continues.

* * * * *

Title 33—Navigation and Navigable Waters

PART 401—SEAWAY REGULATIONS AND RULES

Subpart B—Penalties—Violations of Seaway Regulations

- 7. The authority citation for subpart B of part 401 continues to read as follows:

Authority: 33 U.S.C. 981–990; 46 U.S.C. 70001–70004, 70011, and 70032; 49 CFR 1.101, unless otherwise noted.

- 8. Amend § 401.102 by revising paragraph (a) to read as follows:

§ 401.102 Civil penalty.

(a) A person, as described in § 401.101(b) who violates a regulation in this chapter is liable to a civil penalty of not more than \$117,608.

* * * * *

Title 46—Shipping

PART 221—REGULATED TRANSACTIONS INVOLVING DOCUMENTED VESSELS AND OTHER MARITIME INTERESTS

- 9. The authority citation for part 221 continues to read as follows:

Authority: 46 U.S.C. chs. 301, 313, and 561; Pub. L. 114–74; 49 CFR 1.93.

- 10. Amend § 221.61 by revising paragraph (b) to read as follows:

§ 221.61 Compliance.

* * * * *

(b) Pursuant to 46 U.S.C. 31309, a general penalty of not more than \$26,212 may be assessed for each violation of chapter 313 or 46 U.S.C. subtitle III administered by the Maritime Administration, and pursuant to the regulations in this part a person violating 46 U.S.C. 31329 is liable for a civil penalty of not more than \$65,653 for each violation. A person who charts, sells, transfers, or mortgages a vessel, or an interest therein, in violation of 46 U.S.C. 56101(e) is liable for a civil penalty of not more than \$26,380 for each violation.

PART 307—ESTABLISHMENT OF MANDATORY POSITION REPORTING SYSTEM FOR VESSELS

- 11. The authority citation for part 307 continues to read as follows:

Authority: Pub. L. 109–304; 46 U.S.C. 50113; Pub. L. 114–74; 49 CFR 1.93.

- 12. Section 307.19 is revised to read as follows:

§ 307.19 Penalties.

The owner or operator of a vessel in the waterborne foreign commerce of the United States is subject to a penalty of \$166 for each day of failure to file an AMVER report required by this part. Such penalty shall constitute a lien upon the vessel, and such vessel may be libeled in the district court of the United States in which the vessel may be found.

PART 340—PRIORITY USE AND ALLOCATION OF SHIPPING SERVICES, CONTAINERS AND CHASSIS, AND PORT FACILITIES AND SERVICES FOR NATIONAL SECURITY AND NATIONAL DEFENSE RELATED OPERATIONS

- 13. The authority citation for part 340 continues to read as follows:

Authority: 50 U.S.C. 4501 *et seq.* (“The Defense Production Act”); Executive Order 13603 (77 FR 16651); Executive Order 12656 (53 FR 47491); Pub. L. 114–74; 49 CFR 1.45; 49 CFR 1.93(l).

- 14. Section 340.9 is revised to read as follows:

§ 340.9 Compliance.

Pursuant to 50 U.S.C. 4513, any person who willfully performs any act prohibited, or willfully fails to perform any act required, by the provisions of this part shall, upon conviction, be fined not more than \$33,181 or imprisoned for not more than one year, or both.

PART 356—REQUIREMENTS FOR VESSELS OF 100 FEET OR GREATER IN REGISTERED LENGTH TO OBTAIN A FISHERY ENDORSEMENT TO THE VESSEL’S DOCUMENTATION

- 15. The authority citation for part 356 continues to read as follows:

Authority: 46 U.S.C. 12102; 46 U.S.C. 12151; 46 U.S.C. 31322; Pub. L. 105–277, division C, title II, subtitle I, section 203 (46 U.S.C. 12102 note), section 210(e), and section 213(g), 112 Stat. 2681; Pub. L. 107–20, section 2202, 115 Stat. 168–170; Pub. L. 114–74; 49 CFR 1.93.

- 16. Amend § 356.49 by revising paragraph (b) to read as follows:

§ 356.49 Penalties.

* * * * *

(b) A fine of up to \$192,476 may be assessed against the vessel owner for each day in which such vessel has engaged in fishing (as such term is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)) within the exclusive economic zone of the United States; and

* * * * *

Title 49—Transportation

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

- 17. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 Section 4; Pub. L. 104–121 Sections 212–213; Pub. L. 104–134 Section 31001; Pub. L. 114–74 Section 701 (28 U.S.C. 2461 note); 49 CFR 1.81 and 1.97; 33 U.S.C. 1321.

- 18. Revise § 107.329 to read as follows:

§ 107.329 Maximum penalties.

(a) A person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued thereunder, this subchapter, subchapter C of this chapter, or a special permit or approval issued under this subchapter applicable to the transportation of hazardous materials or the causing of them to be transported or shipped is liable for a civil penalty of not more than \$102,348 for each violation, except the maximum civil penalty is \$238,809 if the violation results in death, serious illness, or severe injury to any person or substantial destruction of property. There is no minimum civil penalty, except for a minimum civil penalty of \$617 for violations relating to training. When the violation is a continuing one, each day of the violation constitutes a separate offense.

(b) A person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued thereunder, this subchapter, subchapter C of this chapter, or a special permit or approval issued under this subchapter applicable to the design, manufacture, fabrication, inspection, marking, maintenance, reconditioning, repair or testing of a package, container, or packaging component which is represented, marked, certified, or sold by that person as qualified for use in the transportation of hazardous materials in commerce is liable for a civil penalty of not more than \$102,348 for each violation, except the maximum civil penalty is \$238,809 if the violation results in death, serious illness, or severe injury to any person or substantial destruction of property. There is no minimum civil penalty, except for a minimum civil penalty of \$617 for violations relating to training.

Appendix A to Subpart D of Part 107 [Amended]

- 19. Amend appendix A to subpart D of part 107, under section B, Penalty Increases for Multiple Counts, in the

second paragraph, by removing “\$99,756 or \$232,762” and “January 6, 2023” and adding in their places “\$102,348 or \$238,809” and “December 30, 2024,” respectively.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 20. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4; Pub. L. 104–134, section 31001; Pub. L. 114–74 section 4 (28 U.S.C. 2461 note); 49 CFR 1.81 and 1.97.

■ 21. Amend § 171.1 by revising paragraph (g) to read as follows:

§ 171.1 Applicability of Hazardous Materials Regulations (HMR) to persons and functions.

* * * * *

(g) *Penalties for noncompliance.* Each person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued under Federal hazardous material transportation law, subchapter A of this chapter, or a special permit or approval issued under subchapter A or C of this chapter is liable for a civil penalty of not more than \$102,348 for each violation, except the maximum civil penalty is \$238,809 if the violation results in death, serious illness, or severe injury to any person or substantial destruction of property. There is no minimum civil penalty, except for a minimum civil penalty of \$617 for a violation relating to training.

PART 190—PIPELINE SAFETY ENFORCEMENT AND REGULATORY PROCEDURES

■ 22. The authority citation for part 190 continues to read as follows:

Authority: 33 U.S.C. 1321(b); 49 U.S.C. 60101 *et seq.*

■ 23. Amend § 190.223 by revising paragraphs (a), (c), and (d) to read as follows:

§ 190.223 Maximum penalties.

(a) Any person found to have violated a provision of 49 U.S.C. 60101, *et seq.*, or any regulation in 49 CFR parts 190 through 199, or order issued pursuant to 49 U.S.C. 60101, *et seq.* or 49 CFR part 190, is subject to an administrative civil penalty not to exceed \$272,926 for each violation for each day the violation continues, with a maximum administrative civil penalty not to exceed \$2,729,245 for any related series of violations.

* * * * *

(c) Any person found to have violated any standard or order under 49 U.S.C.

60103 is subject to an administrative civil penalty not to exceed \$99,704, which may be in addition to other penalties to which such person may be subject under paragraph (a) of this section.

(d) Any person who is determined to have violated any standard or order under 49 U.S.C. 60129 is subject to an administrative civil penalty not to exceed \$1,584, which may be in addition to other penalties to which such person may be subject under paragraph (a) of this section.

* * * * *

PART 209—RAILROAD SAFETY ENFORCEMENT PROCEDURES

■ 24. The authority citation for part 209 continues to read as follows:

Authority: 49 U.S.C. 5123, 5124, 20103, 20107, 20111, 20112, 20114; 28 U.S.C. 2461 note; and 49 CFR 1.89.

■ 25. Amend § 209.103 by revising paragraphs (a) and (c) to read as follows:

§ 209.103 Minimum and maximum penalties.

(a) A person who knowingly violates a requirement of the Federal hazardous materials transportation laws, an order issued thereunder, 49 CFR subchapter A or C of chapter I, subtitle B, or a special permit or approval issued under subchapter A or C of chapter I, subtitle B, of this title is liable for a civil penalty of not more than \$102,348 for each violation, except that—

(1) The maximum civil penalty for a violation is \$238,809 if the violation results in death, serious illness, or severe injury to any person, or substantial destruction of property; and

(2) A minimum \$617 civil penalty applies to a violation related to training.

* * * * *

(c) The maximum and minimum civil penalties described in paragraph (a) of this section apply to violations occurring on or after December 30, 2024.

■ 26. Amend § 209.105 by revising the last sentence of paragraph (c) to read as follows:

§ 209.105 Notice of probable violation.

* * * * *

(c) * * * In an amended notice, FRA may change the civil penalty amount proposed to be assessed up to and including the maximum penalty amount of \$102,348 for each violation, except that if the violation results in death, serious illness or severe injury to any person, or substantial destruction of property, FRA may change the penalty amount proposed to be assessed up to and including the maximum penalty amount of \$238,809.

§ 209.409 [Amended]

■ 27. Amend § 209.409 as follows:

■ a. Remove the dollar amount “\$1,086” and add in its place “\$1,114”;

■ b. Remove the dollar amount “\$35,516” and add in its place “\$36,439”; and

■ c. Remove the dollar amount “\$142,063” and add in its place “\$145,754”.

■ 28. Amend appendix A to part 209 in the section “Penalty Schedules; Assessment of Maximum Penalties” as follows:

■ a. Add a sentence at the end of the sixth paragraph;

■ b. Revise the fourth sentence in the seventh paragraph; and

■ c. Revise the first sentence of the tenth paragraph.

The addition and revisions read as follows:

Appendix A to Part 209—Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws

* * * * *

Penalty Schedules; Assessment of Maximum Penalties

* * * * *

* * * Effective December 30, 2024, the minimum civil monetary penalty was raised from \$1,086 to \$1,114, the ordinary maximum civil monetary penalty was raised from \$35,516 to \$36,439, and the aggravated maximum civil monetary penalty was raised from \$142,063 to \$145,754.

* * * For each regulation in this part or order, the schedule shows two amounts within the \$1,114 to \$36,439 range in separate columns, the first for ordinary violations, the second for willful violations (whether committed by railroads or individuals). * * *

* * * * *

Accordingly, under each of the schedules (ordinarily in a footnote), and regardless of the fact that a lesser amount might be shown in both columns of the schedule, FRA reserves the right to assess the statutory maximum penalty of up to \$145,754 per violation where a pattern of repeated violations or a grossly negligent violation has created an imminent hazard of death or injury or has caused death or injury. * * *

* * * * *

Appendix B to Part 209 [Amended]

■ 29. Amend appendix B to part 209 as follows:

■ a. Remove the dollar amount “\$99,756” everywhere it appears and add in its place “\$102,348”;

■ b. Remove the dollar amount “\$232,762” everywhere it appears and add in its place “\$238,809”; and

■ c. Remove the dollar amount “\$601” and add in its place “\$617” in the first paragraph.

PART 213—TRACK SAFETY STANDARDS

■ 30. The authority citation for part 213 continues to read as follows:

Authority: 49 U.S.C. 20102–20114 and 20142; 28 U.S.C. 2461 note; and 49 CFR 1.89.

§ 213.15 [Amended]

- 31. Amend § 213.15 in paragraph (a) as follows:
 - a. Remove the dollar amount “\$1,086” and add in its place “\$1,114”;
 - b. Remove the dollar amount “\$35,516” and add in its place “\$36,439”; and
 - c. Remove the dollar amount “\$142,063” and add in its place “\$145,754”.

PART 214—RAILROAD WORKPLACE SAFETY

■ 32. The authority citation for part 214 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 21301–21302, 31304; 28 U.S.C. 2461 note; and 49 CFR 1.89.

§ 214.5 [Amended]

- 33. Amend § 214.5 as follows:
 - a. Remove the dollar amount “\$1,086” and add in its place “\$1,114”;
 - b. Remove the dollar amount “\$35,516” and add in its place “\$36,439”; and
 - c. Remove the dollar amount “\$142,063” and add in its place “\$145,754”.

PART 215—RAILROAD FREIGHT CAR SAFETY STANDARDS

■ 34. The authority citation for part 215 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461 note; and 49 CFR 1.89.

§ 215.7 [Amended]

- 35. Amend § 215.7 as follows:
 - a. Remove the dollar amount “\$1,086” and add in its place “\$1,114”;
 - b. Remove the dollar amount “\$35,516” and add in its place “\$36,439”; and
 - c. Remove the dollar amount “\$142,063” and add in its place “\$145,754”.

PART 216—SPECIAL NOTICE AND EMERGENCY ORDER PROCEDURES: RAILROAD TRACK, LOCOMOTIVE AND EQUIPMENT

■ 36. The authority citation for part 216 continues to read as follows:

Authority: 49 U.S.C. 20102–20104, 20107, 20111, 20133, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461 note; and 49 CFR 1.89.

§ 216.7 [Amended]

- 37. Amend § 216.7 as follows:
 - a. Remove the dollar amount “\$1,086” and add in its place “\$1,114”;
 - b. Remove the dollar amount “\$35,516” and add in its place “\$36,439”; and
 - c. Remove the dollar amount “\$142,063” and add in its place “\$145,754”.

PART 217—RAILROAD OPERATING RULES

■ 37. The authority citation for part 217 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461 note; and 49 CFR 1.89.

§ 217.5 [Amended]

- 38. Amend § 217.5 as follows:
 - a. Remove the dollar amount “\$1,086” and add in its place “\$1,114”;
 - b. Remove the dollar amount “\$35,516” and add in its place “\$36,439”; and
 - c. Remove the dollar amount “\$142,063” and add in its place “\$145,754”.

PART 218—RAILROAD OPERATING PRACTICES

■ 39. The authority citation for part 218 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20131, 20138, 20144, 20168; 28 U.S.C. 2461 note; and 49 CFR 1.89.

§ 218.9 [Amended]

- 40. Amend § 218.9 as follows:
 - a. Remove the dollar amount “\$1,086” and add in its place “\$1,114”;
 - b. Remove the dollar amount “\$35,516” and add in its place “\$36,439”; and
 - c. Remove the dollar amount “\$142,063” and add in its place “\$145,754”.

PART 219—CONTROL OF ALCOHOL AND DRUG USE

■ 41. The authority citation for part 219 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20140, 21301, 21304, 21311; 28 U.S.C. 2461 note; Div. A, Sec. 412, Pub. L. 110–432, 122 Stat. 4889 (49 U.S.C. 20140 note); Sec. 8102, Pub. L. 115–271, 132 Stat. 3894; and 49 CFR 1.89.

§ 219.10 [Amended]

- 42. Amend § 219.10 as follows:
 - a. Remove the dollar amount “\$1,086” and add in its place “\$1,114”;
 - b. Remove the dollar amount “\$35,516” and add in its place “\$36,439”; and
 - c. Remove the dollar amount “\$142,063” and add in its place “\$145,754”.

PART 220—RAILROAD COMMUNICATIONS

■ 43. The authority citation for part 220 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20103, note, 20107, 21301–21302, 20701–20703, 21304, 21311; 28 U.S.C. 2461 note; and 49 CFR 1.89.

§ 220.7 [Amended]

- 44. Amend § 220.7 as follows:
 - a. Remove the dollar amount “\$1,086” and add in its place “\$1,114”;
 - b. Remove the dollar amount “\$35,516” and add in its place “\$36,439”; and
 - c. Remove the dollar amount “\$142,063” and add in its place “\$145,754”.

PART 221—REAR END MARKING DEVICE—PASSENGER, COMMUTER AND FREIGHT TRAINS

■ 45. The authority citation for part 221 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461 note; and 49 CFR 1.89.

§ 221.7 [Amended]

- 46. Amend § 221.7 as follows:
 - a. Remove the dollar amount “\$1,086” and add in its place “\$1,114”;
 - b. Remove the dollar amount “\$35,516” and add in its place “\$36,439”; and
 - c. Remove the dollar amount “\$142,063” and add in its place “\$145,754”.

PART 222—USE OF LOCOMOTIVE HORNS AT PUBLIC HIGHWAY-RAIL GRADE CROSSINGS

■ 47. The authority citation for part 222 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20153, 21301, 21304; 28 U.S.C. 2461 note; and 49 CFR 1.89.

§ 222.11 [Amended]

- 48. Amend § 222.11 as follows:
 - a. Remove the dollar amount “\$1,086” and add in its place “\$1,114”;
 - b. Remove the dollar amount “\$35,516” and add in its place “\$36,439”; and
 - c. Remove the dollar amount “\$142,063” and add in its place “\$145,754”.

PART 223—SAFETY GLAZING STANDARDS—LOCOMOTIVES, PASSENGER CARS AND CABOSES

■ 49. The authority citation for part 223 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20133, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461 note; and 49 CFR 1.89.

§ 223.7 [Amended]

- 50. Amend § 223.7 as follows:
- a. Remove the dollar amount “\$1,086” and add in its place “\$1,114”;
- b. Remove the dollar amount “\$35,516” and add in its place “\$36,439”; and
- c. Remove the dollar amount “\$142,063” and add in its place “\$145,754”.

PART 224—REFLECTORIZATION OF RAIL FREIGHT ROLLING STOCK

- 51. The authority citation for part 224 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20148 and 21301; 28 U.S.C. 2461 note; and 49 CFR 1.89.

§ 224.11 [Amended]

- 52. Amend § 224.11 in paragraph (a) as follows:
- a. Remove the dollar amount “\$1,086” and add in its place “\$1,114”;
- b. Remove the dollar amount “\$35,516” and add in its place “\$36,439”; and
- c. Remove the dollar amount “\$142,063” and add in its place “\$145,754”.

PART 225—RAILROAD ACCIDENTS/ INCIDENTS: REPORTS CLASSIFICATION, AND INVESTIGATIONS

- 53. The authority citation for part 225 is continues to read as follows:

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901–20902, 21301, 21302, 21311; 28 U.S.C. 2461 note; and 49 CFR 1.89.

§ 225.29 [Amended]

- 54. Amend § 225.29 as follows:
- a. Remove the dollar amount “\$1,086” and add in its place “\$1,114”;
- b. Remove the dollar amount “\$35,516” and add in its place “\$36,439”; and
- c. Remove the dollar amount “\$142,063” and add in its place “\$145,754”.

PART 227—OCCUPATIONAL SAFETY AND HEALTH IN THE LOCOMOTIVE CAB

- 55. The authority citation for part 227 continues to read as follows:

Authority: 49 U.S.C. 20103, 20103 note, 20166, 20701–20703, 21301, 21302, 21304; 28 U.S.C. 2461 note; and 49 CFR 1.89.

§ 227.9 [Amended]

- 56. Amend § 227.9 in paragraph (a) as follows:
- a. Remove the dollar amount “\$1,086” and add in its place “\$1,114”;

- b. Remove the dollar amount “\$35,516” and add in its place “\$36,439”; and
- c. Remove the dollar amount “\$142,063” and add in its place “\$145,754”.

PART 228—PASSENGER TRAIN EMPLOYEE HOURS OF SERVICE; RECORDKEEPING AND REPORTING; SLEEPING QUARTERS

- 57. The authority citation for part 228 continues to read as follows:

Authority: 49 U.S.C. 103, 20103, 20107, 21101–21109; 49 U.S.C. 21301, 21303, 21304, 21311; 28 U.S.C. 2461 note; and 49 CFR 1.89.

§ 228.6 [Amended]

- 58. Amend § 228.6 in paragraph (a) as follows:
- a. Remove the dollar amount “\$1,086” and add in its place “\$1,114”;
- b. Remove the dollar amount “\$35,516” and add in its place “\$36,439”; and
- c. Remove the dollar amount “\$142,063” and add in its place “\$145,754”.
- 59. Amend appendix A to part 228, under the heading “General Provisions,” in the “Penalty” paragraph by adding a sentence at the end of the first paragraph to read as follows:

Appendix A to Part 228—Requirements of the Hours of Service Act: Statement of Agency Policy and Interpretation

* * * * *

General Provisions

* * * * *

Penalty. * * * Effective December 30, 2024, the minimum civil monetary penalty was raised from \$1,086 to \$1,114, the ordinary maximum civil monetary penalty was raised from \$35,516 to \$36,439, and the aggravated maximum civil monetary penalty was raised from \$142,063 to \$145,754.

* * * * *

PART 229—RAILROAD LOCOMOTIVE SAFETY STANDARDS

- 60. The authority citation for part 229 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20137–38, 20143, 20168, 20701–03, 21301–02, 21304; 28 U.S.C. 2461 note; and 49 CFR 1.89.

§ 229.7 [Amended]

- 61. Amend § 229.7 in paragraph (b) as follows:
- a. Remove the dollar amount “\$1,086” and add in its place “\$1,114”;
- b. Remove the dollar amount “\$35,516” and add in its place “\$36,439”; and
- c. Remove the dollar amount “\$142,063” and add in its place “\$145,754”.

PART 230—STEAM LOCOMOTIVE INSPECTION AND MAINTENANCE STANDARDS

- 62. The authority citation for part 230 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20702; 28 U.S.C. 2461 note; and 49 CFR 1.89.

§ 230.4 [Amended]

- 63. Amend § 230.4 in paragraph (a) as follows:
- a. Remove the dollar amount “\$1,086” and add in its place “\$1,114”;
- b. Remove the dollar amount “\$35,516” and add in its place “\$36,439”; and
- c. Remove the dollar amount “\$142,063” and add in its place “\$145,754”.

PART 231—RAILROAD SAFETY APPLIANCE STANDARDS

- 64. The authority citation for part 231 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20131, 20301–20303, 21301–21302, 21304; 28 U.S.C. 2461 note; and 49 CFR 1.89.

§ 231.0 [Amended]

- 65. Amend § 231.0 in paragraph (f) as follows:
- a. Remove the dollar amount “\$1,086” and add in its place “\$1,114”;
- b. Remove the dollar amount “\$35,516” and add in its place “\$36,439”; and
- c. Remove the dollar amount “\$142,063” and add in its place “\$145,754”.

PART 233—SIGNAL SYSTEMS REPORTING REQUIREMENTS

- 66. The authority citation for part 233 continues to read as follows:

Authority: 49 U.S.C. 504, 522, 20103, 20107, 20501–20505, 21301, 21302, 21311; 28 U.S.C. 2461 note; and 49 CFR 1.89.

§ 233.11 [Amended]

- 67. Amend § 233.11 as follows:
- a. Remove the dollar amount “\$1,086” and add in its place “\$1,114”;
- b. Remove the dollar amount “\$35,516” and add in its place “\$36,439”; and
- c. Remove the dollar amount “\$142,063” and add in its place “\$145,754”.

PART 234—GRADE CROSSING SAFETY

- 68. The authority citation for part 234 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20152, 20160, 21301, 21304, 21311, 22907 note; 28 U.S.C. 2461 note; and 49 CFR 1.89.

§ 234.6 [Amended]

- 69. Amend § 234.6 in paragraph (a) as follows:
 - a. Remove the dollar amount “\$1,086” and add in its place “\$1,114”;
 - b. Remove the dollar amount “\$35,516” and add in its place “\$36,439”; and
 - c. Remove the dollar amount “\$142,063” and add in its place “\$145,754”.

PART 235—INSTRUCTIONS GOVERNING APPLICATIONS FOR APPROVAL OF A DISCONTINUANCE OR MATERIAL MODIFICATION OF A SIGNAL SYSTEM OR RELIEF FROM THE REQUIREMENTS OF PART 236

- 70. The authority citation for part 235 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461 note; and 49 CFR 1.89.

§ 235.9 [Amended]

- 71. Amend § 235.9 as follows:
 - a. Remove the dollar amount “\$1,086” and add in its place “\$1,114”;
 - b. Remove the dollar amount “\$35,516” and add in its place “\$36,439”; and
 - c. Remove the dollar amount “\$142,063” and add in its place “\$145,754”.

PART 236—RULES, STANDARDS, AND INSTRUCTIONS GOVERNING THE INSTALLATION, INSPECTION, MAINTENANCE, AND REPAIR OF SIGNAL AND TRAIN CONTROL SYSTEMS, DEVICES, AND APPLIANCES

- 72. The authority citation for part 236 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20141, 20157, 20301–20303, 20306, 20501–20505, 20701–20703, 21301–21302, 21304; 28 U.S.C. 2461 note; and 49 CFR 1.89.

§ 236.0 [Amended]

- 73. Amend § 236.0 in paragraph (f) as follows:
 - a. Remove the dollar amount “\$1,086” and add in its place “\$1,114”;
 - b. Remove the dollar amount “\$35,516” and add in its place “\$36,439”; and
 - c. Remove the dollar amount “\$142,063” and add in its place “\$145,754”.

PART 237—BRIDGE SAFETY STANDARDS

- 74. The authority citation for part 237 continues to read as follows:

Authority: 49 U.S.C. 20102–20114; 28 U.S.C. 2461 note; Div. A, Sec. 417, Pub. L. 110–432, 122 Stat. 4848; and 49 CFR 1.89.

§ 237.7 [Amended]

- 75. Amend § 237.7 in paragraph (a) as follows:
 - a. Remove the dollar amount “\$1,086” and add in its place “\$1,114”;
 - b. Remove the dollar amount “\$35,516” and add in its place “\$36,439”; and
 - c. Remove the dollar amount “\$142,063” and add in its place “\$145,754”.

PART 238—PASSENGER EQUIPMENT SAFETY STANDARDS

- 76. The authority citation for part 238 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302–20303, 20306, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461 note; and 49 CFR 1.89.

§ 238.11 [Amended]

- 77. Amend § 238.11 in paragraph (a) as follows:
 - a. Remove the dollar amount “\$1,086” and add in its place “\$1,114”;
 - b. Remove the dollar amount “\$35,516” and add in its place “\$36,439”; and
 - c. Remove the dollar amount “\$142,063” and add in its place “\$145,754”.

PART 239—PASSENGER TRAIN EMERGENCY PREPAREDNESS

- 78. The authority citation for part 239 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20105–20114, 20133, 21301, 21304, and 21311; 28 U.S.C. 2461 note; and 49 CFR 1.89.

§ 239.11 [Amended]

- 79. Amend § 239.11 as follows:
 - a. Remove the dollar amount “\$1,086” and add in its place “\$1,114”;
 - b. Remove the dollar amount “\$35,516” and add in its place “\$36,439”; and
 - c. Remove the dollar amount “\$142,063” and add in its place “\$145,754”.

PART 240—QUALIFICATION AND CERTIFICATION OF LOCOMOTIVE ENGINEERS

- 80. The authority citation for part 240 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20135, 21301, 21304, 21311; 28 U.S.C. 2461 note; and 49 CFR 1.89.

§ 240.11 [Amended]

- 81. Amend § 240.11 in paragraph (a) as follows:
 - a. Remove the dollar amount “\$1,086” and add in its place “\$1,114”;
 - b. Remove the dollar amount “\$35,516” and add in its place “\$36,439”; and

- c. Remove the dollar amount “\$142,063” and add in its place “\$145,754”.

PART 241—UNITED STATES LOCATIONAL REQUIREMENT FOR DISPATCHING OF UNITED STATES RAIL OPERATIONS

- 82. The authority citation for part 241 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301, 21304, 21311; 28 U.S.C. 2461 note; 49 CFR 1.89.

§ 241.15 [Amended]

- 83. Amend § 241.15 in paragraph (a) as follows:
 - a. Remove the dollar amount “\$1,086” and add in its place “\$1,114”;
 - b. Remove the dollar amount “\$35,516” and add in its place “\$36,439”; and
 - c. Remove the dollar amount “\$142,063” and add in its place “\$145,754”.

PART 242—QUALIFICATION AND CERTIFICATION OF CONDUCTORS

- 84. The authority citation for part 242 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20135, 20138, 20162, 20163, 21301, 21304, 21311; 28 U.S.C. 2461 note; and 49 CFR 1.89.

§ 242.11 [Amended]

- 85. Amend § 242.11 in paragraph (a) as follows:
 - a. Remove the dollar amount “\$1,086” and add in its place “\$1,114”;
 - b. Remove the dollar amount “\$35,516” and add in its place “\$36,439”; and
 - c. Remove the dollar amount “\$142,063” and add in its place “\$145,754”.

PART 243—TRAINING, QUALIFICATION, AND OVERSIGHT FOR SAFETY-RELATED RAILROAD EMPLOYEES

- 86. The authority citation for part 243 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20131–20155, 20162, 20301–20306, 20701–20702, 21301–21304, 21311; 28 U.S.C. 2461 note; and 49 CFR 1.89.

§ 243.7 [Amended]

- 87. Amend § 243.7 in paragraph (a) as follows:
 - a. Remove the dollar amount “\$1,086” and add in its place “\$1,114”;
 - b. Remove the dollar amount “\$35,516” and add in its place “\$36,439”; and
 - c. Remove the dollar amount “\$142,063” and add in its place “\$145,754”.

PART 244—REGULATIONS ON SAFETY INTEGRATION PLANS GOVERNING RAILROAD CONSOLIDATIONS, MERGERS, AND ACQUISITIONS OF CONTROL

■ 88. The authority citation for part 244 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301; 5 U.S.C. 553 and 559; 28 U.S.C. 2461 note; and 49 CFR 1.89.

§ 244.5 [Amended]

■ 89. Amend § 244.5 in paragraph (a) as follows:

- a. Remove the dollar amount “\$1,086” and add in its place “\$1,114”;
- b. Remove the dollar amount “\$35,516” and add in its place “\$36,439”; and
- c. Remove the dollar amount “\$142,063” and add in its place “\$145,754”.

PART 272—CRITICAL INCIDENT STRESS PLANS

■ 90. The authority citation for part 272 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20109 note; 28 U.S.C. 2461 note; and 49 CFR 1.89.

§ 272.11 [Amended]

■ 91. Amend § 272.11 in paragraph (a) as follows:

- a. Remove the dollar amount “\$1,086” and add in its place “\$1,114”;
- b. Remove the dollar amount “\$35,516” and add in its place “\$36,439”; and
- c. Remove the dollar amount “\$142,063” and add in its place “\$145,754”.

PART 386—RULES OF PRACTICE FOR FMCSA PROCEEDINGS

■ 92. 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, 13106a; 49 U.S.C. chapters 5, 51, 131–141, 145–149, 311, 313, and 315; and 49 CFR 1.81, 1.87.

■ 93. Amend appendix A to part 386 by revising section II and section IV.a. through e. and g. through j. to read as follows:

Appendix A to Part 386—Penalty Schedule: Violations of Notices and Orders

* * * * *

II. Subpoena

Violation—Failure to respond to Agency subpoena to appear and testify or produce records.

Penalty—minimum of \$1,365 but not more than \$13,676 per violation.

* * * * *

IV. Out-of-Service Order

a. Violation—Operation of a commercial vehicle by a driver during the period the driver was placed out of service.

Penalty—Up to \$2,364 per violation.

(For purposes of this violation, the term “driver” means an operator of a commercial motor vehicle, including an independent contractor who, while in the course of operating a commercial motor vehicle, is employed or used by another person.)

b. Violation—Requiring or permitting a driver to operate a commercial vehicle during the period the driver was placed out of service.

Penalty—Up to \$23,647 per violation.

(This violation applies to motor carriers including an independent contractor who is not a “driver,” as defined under paragraph IV(a) above.)

c. Violation—Operation of a commercial motor vehicle or intermodal equipment by a driver after the vehicle or intermodal equipment was placed out-of-service and before the required repairs are made.

Penalty—\$2,364 each time the vehicle or intermodal equipment is so operated. (This violation applies to drivers as defined in IV(a) above.)

d. Violation—Requiring or permitting the operation of a commercial motor vehicle or intermodal equipment placed out-of-service before the required repairs are made.

Penalty—Up to \$23,647 each time the vehicle or intermodal equipment is so operated after notice of the defect is received.

(This violation applies to intermodal equipment providers and motor carriers, including an independent owner operator who is not a “driver,” as defined in IV(a) above.)

e. Violation—Failure to return written certification of correction as required by the out-of-service order.

Penalty—Up to \$1,182 per violation.

* * * * *

g. Violation—Operating in violation of an order issued under § 386.72(b) to cease all or part of the employer’s commercial motor vehicle operations or to cease part of an intermodal equipment provider’s operations, i.e., failure to cease operations as ordered.

Penalty—Up to \$34,116 per day the operation continues after the effective date and time of the order to cease.

h. Violation—Operating in violation of an order issued under § 386.73.

Penalty—Up to \$29,980 per day the operation continues after the effective date and time of the out-of-service order.

i. Violation—Conducting operations during a period of suspension under § 386.83 or § 386.84 for failure to pay penalties.

Penalty—Up to \$19,246 for each day that operations are conducted during the suspension or revocation period.

j. Violation—Conducting operations during a period of suspension or revocation under § 385.911, § 385.913, § 385.1009, or § 385.1011 of this subchapter.

Penalty—Up to \$29,980 for each day that operations are conducted during the suspension or revocation period.

■ 94. Amend appendix B to part 386 by revising paragraphs (a)(1) through (5),

(b), (d) through (f), (g)(1) through (8), (10) through (14), and (16) through (18), (g)(21)(i), (g)(22) and (23), (h), and (i) to read as follows:

Appendix B to Part 386—Penalty Schedule: Violations and Monetary Penalties

* * * * *

What are the types of violations and maximum monetary penalties?

(a) * * *

(1) *Recordkeeping.* A person or entity that fails to prepare or maintain a record required by part 40 of this title and parts 382, subpart A, B, C, D, E, or F, 385, and 390 through 399 of this subchapter, or prepares or maintains a required record that is incomplete, inaccurate, or false, is subject to a maximum civil penalty of \$1,584 for each day the violation continues, up to \$15,846.

(2) *Knowing falsification of records.* A person or entity that knowingly falsifies, destroys, mutilates, or changes a report or record required by parts 382, subpart A, B, C, D, E, or F, 385, and 390 through 399 of this subchapter, knowingly makes or causes to be made a false or incomplete record about an operation or business fact or transaction, or knowingly makes, prepares, or preserves a record in violation of a regulation order of the Secretary is subject to a maximum civil penalty of \$15,846 if such action misrepresents a fact that constitutes a violation other than a reporting or recordkeeping violation.

(3) *Non-recordkeeping violations.* A person or entity that violates part 382, subpart A, B, C, D, E, or F, part 385, or parts 390 through 399 of this subchapter, except a recordkeeping requirement, is subject to a civil penalty not to exceed \$19,246 for each violation.

(4) *Non-recordkeeping violations by drivers.* A driver who violates parts 382, subpart A, B, C, D, E, or F, 385, and 390 through 399 of this subchapter, except a recordkeeping violation, is subject to a civil penalty not to exceed \$4,812.

(5) *Violation of 49 CFR 392.5.* A driver placed out of service for 24 hours for violating the alcohol prohibitions of 49 CFR 392.5(a) or (b) who drives during that period is subject to a civil penalty not to exceed \$3,961 for a first conviction and not less than \$7,924 for a second or subsequent conviction.

* * * * *

(b) *Commercial driver’s license (CDL) violations.* Any employer, employee, medical review officer, or service agent who violates any provision of 49 CFR part 382, subpart G, or any person who violates 49 CFR part 383, subpart B, C, E, F, G, or H, is subject to a civil penalty not to exceed \$7,155; except:

(1) A CDL-holder who is convicted of violating an out-of-service order shall be subject to a civil penalty of not less than \$3,961 for a first conviction and not less than \$7,924 for a second or subsequent conviction;

(2) An employer of a CDL-holder who knowingly allows, requires, permits, or authorizes an employee to operate a CMV during any period in which the CDL-holder is subject to an out-of-service order, is subject to a civil penalty of not less than \$7,155 or more than \$39,615; and

(3) An employer of a CDL-holder who knowingly allows, requires, permits, or authorizes that CDL-holder to operate a CMV in violation of a Federal, State, or local law or regulation pertaining to railroad-highway grade crossings is subject to a civil penalty of not more than \$20,537.

* * * * *

(d) *Financial responsibility violations.* A motor carrier that fails to maintain the levels of financial responsibility prescribed by part 387 of this subchapter or any person (except an employee who acts without knowledge) who knowingly violates the rules of part 387, subparts A and B, is subject to a maximum penalty of \$21,114. Each day of a continuing violation constitutes a separate offense.

(e) *Violations of the Hazardous Materials Regulations (HMRs) and safety permitting regulations found in subpart E of part 385 of this subchapter.* This paragraph (e) applies to violations by motor carriers, drivers, shippers and other persons who transport hazardous materials on the highway in commercial motor vehicles or cause hazardous materials to be so transported.

(1) All knowing violations of 49 U.S.C. chapter 51 or orders or regulations issued under the authority of that chapter applicable to the transportation or shipment of hazardous materials by commercial motor vehicle on the highways are subject to a civil penalty of not more than \$102,348 for each violation. Each day of a continuing violation constitutes a separate offense.

(2) All knowing violations of 49 U.S.C. chapter 51 or orders or regulations issued under the authority of that chapter applicable to training related to the transportation or shipment of hazardous materials by commercial motor vehicle on the highways are subject to a civil penalty of not less than \$617 and not more than \$102,348 for each violation.

(3) All knowing violations of 49 U.S.C. chapter 51 or orders, regulations, or exemptions under the authority of that chapter applicable to the manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container that is represented, marked, certified, or sold as being qualified for use in the transportation or shipment of hazardous materials by commercial motor vehicle on the highways are subject to a civil penalty of not more than \$102,348 for each violation.

(4) Whenever regulations issued under the authority of 49 U.S.C. chapter 51 require compliance with the FMCSRs while transporting hazardous materials, any violations of the FMCSRs will be considered a violation of the HMRs and subject to a civil penalty of not more than \$102,348.

(5) If any violation subject to the civil penalties set out in paragraphs (e)(1) through (4) of this appendix results in death, serious illness, or severe injury to any person or in substantial destruction of property, the civil penalty may be increased to not more than \$238,809 for each offense.

(f) *Operating after being declared unfit by assignment of a final "unsatisfactory" safety rating.* (1) A motor carrier operating a commercial motor vehicle in interstate commerce (except owners or operators of

commercial motor vehicles designed or used to transport hazardous materials for which placarding of a motor vehicle is required under regulations prescribed under 49 U.S.C. chapter 51) is subject, after being placed out of service because of receiving a final "unsatisfactory" safety rating, to a civil penalty of not more than \$34,116 (49 CFR 385.13). Each day the transportation continues in violation of a final "unsatisfactory" safety rating constitutes a separate offense.

(2) A motor carrier operating a commercial motor vehicle designed or used to transport hazardous materials for which placarding of a motor vehicle is required under regulations prescribed under 49 U.S.C. chapter 51 is subject, after being placed out of service because of receiving a final "unsatisfactory" safety rating, to a civil penalty of not more than \$102,348 for each offense. If the violation results in death, serious illness, or severe injury to any person or in substantial destruction of property, the civil penalty may be increased to not more than \$238,809 for each offense. Each day the transportation continues in violation of a final "unsatisfactory" safety rating constitutes a separate offense.

(g) * * *

(1) A person who operates as a motor carrier for the transportation of property in violation of the registration requirements of 49 U.S.C. 13901 is liable for a minimum penalty of \$13,676 per violation.

(2) A person who knowingly operates as a broker in violation of registration requirements of 49 U.S.C. 13904 or financial security requirements of 49 U.S.C. 13906 is liable for a penalty not to exceed \$13,676 for each violation.

(3) A person who operates as a motor carrier of passengers in violation of the registration requirements of 49 U.S.C. 13901 is liable for a minimum penalty of \$34,116 per violation.

(4) A person who operates as a foreign motor carrier or foreign motor private carrier of property in violation of the provisions of 49 U.S.C. 13902(c) is liable for a minimum penalty of \$13,676 per violation.

(5) A person who operates as a foreign motor carrier or foreign motor private carrier without authority, outside the boundaries of a commercial zone along the United States-Mexico border, is liable for a maximum penalty of \$18,766 for an intentional violation and a maximum penalty of \$46,918 for a pattern of intentional violations.

(6) A person who operates as a motor carrier or broker for the transportation of hazardous wastes in violation of the registration provisions of 49 U.S.C. 13901 is liable for a minimum penalty of \$27,293 and a maximum penalty of \$54,585 per violation.

(7) A motor carrier or freight forwarder of household goods, or their receiver or trustee, that does not comply with any regulation relating to the protection of individual shippers, is liable for a minimum penalty of \$2,052 per violation.

(8) A person as described under paragraph (i) or (ii) is liable for a minimum penalty of \$4,109 for the first violation and \$10,269 for each subsequent violation—

(i) Who falsifies, or authorizes an agent or other person to falsify, documents used in

the transportation of household goods by motor carrier or freight forwarder to evidence the weight of a shipment; or

(ii) Who charges for services which are not performed or are not reasonably necessary in the safe and adequate movement of the shipment.

* * * * *

(10) A person who offers, gives, solicits, or receives transportation of property by a carrier at a different rate than the rate in effect under 49 U.S.C. 13702 is liable for a maximum penalty of \$205,375 per violation. When acting in the scope of his/her employment, the acts or omissions of a person acting for or employed by a carrier or shipper are considered the acts or omissions of that carrier or shipper, as well as of that person.

(11) Any person who offers, gives, solicits, or receives a rebate or concession related to motor carrier transportation subject to jurisdiction under subchapter I of 49 U.S.C. chapter 135, or who assists or permits another person to get that transportation at less than the rate in effect under 49 U.S.C. 13702, commits a violation for which the penalty is \$410 for the first violation and \$513 for each subsequent violation.

(12) A freight forwarder, its officer, agent, or employee, that assists or willingly permits a person to get service under 49 U.S.C. 13531 at less than the rate in effect under 49 U.S.C. 13702 commits a violation for which the penalty is up to \$1,028 for the first violation and up to \$4,109 for each subsequent violation.

(13) A person who gets or attempts to get service from a freight forwarder under 49 U.S.C. 13531 at less than the rate in effect under 49 U.S.C. 13702 commits a violation for which the penalty is up to \$1,028 for the first violation and up to \$4,109 for each subsequent violation.

(14) A person who knowingly authorizes, consents to, or permits a violation of 49 U.S.C. 14103 relating to loading and unloading motor vehicles or who knowingly violates subsection (a) of 49 U.S.C. 14103 is liable for a penalty of not more than \$20,537 per violation.

* * * * *

(16) A person required to make a report to the Secretary, answer a question, or make, prepare, or preserve a record under part B of subtitle IV, title 49, U.S.C., or an officer, agent, or employee of that person, is liable for a minimum penalty of \$1,365 and for a maximum penalty of \$10,269 per violation if it does not make the report, does not completely and truthfully answer the question within 30 days from the date the Secretary requires the answer, does not make or preserve the record in the form and manner prescribed, falsifies, destroys, or changes the report or record, files a false report or record, makes a false or incomplete entry in the record about a business-related fact, or prepares or preserves a record in violation of a regulation or order of the Secretary.

(17) A motor carrier, water carrier, freight forwarder, or broker, or their officer, receiver, trustee, lessee, employee, or other person authorized to receive information from them, who discloses information identified in 49

U.S.C. 14908 without the permission of the shipper or consignee is liable for a maximum penalty of \$4,109.

(18) A person who violates a provision of part B, subtitle IV, title 49, U.S.C., or a regulation or order under part B, or who violates a condition of registration related to transportation that is subject to jurisdiction under subchapter I or III of chapter 135, or who violates a condition of registration of a foreign motor carrier or foreign motor private carrier under section 13902, is liable for a penalty of \$1,028 for each violation if another penalty is not provided in 49 U.S.C. chapter 149.

* * * *

(21) * * *

(i) Who knowingly and willfully fails, in violation of a contract, to deliver to, or unload at, the destination of a shipment of household goods in interstate commerce for which charges have been estimated by the motor carrier transporting such goods, and for which the shipper has tendered a payment in accordance with part 375, subpart G, of this subchapter, is liable for a civil penalty of not less than \$20,537 for each violation. Each day of a continuing violation constitutes a separate offense.

* * * *

(22) A broker for transportation of household goods who makes an estimate of the cost of transporting any such goods before entering into an agreement with a motor carrier to provide transportation of household goods subject to FMCSA jurisdiction is liable to the United States for a civil penalty of not less than \$15,846 for each violation.

(23) A person who provides transportation of household goods subject to jurisdiction under 49 U.S.C. chapter 135, subchapter I, or provides broker services for such transportation, without being registered under 49 U.S.C. chapter 139 to provide such transportation or services as a motor carrier or broker, as the case may be, is liable to the United States for a civil penalty of not less than \$39,615 for each violation.

(h) *Copying of records and access to equipment, lands, and buildings.* A person subject to 49 U.S.C. chapter 51 or a motor carrier, broker, freight forwarder, or owner or operator of a commercial motor vehicle subject to part B of subtitle VI of title 49 U.S.C. who fails to allow promptly, upon demand in person or in writing, the Federal Motor Carrier Safety Administration, an employee designated by the Federal Motor Carrier Safety Administration, or an employee of a MCSAP grant recipient to inspect and copy any record or inspect and examine equipment, lands, buildings, and other property, in accordance with 49 U.S.C. 504(c), 5121(c), and 14122(b), is subject to a civil penalty of not more than \$1,584 for each offense. Each day of a continuing violation constitutes a separate offense, except that the total of all civil penalties against any violator for all offenses related to a single violation shall not exceed \$15,846.

(i) *Evasion.* A person, or an officer, employee, or agent of that person:

(1) Who by any means tries to evade regulation of motor carriers under title 49, United States Code, chapter 5, chapter 51,

subchapter III of chapter 311 (except sections 31138 and 31139) or section 31302, 31303, 31304, 31305(b), 31310(g)(1)(A), or 31502, or a regulation in subtitle B, chapter I, subchapter C of this title, or this subchapter, issued under any of those provisions, shall be fined at least \$2,730 but not more than \$6,823 for the first violation and at least \$3,409 but not more than \$10,224 for a subsequent violation.

(2) Who tries to evade regulation under part B of subtitle IV, title 49, U.S.C., for carriers or brokers is liable for a penalty of at least \$2,730 for the first violation or at least \$6,823 for a subsequent violation.

PART 578—CIVIL AND CRIMINAL PENALTIES

■ 95. The authority citation for part 578 continues to read as follows:

Authority: Pub. L. 92–513, Pub. L. 94–163, Pub. L. 98–547, Pub. L. 101–410, Pub. L. 102–388, Pub. L. 102–519, Pub. L. 104–134, Pub. L. 109–59, Pub. L. 110–140, Pub. L. 112–141, Pub. L. 114–74, Pub. L. 114–94 (49 U.S.C. 30165, 30170, 30505, 32308, 32309, 32507, 32709, 32710, 32902, 32912, 33114, and 33115); delegation of authority at 49 CFR 1.81, 1.95.

■ 96. Amend § 578.6 by revising paragraphs (a)(1), (a)(2)(i)(B), (a)(3) and (4), (b) through (g), (h)(1), (h)(2) introductory text, (h)(3), and (i) to read as follows:

§ 578.6 Civil penalties for violations of specified provisions of Title 49 of the United States Code.

(a) * * *

(1) *In general.* A person who violates any of sections 30112, 30115, 30117 through 30122, 30123(a), 30125(c), 30127, or 30141 through 30147 of Title 49 of the United States Code or a regulation in this chapter prescribed under any of those sections is liable to the United States Government for a civil penalty of not more than \$27,874 for each violation. A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by any of those sections. The maximum civil penalty under this paragraph (a)(1) for a related series of violations is \$139,356,994.

(2) * * *

(i) * * *

(B) Violates section 30112(a)(2) of Title 49 United States Code, shall be subject to a civil penalty of not more than \$15,846 for each violation. A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by this section. The maximum penalty under this paragraph (a)(2)(i)(B) for a related series of violations is \$23,769,723.

(3) *Section 30166.* A person who violates Section 30166 of Title 49 of the United States Code or a regulation in this chapter prescribed under that section is liable to the United States Government for a civil penalty for failing or refusing to allow or perform an act required under that section or regulation. The maximum penalty under this paragraph (a)(3) is \$27,874 per violation per day. The maximum penalty under this paragraph (a)(3) for a related series of daily violations is \$139,356,994.

(4) *False and misleading reports.* A person who knowingly and willfully submits materially false or misleading information to the Secretary, after certifying the same information as accurate under the certification process established pursuant to Section 30166(o) of Title 49 of the United States Code, shall be subject to a civil penalty of not more than \$6,823 per day. The maximum penalty under this paragraph (a)(4) for a related series of daily violations is \$1,364,624.

(b) *National Automobile Title Information System.* An individual or entity violating 49 U.S.C. Chapter 305 is liable to the United States Government for a civil penalty of not more than \$2,224 for each violation.

(c) *Bumper standards.* (1) A person that violates 49 U.S.C. 32506(a) is liable to the United States Government for a civil penalty of not more than \$3,650 for each violation. A separate violation occurs for each passenger motor vehicle or item of passenger motor vehicle equipment involved in a violation of 49 U.S.C. 32506(a)(1) or (4)—

(i) That does not comply with a standard prescribed under 49 U.S.C. 32502; or

(ii) For which a certificate is not provided, or for which a false or misleading certificate is provided, under 49 U.S.C. 32504.

(2) The maximum civil penalty under this paragraph (c) for a related series of violations is \$4,064,690.

(d) *Consumer information—(1) Crashworthiness and damage susceptibility.* A person who violates 49 U.S.C. 32308(a), regarding crashworthiness and damage susceptibility, is liable to the United States Government for a civil penalty of not more than \$3,650 for each violation. Each failure to provide information or comply with a regulation in violation of 49 U.S.C. 32308(a) is a separate violation. The maximum penalty under this paragraph (d)(1) for a related series of violations is \$1,990,815.

(2) *Consumer tire information.* Any person who fails to comply with the national tire fuel efficiency program under 49 U.S.C. 32304A is liable to the

United States Government for a civil penalty of not more than \$75,541 for each violation.

(e) *Country of origin content labeling.* A manufacturer of a passenger motor vehicle distributed in commerce for sale in the United States that willfully fails to attach the label required under 49 U.S.C. 32304 to a new passenger motor vehicle that the manufacturer manufactures or imports, or a dealer that fails to maintain that label as required under 49 U.S.C. 32304, is liable to the United States Government for a civil penalty of not more than \$2,224 for each violation. Each failure to attach or maintain that label for each vehicle is a separate violation.

(f) *Odometer tampering and disclosure.* (1) A person that violates 49 U.S.C. Chapter 327 or a regulation in this chapter prescribed or order issued thereunder is liable to the United States Government for a civil penalty of not more than \$13,676 for each violation. A separate violation occurs for each motor vehicle or device involved in the violation. The maximum civil penalty under this paragraph (f)(1) for a related series of violations is \$1,364,624.

(2) A person that violates 49 U.S.C. Chapter 327 or a regulation in this chapter prescribed or order issued thereunder, with intent to defraud, is liable for three times the actual damages or \$13,676, whichever is greater.

(g) *Vehicle theft protection.* (1) A person that violates 49 U.S.C. 33114(a)(1)–(4) is liable to the United States Government for a civil penalty of not more than \$2,998 for each violation. The failure of more than one part of a single motor vehicle to conform to an applicable standard under 49 U.S.C. 33102 or 33103 is only a single violation. The maximum penalty under this paragraph (g)(1) for a related series of violations is \$749,432.

(2) A person that violates 49 U.S.C. 33114(a)(5) is liable to the United States Government for a civil penalty of not more than \$222,609 a day for each violation.

(h) *Automobile fuel economy.* (1) A person that violates 49 U.S.C. 32911(a) is liable to the United States Government for a civil penalty of not more than \$52,468 for each violation. A separate violation occurs for each day the violation continues.

(2) Except as provided in 49 U.S.C. 32912(c), a manufacturer that violates a standard prescribed for a model year under 49 U.S.C. 32902 is liable to the United States Government for a civil penalty of \$17 (for model years before model year 2019, the civil penalty is \$5.50; for model years 2019 through 2021, the civil penalty is \$14; for model

year 2022, the civil penalty is \$15; for model year 2023, the civil penalty is \$16; for model year 2024, the civil penalty is \$17), multiplied by each .1 of a mile a gallon by which the applicable average fuel economy standard under that section exceeds the average fuel economy—

* * * * *

(3) If a higher amount for each .1 of a mile a gallon to be used in calculating a civil penalty under paragraph (h)(2) of this section is prescribed pursuant to the process provided in 49 U.S.C. 32912(c), the amount prescribed may not be more than \$33 for each .1 of a mile a gallon.

(i) *Medium- and heavy-duty vehicle fuel efficiency.* The maximum civil penalty for a violation of the fuel consumption standards of 49 CFR part 535 is not more than \$51,668 per vehicle or engine. The maximum civil penalty for a related series of violations shall be determined by multiplying \$51,668 times the vehicle or engine production volume for the model year in question within the regulatory averaging set.

Signed in Washington, DC, on December 18, 2024.

Subash Iyer,

Acting General Counsel.

[FR Doc. 2024–30608 Filed 12–27–24; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

Docket No. FAA–2015–8672; Amdt. No. 91–340E]

RIN 2120–AL96

Extension of the Prohibition Against Certain Flights in Specified Areas of the Sanaa Flight Information Region (FIR) (OYSC)

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

ACTION: Final rule.

SUMMARY: This action extends the prohibition against certain flight operations in specified areas of the Sanaa Flight Information Region (FIR) (OYSC) by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when the operator

of such aircraft is a foreign air carrier, for an additional three years, from January 7, 2025, until January 7, 2028. The FAA finds this action necessary to address significant, unacceptable safety-of-flight risks to U.S. civil aviation operations in the specified areas of the Sanaa FIR (OYSC) stemming from heightened regional tensions associated with Houthi weapons employment and operational activities. Most recently, Houthi forces have engaged in increased weapons employment and operational activities related to the Israel-Gaza Conflict, leading in some cases to air defense responses. The FAA also takes into account the Houthis' recent history of having conducted long-range attacks emanating from the Sanaa FIR (OYSC) in other directions, notably against Saudi Arabia and the United Arab Emirates (UAE) in 2022. The FAA also republishes the approval process and exemption information for this Special Federal Aviation Regulation (SFAR), consistent with other recently published flight prohibition SFARs.

DATES: This final rule is effective on December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Bill Petrak, Flight Standards Service, through the Washington Operations Center, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–3203; email 9-FAA-OverseasFlightProhibitions@faa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This action extends the expiration date of SFAR No. 115, title 14 Code of Federal Regulations (14 CFR) 91.1611, from January 7, 2025, until January 7, 2028. SFAR No. 115 prohibits certain flight operations in the specified areas of the Sanaa FIR (OYSC) by all: U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when the operator of such aircraft is a foreign air carrier. Since the start of the Israel-Gaza Conflict, Houthi forces have launched numerous long-range weaponized unmanned aircraft systems (UAS), missiles, and rockets out of Houthi-controlled territories in Yemen toward intended targets in Israel, the Red Sea, the Gulf of Aden, and the Arabian Sea. These attacks have been likely attempts to strike Israel and hold maritime shipping in the Red Sea, the Gulf of Aden, and the Arabian Sea at risk. Prior to the 2022 UN brokered ceasefire,

which has expired, the Houthis conducted similar long-range attacks against Saudi Arabia and the UAE. Additionally, Houthi forces armed with advanced anti-aircraft weapons systems capable of targeting aircraft at or above standard cruising altitudes have successfully engaged Western intelligence and surveillance aircraft operating over Houthi-controlled territory in Yemen and over the Red Sea.

Consistent with other recently published flight prohibition SFARs, this action also republishes the approval process and exemption information for this flight prohibition SFAR.

II. Authority and Good Cause

A. Authority

The FAA is responsible for the safety of flight in the U.S. and for the safety of U.S. civil operators, U.S.-registered civil aircraft, and U.S.-certificated airmen throughout the world. Section 106(f) of title 49, U.S. Code (U.S.C.), subtitle I, establishes the FAA Administrator's authority to issue rules on aviation safety. Subtitle VII of title 49, Aviation Programs, describes in more detail the scope of the agency's authority. Section 40101(d)(1) provides that the Administrator shall consider in the public interest, among other matters, assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. Section 40105(b)(1)(A) requires the Administrator to exercise this authority consistently with the obligations of the U.S. Government under international agreements.

The FAA is promulgating this rule under the authority described in 49 U.S.C. 44701, General requirements. Under that section, the FAA is charged broadly with promoting safe flight of U.S. civil aircraft in air commerce by prescribing, among other things, regulations and minimum standards for practices, methods, and procedures that the Administrator finds necessary for safety in air commerce and national security.

This regulation is within the scope of the FAA's authority because it continues to prohibit the persons described in paragraph (a) of SFAR No. 115, § 91.1611, from conducting flight operations in the specified areas of the Sanaa FIR (OYSC) due to the continuing significant hazards to the safety of U.S. civil flight operations, as described in the preamble to this final rule.

B. Good Cause for Immediate Adoption

Section 553(b)(B) of title 5, U.S.C., authorizes agencies to dispense with

notice and comment procedures for rules when the agency for "good cause" finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Also, section 553(d) permits agencies, upon a finding of good cause, to issue rules with an effective date less than 30 days from the date of publication. In this instance, the FAA finds good cause to forgo notice and comment and the delayed effective date because they would be impracticable and contrary to the public interest.

Providing notice and the opportunity for the public to comment here would be impracticable. The FAA's flight prohibitions, and any amendments thereto, need to include appropriate boundaries that reflect the agency's current understanding of the risk environment for U.S. civil aviation. This allows the FAA to protect the safety of U.S. operators' aircraft and the lives of their passengers and crews without over-restricting or under-restricting U.S. operators' routing options. However, the risk environment for U.S. civil aviation in airspace managed by other countries with respect to safety of flight is fluid in circumstances involving fighting, violent extremist and militant activity, or periods of heightened tensions, particularly where weapons capable of targeting or otherwise negatively affecting U.S. civil aviation are or may be present. This fluidity, and the potential for rapid changes in the risks to U.S. civil aviation, significantly limits how far in advance of a new or amended flight prohibition the FAA can usefully assess the risk environment. The delay that would be occasioned by providing an opportunity to comment on this action would significantly increase the risk that the resulting final action would not accurately reflect the current risks to U.S. civil aviation associated with the situation and thus would not establish boundaries for the flight prohibition commensurate with those risks.

While the FAA sought and responded to public comments, the boundaries of the area in which unacceptable risks to the safety of U.S. civil aviation existed might change due to: evolving military or political circumstances; violent extremist and militant group activity; the introduction, removal, or repositioning of more advanced anti-aircraft weapon systems; or other factors. As a result, if the situation improved while the FAA sought and responded to public comments, the rule the FAA finalized might be over-restrictive, unnecessarily limiting U.S. operators' routing options and potentially causing them to incur unnecessary additional fuel and

operations-related costs, as well as potentially causing passengers to incur unnecessarily some costs attributed to their time. Conversely, if the situation deteriorated while the FAA sought and responded to public comments, the rule the FAA finalized might be under-restrictive, allowing U.S. civil aviation to continue operating in areas where unacceptable risks to their safety had developed. Such an outcome would endanger the safety of these aircraft, as well as their passengers and crews, exposing them to unacceptable risks of death, injury, and property damage that could occur if a U.S. operator's aircraft were shot down (or otherwise damaged) while operating in the specified areas of the Sanaa FIR (OYSC).

Alternatively, if the FAA made changes to the area in which U.S. civil aviation operations would be prohibited between a notice of proposed rulemaking and a final rule due to changed conditions, the version of the rule the public commented on would no longer reflect the FAA's current assessment of the risk environment for U.S. civil aviation.

In addition, seeking comment would be contrary to the public interest because some of the rational basis for the rulemaking is based upon classified information and controlled unclassified information not authorized for public release. In order to meaningfully provide comment on a proposal, the public would need access to the basis for the agency's decision-making, which the FAA cannot provide. Disclosing classified information or controlled unclassified information not authorized for public release in order to seek meaningful comment on the proposal would harm the public interest. Accordingly, the FAA meaningfully seeking comment on the proposal is contrary to the public interest.

Therefore, providing notice and the opportunity for comment would be impracticable as it would hinder the FAA's ability to maintain appropriate flight prohibitions based on up-to-date risk assessments of the risks to the safety of U.S. civil aviation operations in airspace managed by other countries. It would also be contrary to the public interest, as the FAA cannot protect classified information and controlled unclassified information not authorized for public release and meaningfully seek public comment.

For the same reasons discussed above, the potential safety impacts and the need for prompt action on up-to-date information that is not public would make delaying the effective date impracticable and contrary to the public interest.

Accordingly, the FAA finds good cause exists to forgo notice and comment and any delay in the effective date for this rule.

III. Background

In its most recent extension of the prohibition against certain flights in specified areas of the Sanaa FIR (OYSC),^{1 2} the FAA continued to assess the situation in the specified areas of the Sanaa FIR (OYSC) as presenting significant, continuing safety-of-flight risks for U.S. civil aviation due to the ongoing conflict between the Saudi-led Coalition (SLC) and Houthi forces and the enduring extremist or militant threat to U.S. civil aviation operations in those areas. Houthi forces had continued to develop, acquire, and employ advanced weapons capabilities, including and nontraditional air defense capabilities, UAS, and missile capabilities. Collectively, such capabilities posed risks to U.S. civil aviation operations at all altitudes in the specified areas of the Sanaa FIR (OYSC) and at airports in Yemen.

Houthi forces operated multiple air defense systems capable of targeting aircraft at various altitudes. They had employed increasingly capable Iranian-supplied surface-to-air missiles (SAMs) and electro-optical/infrared seeker air-to-air missiles modified for use as SAMs to engage aircraft. Houthi air defense capabilities posed an inadvertent risk to U.S. civil aviation operations due to the potential for misidentification or miscalculation by irregular forces using advanced air defense capabilities for which they may not have received adequate training and may not have had adequate air surveillance information to distinguish accurately between civil aircraft and potential airborne threats. In the preamble to the December 2021 final rule, the FAA stated that it continued to assess, at that time, that Houthi forces

in Yemen did not possess functional medium-/long-range strategic SAM capabilities. Houthi forces have subsequently acquired longer range anti-aircraft weapon systems.

Additionally, as described in the preamble to the December 2021 final rule, Houthi forces had targeted international airports in the region using weaponized UAS, ballistic, and cruise missiles. Although the FAA noted that some Houthi offensive weapons systems had range capabilities that would allow them to reach the limited areas of the Sanaa FIR (OYSC) in which the FAA permits U.S. civil aviation to operate, Houthi forces had not demonstrated an intent to conduct weaponized UAS or missile attacks in those areas. Instead, they had focused these types of attacks primarily on targets in Saudi Arabia and in contested areas of Yemen. In addition, in the preamble to the December 2021 final rule, the FAA assessed Houthi weaponized UAS operations would only present a safety-of-flight hazard to civil aircraft operating off the Yemeni coast if such aircraft were operating below cruising altitudes.

Besides the safety-of-flight risks associated with the SLC-Houthi conflict, in the preamble to the December 7, 2021 final rule, the FAA assessed extremist or militant groups operating in Yemen likely had access to anti-aircraft-capable weapons, including man-portable air defense systems (MANPADS), which pose risks up to 25,000 feet. Al-Qa'ida in the Arabian Peninsula (AQAP) continued to operate in Yemen and historically had attempted to attack Western civil aviation through novel improvised explosive devices, including the failed 2009 underwear bombing attempt on a U.S.-bound flight and the 2010 printer cartridge plot that targeted U.S.-bound cargo flights. Additionally, Islamic State of Iraq and ash-Sham (ISIS) cells remained active in Yemen.

IV. Discussion of the Final Rule

The FAA has assessed the situation in the specified areas of the Sanaa FIR (OYSC) and determined that it continues to be hazardous for U.S. civil aviation. Since the beginning of the Israel-Gaza Conflict in October 2023, Houthi forces have launched numerous attacks likely targeting Israel and maritime shipping in the Red Sea, the Gulf of Aden, and the Arabian Sea using a variety of weapons including cruise missiles, anti-ship ballistic missiles, and weaponized UAS. Such attacks present significant risks to safety-of-flight of U.S. civil aviation in the specified areas of the Sanaa FIR (OYSC) addressed by this flight prohibition SFAR. Although

the majority of these attacks primarily pose low-altitude risks, Houthi-launched ballistic missiles pose risks to aircraft operating at or above standard cruising altitudes, as ballistic missile trajectories may ascend through or over established air routes. Additionally, ballistic missile operations can negatively affect flight safety in the event of a missile failure, as falling debris may descend through air routes.

Houthi forces are also equipped with a variety of advanced anti-aircraft weapons—including various MANPADS, SAMs, and Iranian-proliferated loitering munition systems—capable of targeting aircraft at or above standard cruising altitudes. In 2023 and 2024, the Houthis used these systems to successfully intercept multiple U.S. intelligence, surveillance, and reconnaissance UAS over Yemen and the Red Sea. These weapon systems pose risks to civil aviation operations over Houthi-controlled territory in Yemen, with ranges extending beyond the specified areas of the Sanaa FIR (OYSC). For example, in November 2023, the Houthis claimed responsibility for having allegedly shot down a MQ-9 Reaper off the western coast of Yemen. Additionally, in late May 2024, the Houthis claimed responsibility for shooting down another MQ-9 near Marib, Yemen. Houthi air defense operations have continued over Houthi-controlled territory in Yemen and off Yemen's west coast, in likely attempts to intercept Western military reconnaissance operations. The FAA remains concerned that Houthi forces operating advanced anti-aircraft weapons may not have adequate training or adequate air surveillance information to distinguish accurately between civil aircraft and potential airborne threats. There are concerns that Houthi forces may now possess functional medium-range SAMs. These circumstances present an unacceptable inadvertent risk of aircraft misidentification, which could result in the accidental shoot down of a civil aircraft, in the specified areas of the Sanaa FIR (OYSC).

Additionally, AQAP and ISIS have remained active in Yemen and likely have access to a variety of weapons, including small arms; small commercially-available UAS, which can be weaponized; and potentially legacy MANPADS, posing risks to aircraft up to 25,000 feet.

Collectively, the various threat actors' existing capabilities, coupled with their demonstrated intent to use these weapons, presents a continued, significant, and unacceptable level of risk to U.S. civil aviation operations at

¹ *Extension of the Prohibition Against Certain Flights in Specified Areas of the Sanaa Flight Information Region (FIR) (OYSC)* final rule, 86 FR 69167 (Dec. 7, 2021).

² Subsequent to the publication of the 2021 final rule, the FAA became aware the International Civil Aviation Organization (ICAO) Middle East Air Navigation Planning and Implementation Regional Group approved an update to the Regional Air Navigation Plan to amend certain waypoints. Some of the amendments affected waypoints used by the FAA to demarcate the boundary between the airspace in which U.S. operators are prohibited from conducting operations and the airspace in which U.S. operators are permitted to operate. To address the amendments of waypoints, on September 22, 2023, the FAA published a technical amendment in the *Federal Register* identifying the new waypoint names and locations to clarify where U.S. operators are prohibited from conducting operations due to flight safety risks associated with the conflict in Yemen and where they are permitted to operate. 88 FR 65319.

all altitudes in the specified areas of the Sanaa FIR (OYSC). Houthis cross-border attacks into Saudi Arabia and the UAE ceased following an April 2022 United Nations (UN)-brokered temporary ceasefire between the Houthis and the SLC, even though the temporary ceasefire expired in the fall of 2022 without the Houthis and the SLC agreeing to a longer-term formal ceasefire. However, SLC-Houthi cross-border attacks could resume with little or no warning—a risk that has significantly increased since the start of the Israel-Gaza Conflict in October 2023 due to increased regional volatility.

Therefore, the FAA extends the expiration date of SFAR No. 115, § 91.1611, from January 7, 2025, until January 7, 2028, without any changes to the boundaries of the SFAR.

If the risk to U.S. civil aviation safety and security decreases to an acceptable level, then further amendments to SFAR No. 115, § 91.1611, might be appropriate. The FAA will continue to monitor the situation and evaluate the extent to which persons described in paragraph (a) of this rule might be able to operate safely in the specified areas of the Sanaa FIR (OYSC).

The FAA also republishes the details concerning the approval and exemption processes in sections V and VI of this preamble, consistent with other recently published flight prohibition SFARs, to enable interested persons to refer to this final rule for comprehensive information about requesting relief from the FAA from the provisions of SFAR No. 115, § 91.1611.

V. Approval Process Based on a Request From a Department, Agency, or Instrumentality of the United States Government

A. Approval Process Based on an Authorization Request From a Department, Agency, or Instrumentality of the United States Government

In some instances, U.S. Government departments, agencies, or instrumentalities may need to engage U.S. civil aviation to support their activities in the specified areas of the Sanaa FIR (OYSC). If a department, agency, or instrumentality of the U.S. Government determines that it has a critical need to engage any person described in paragraph (a) of SFAR No. 115, § 91.1611, including a U.S. air carrier or commercial operator, to transport civilian or military passengers or cargo or conduct other operations in the specified areas of the Sanaa FIR (OYSC), that department, agency, or instrumentality may request the FAA to approve persons described in paragraph

(a) of SFAR No. 115, § 91.1611, to conduct such operations.

The requesting U.S. Government department, agency, or instrumentality must submit the request for approval to the FAA's Associate Administrator for Aviation Safety in a letter signed by an appropriate senior official of the requesting department, agency, or instrumentality.³ The FAA will not accept or consider requests for approval from anyone other than the requesting U.S. Government department, agency, or instrumentality. In addition, the senior official signing the letter requesting FAA approval must be sufficiently positioned within the requesting department, agency, or instrumentality to demonstrate that the organization's senior leadership supports the request for approval and is committed to taking all necessary steps to minimize aviation safety and security risks to the proposed flights. The senior official must also be in a position to: (1) attest to the accuracy of all representations made to the FAA in the request for approval, and (2) ensure that any support from the requesting U.S. Government department, agency, or instrumentality described in the request for approval is in fact brought to bear and is maintained over time. Unless justified by exigent circumstances, requesting U.S. Government departments, agencies, or instrumentalities must submit requests for approval to the FAA no less than 30 calendar days before the date on which the requesting department, agency, or instrumentality wishes the operator(s) to commence the proposed operation(s).

The requestor must send the request to the Associate Administrator for Aviation Safety, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591. Electronic submissions are acceptable, and the requesting entity may request that the FAA notify it electronically as to whether the FAA grants the request for approval. If a requestor wishes to make an electronic submission to the FAA, the requestor should contact the Washington Operations Center by telephone at (202) 267-3203 or by email at 9-FAA-OverseasFlightProhibitions@faa.gov for submission instructions. The requestor must not submit its letter requesting FAA approval or related supporting documentation to the

³ This approval procedure applies to U.S. Government departments, agencies, or instrumentalities; it does not apply to the public. The FAA describes this procedure in the interest of providing transparency with respect to the FAA's process for interacting with U.S. Government departments, agencies, or instrumentalities that seek to engage U.S. civil aviation to operate in the area in which this SFAR would prohibit their operations in the absence of specific FAA approval.

Washington Operations Center. Rather, the Washington Operations Center will refer the requestor to an appropriate staff member of the Flight Standards Service for further assistance.

A single letter may request approval from the FAA for multiple persons described in SFAR No. 115, § 91.1611, or for multiple flight operations. To the extent known, the letter must identify the person(s) the requester expects the SFAR to cover on whose behalf the U.S. Government department, agency, or instrumentality seeks FAA approval, and it must describe—

- The proposed operation(s), including the nature of the mission being supported;
- The service the person(s) covered by the SFAR will provide;
- To the extent known, the specific locations in the specified areas of the Sanaa FIR (OYSC) where the proposed operation(s) will occur, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the specified areas of the Sanaa FIR (OYSC) and the airports, airfields, or landing zones at which the aircraft will take off and land; and
- The method by which the requesting department, agency, or instrumentality will provide, or how the operator will otherwise obtain, current threat information and an explanation of how the operator will integrate this information into all phases of the proposed operations (*i.e.*, the pre-mission planning and briefing, in-flight, and post-flight phases).

The request for approval must also include a list of operators with whom the U.S. Government department, agency, or instrumentality requesting FAA approval has a current contract(s), grant(s), or cooperative agreement(s) (or its prime contractor has a subcontract(s)) for specific flight operations in the specified areas of the Sanaa FIR (OYSC). The requestor may identify additional operators to the FAA at any time after the FAA issues its approval. Neither the operators listed in the original request, nor any operators the requestor subsequently seeks to add to the approval, may commence operations under the approval until the FAA issues them an Operations Specification (OpSpec) or Letter of Authorization (LOA), as appropriate, for operations in the specified areas of the Sanaa FIR (OYSC). The approval conditions discussed below apply to all operators. Requestors should contact the Washington Operations Center by telephone at (202) 267-3203 or by email at 9-FAA-OverseasFlightProhibitions@faa.gov for instructions on how to submit the names of additional

operators the requestor wishes to add to an existing approval to the FAA. The requestor must not submit the names of additional operators it wishes to add to an existing approval to the Washington Operations Center. Rather, the Washington Operations Center will refer the requestor to an appropriate staff member of the Flight Standards Service for further assistance.

If an approval request includes classified information or controlled unclassified information not authorized for public release, requestors may contact the Washington Operations Center for instructions on submitting it to the FAA. The Washington Operations Center's contact information appears in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

FAA approval of an operation under SFAR No. 115, § 91.1611, does not relieve persons subject to this SFAR of the responsibility to comply with all other applicable FAA rules and regulations. Operators of civil aircraft must comply with the conditions of their certificates, OpSpecs, and LOAs, as applicable. Operators must also comply with all rules and regulations of other U.S. Government departments, agencies, or instrumentalities that may apply to the proposed operation(s), including, but not limited to, regulations issued by the Transportation Security Administration.

B. Approval Conditions

If the FAA approves the request, the FAA's Aviation Safety organization will send an approval letter to the requesting U.S. Government department, agency, or instrumentality informing it that the FAA's approval is subject to all of the following conditions:

(1) The approval will stipulate those procedures and conditions that limit, to the greatest degree possible, the risk to the operator, while still allowing the operator to achieve its operational objectives.

(2) Before any approval takes effect, the operator must submit to the FAA:

(a) A written release of the U.S. Government from all damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising out of or related to the approved operations in the specified areas of the Sanaa FIR (OYSC); and

(b) The operator's written agreement to indemnify the U.S. Government with respect to any and all third-party damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising out of or related to the approved

operations in the specified areas of the Sanaa FIR (OYSC).

(3) Other conditions the FAA may specify, including those the FAA might impose in OpSpecs or LOAs, as applicable.

The release and agreement to indemnify do not preclude an operator from raising a claim under an applicable non-premium war risk insurance policy the FAA issues under chapter 443 of title 49, U.S. Code.

If the FAA approves the proposed operation(s), the FAA will issue an OpSpec or LOA, as applicable, to the operator(s) identified in the original request and any operators the requestor subsequently adds to the approval, authorizing them to conduct the approved operation(s). In addition, as stated in paragraph (3) of this section V.B., the FAA notes that it may include additional conditions beyond those contained in the approval letter in any OpSpec or LOA associated with a particular operator operating under this approval, as necessary in the interests of aviation safety. U.S. Government departments, agencies, and instrumentalities requesting FAA approval on behalf of entities with which they have a contract or subcontract, grant, or cooperative agreement should request a copy of the relevant OpSpec or LOA directly from the entity with which they have any of the foregoing types of arrangements, if desired.

VI. Information Regarding Petitions for Exemption

Any operations not conducted under an approval the FAA issues through the approval process set forth previously may only occur in accordance with an exemption from SFAR No. 115, § 91.1611. A petition for exemption must comply with 14 CFR part 11. The FAA will consider whether exceptional circumstances exist beyond those described in the approval process in the previous section. To determine whether a petition for exemption from the prohibition this SFAR establishes fulfills the standards described in 14 CFR 11.81, the FAA consistently finds necessary the following information:

- The proposed operation(s), including the nature of the operation;
- The service the person(s) covered by the SFAR will provide;
- The specific locations in the specified areas of the Sanaa FIR (OYSC) where the proposed operation(s) will occur, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the specified areas of the Sanaa FIR (OYSC) and the

airports, airfields, or landing zones at which the aircraft will take off and land;

- The method by which the operator will obtain current threat information and an explanation of how the operator will integrate this information into all phases of its proposed operations (*i.e.*, the pre-mission planning and briefing, in-flight, and post-flight phases); and
- The plans and procedures the operator will use to minimize the risks identified in this preamble to the proposed operations, to support the relief sought and demonstrate that granting such relief would not adversely affect safety or would provide a level of safety at least equal to that provided by this SFAR. The FAA has found comprehensive, organized plans and procedures of this nature to be helpful in facilitating the agency's safety evaluation of petitions for exemption from flight prohibition SFARs.

The FAA includes, as a condition of each such exemption it issues, a release and agreement to indemnify, as described previously.

The FAA recognizes that, with the support of the U.S. Government, the governments of other countries could plan operations that may be affected by SFAR No. 115, § 91.1611. While the FAA will not permit these operations through the approval process, the FAA will consider exemption requests for such operations on an expedited basis and in accordance with the order of preference set forth in paragraph (c) of SFAR No. 115, § 91.1611.

If a petition for exemption includes information that is sensitive for security reasons or proprietary information, requestors may contact the Washington Operations Center for instructions on submitting it to the FAA. The Washington Operations Center's contact information is listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule. Requestors must not submit their petitions for exemption or related supporting documentation to the Washington Operations Center. Rather, the Washington Operations Center will refer the requestor to the appropriate staff member of the Flight Standards Service or the Office of Rulemaking for further assistance.

VII. Regulatory Notices and Analyses

Federal agencies consider the impacts of regulatory actions under a variety of executive orders and other requirements. First, Executive Order 12866, Executive Order 13563, and Executive Order 14094 ("Modernizing Regulatory Review") direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the

intended regulation justify the costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is \$183 million using the most current (2023) Implicit Price Deflator for the Gross Domestic Product. This portion of the preamble summarizes the FAA’s analysis of the economic impacts of this final rule.

In conducting these analyses, the FAA has determined this final rule has benefits that justify its costs. This rule is a significant regulatory action, as defined in section 3(f)(4) of Executive Order 12866 as amended by Executive Order 14094. As 5 U.S.C. 553 does not require notice and comment for this final rule, 5 U.S.C. 603 and 604 do not require regulatory flexibility analyses regarding impacts on small entities. This rule will not create unnecessary obstacles to the foreign commerce of the United States. This rule will not impose an unfunded mandate on State, local, or Tribal governments, or on the private sector, by exceeding the threshold identified previously.

A. Regulatory Evaluation

This rule prohibits U.S. civil flights in the specified areas of the Sanaa FIR (OYSC) due to the significant hazards to U.S. civil aviation described in this preamble. The alternative flight routes result in some additional fuel and operations costs to the operators, as well as some costs attributed to passenger time. Accordingly, the incremental costs of the extension of this flight prohibition SFAR are minimal. By prohibiting unsafe flights, the benefits of this rule will exceed the minimal flight deviation costs. Therefore, the FAA finds that the incremental costs of extending SFAR No. 115, 14 CFR 91.1611, will be minimal and are exceeded by the benefits of avoided risks of deaths, injuries, and property damage that could occur if a U.S. operator’s aircraft were shot down (or otherwise damaged) while operating in

the specified areas of the Sanaa FIR (OYSC).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), in 5 U.S.C. 603, requires an agency to prepare an initial regulatory flexibility analysis describing impacts on small entities whenever 5 U.S.C. 553 or any other law requires an agency to publish a general notice of proposed rulemaking for any proposed rule. Similarly, 5 U.S.C. 604 requires an agency to prepare a final regulatory flexibility analysis when an agency issues a final rule under 5 U.S.C. 553 after that section or any other law requires publication of a general notice of proposed rulemaking. The FAA concludes good cause exists to forgo notice and comment and to not delay the effective date for this rule. As 5 U.S.C. 553 does not require notice and comment in this situation, 5 U.S.C. 603 and 604 similarly do not require regulatory flexibility analyses.

C. International Trade Impact Assessment

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

The FAA has assessed the potential effect of this final rule and determined that its purpose is to protect the safety of U.S. civil aviation from risks to their operations in the specified areas of the Sanaa FIR (OYSC), a location outside the U.S. Therefore, the rule complies with the Trade Agreements Act of 1979.

D. Unfunded Mandates Assessment

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

uses an inflation-adjusted value of \$183 million in lieu of \$100 million.

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

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires the FAA to consider the impact of paperwork and other information collection burdens it imposes on the public. The FAA has determined no new requirement for information collection is associated with this final rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, the FAA’s policy is to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined no ICAO Standards and Recommended Practices correspond to this regulation. The FAA finds this action is fully consistent with the obligations under 49 U.S.C. 40105(b)(1)(A) to ensure the FAA exercises its duties consistently with the obligations of the United States under international agreements.

While the FAA’s flight prohibition does not apply to foreign air carriers, DOT codeshare authorizations prohibit foreign air carriers from carrying a U.S. codeshare partner’s code on a flight segment that operates in airspace for which the FAA has issued a flight prohibition for U.S. civil aviation. In addition, foreign air carriers and other foreign operators may choose to avoid, or be advised or directed by their civil aviation authorities to avoid, airspace for which the FAA has issued a flight prohibition for U.S. civil aviation.

G. Environmental Analysis

The FAA has analyzed this action under Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, and DOT Order 5610.1C, Paragraph 16. Executive Order 12114 requires the FAA to be informed of environmental considerations and take those considerations into account when making decisions on major Federal actions that could have environmental impacts anywhere beyond the borders of the United States. The FAA has determined this action is exempt pursuant to Section 2–5(a)(i) of Executive Order 12114 because it does not have the potential for a significant effect on the environment outside the United States.

In accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 8–6(c), the FAA has prepared a memorandum for the record stating the reason(s) for this determination and has placed it in the docket for this rulemaking.

VIII. Executive Order Determinations

A. Executive Order 13132, Federalism

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

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

The FAA analyzed this rule under Executive Order 13211. The agency has determined it is not a “significant energy action” under the Executive order and will not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

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

IX. Additional Information

A. Electronic Access

Except for classified and controlled unclassified material not authorized for public release, all documents the FAA considered in developing this rule, including economic analyses and technical reports, may be accessed from the internet through the docket for this rulemaking.

Those documents may be viewed online at <https://www.regulations.gov> using the docket number listed above. A copy of this rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365

days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register’s website at <https://www.federalregister.gov> and the Government Publishing Office’s website at <https://www.govinfo.gov>. A copy may also be found at the FAA’s Regulations and Policies website at https://www.faa.gov/regulations_policies.

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

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121) (set forth as a note to 5 U.S.C. 601) requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the persons listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit https://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Yemen.

The Amendment

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

PART 91—GENERAL OPERATING AND FLIGHT RULES

- 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534; Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note); Sec. 828 of Pub. L. 118–63, 138 Stat. 1330 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

- 2. Amend § 91.1611 by revising paragraph (e) to read as follows:

§ 91.1611 Special Federal Aviation Regulation No. 115—Prohibition against certain flights in specified areas of the Sanaa Flight Information Region (FIR) (OYSC).

* * * * *

(e) *Expiration.* This SFAR will remain in effect until January 7, 2028. The FAA may amend, rescind, or extend this SFAR, as necessary.

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5).

Michael G. Whitaker,

Administrator.

[FR Doc. 2024–31188 Filed 12–27–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 107

[Docket No. FAA–2024–2403]

Accepted Means of Compliance for Small Unmanned Aircraft Category 2 and Category 3 Operations Over Human Beings; Virginia Tech Mid-Atlantic Aviation Partnership (VT MAAP)

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

ACTION: Notification of availability.

SUMMARY: This document announces the acceptance of a means of compliance with FAA regulations for small unmanned aircraft (sUA) Category 2 and Category 3 operations over human beings. The Administrator finds that VT MAAP’s “Operation of Small Unmanned Aircraft Systems Over People,” version 2.1, dated August 9, 2024, provides an acceptable means, but not the only means, of showing compliance with FAA regulations.

DATES: Effective December 30, 2024.

FOR FURTHER INFORMATION CONTACT:

FAA Contact: Kimberly Luu, Cabin Safety Section, AIR–624, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3414; email Kimberly.H.Luu@faa.gov.

VT MAAP Contact: Robert Briggs, UAS Chief Engineer, 1991 Kraft Drive, Suite 2018, Blacksburg, VA 24061, (540) 231–9373; rbriggs@vt.edu.

SUPPLEMENTARY INFORMATION:

Background

Title 14, Code of Federal Regulations, part 107, subpart D, prescribes the eligibility and operating requirements for civil sUA to operate over human beings in the United States. To be eligible for use, the sUA must meet the requirements of § 107.120(a) for Category 2 operations or § 107.130(a) for Category 3 operations. These sections require the sUA to be designed, produced, or modified such that it will not cause injury to a human being above a specified severity limit, does not contain any exposed rotating parts that would lacerate human skin, and does not contain any safety defects. Section 107.155 requires that means of compliance with § 107.120(a) or § 107.130(a) be established and FAA-accepted. Section 107.160 requires an applicant to declare that sUA for Category 2 or Category 3 operations meet an FAA-accepted means of compliance.

Means of Compliance Accepted

This notice of availability serves as a formal acceptance by the FAA of VT MAAP's "Operation of Small Unmanned Aircraft Systems Over People," version 2.1, as an acceptable means of compliance, but not the only means of compliance with §§ 107.120(a) and 107.130(a). Applicants may also propose alternative means of compliance for FAA review and possible acceptance.

Revisions

Revisions to VT MAAP's "Operation of Small Unmanned Aircraft Systems Over People," version 2.1, will not be automatically accepted and will require further FAA acceptance for any revisions to be considered an accepted means of compliance.

Issued in Kansas City, Missouri, on December 20, 2024.

Patrick R. Mullen,

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

[FR Doc. 2024–31234 Filed 12–27–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 107**

[Docket No. FAA–2024–1975]

Accepted Means of Compliance for Small Unmanned Aircraft Category 3 Operations Over Human Beings; Wingtra AG

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This document announces the acceptance of a means of compliance with FAA regulations for small unmanned aircraft (sUA) Category 3 operations over human beings. The Administrator finds that Wingtra AG's "Proposed Means of Compliance for Operations Over People (OOP)," dated April 30, 2024, provides an acceptable means, but not the only means, of showing compliance with FAA regulations.

DATES: Effective December 30, 2024.

FOR FURTHER INFORMATION CONTACT:

FAA Contact: Kimberly Luu, Cabin Safety Section, AIR–624, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3414; email Kimberly.H.Luu@faa.gov (mail to: Kimberly.H.Luu@faa.gov).

Wingtra AG Contact: Armin Ambuehl, CTO, Giesshübelstrasse 40, 8045 Zurich, Switzerland, +41 799032851; hello@wingtra.com (mail to: hello@wingtra.com).

SUPPLEMENTARY INFORMATION:**Background**

Title 14, Code of Federal Regulations, part 107, subpart D, prescribes the eligibility and operating requirements for civil sUA to operate over human beings in the United States. To be eligible for use, the sUA must meet the requirements of § 107.130(a) for Category 3 operations. These sections require the sUA to be designed, produced, or modified such that it will not cause injury to a human being above a specified severity limit, does not contain any exposed rotating parts that would lacerate human skin, and does not contain any safety defects. Section 107.155 requires that means of compliance with § 107.130(a) be established and FAA-accepted. Section 107.160 requires an applicant to declare

that sUA for Category 3 operations meet an FAA-accepted means of compliance.

Means of Compliance Accepted

This notification of availability serves as a formal acceptance by the FAA of Wingtra AG's "Proposed Means of Compliance for Operations Over People (OOP)," dated April 30, 2024, as an acceptable means of compliance, but not the only means of compliance with § 107.130(a) for Category 3 operations. Applicants may also propose alternative means of compliance for FAA review and possible acceptance.

Revisions

Revisions to Wingtra AG's "Proposed Means of Compliance for Operations Over People (OOP)," dated April 30, 2024, will not be automatically accepted, and will require further FAA acceptance for any revisions to be considered as an accepted means of compliance.

Issued in Kansas City, Missouri, on December 20, 2024.

Patrick R. Mullen,

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

[FR Doc. 2024–31237 Filed 12–27–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE**Office of the Secretary****15 CFR Part 6**

[Docket No. 241030–0284]

RIN 0605–AA69

Civil Monetary Penalty Adjustments for Inflation

AGENCY: Office of the Chief Financial Officer and Assistant Secretary for Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: This final rule is being issued to adjust for inflation each civil monetary penalty (CMP) provided by law within the jurisdiction of the United States Department of Commerce (Department of Commerce). The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, required the head of each agency to adjust for inflation its CMP levels in effect as of November 2, 2015, under a revised methodology that was effective for 2016 which provided for initial

catch up adjustments for inflation in 2016, and requires adjustments for inflation to CMPs under a revised methodology for each year thereafter. The Department of Commerce's 2025 adjustments for inflation to CMPs apply only to CMPs with a dollar amount, and will not apply to CMPs written as functions of violations. The Department of Commerce's 2025 adjustments for inflation to CMPs apply only to those CMPs, including those whose associated violation predated such adjustment, which are assessed by the Department of Commerce after the effective date of the new CMP level.

DATES: This rule is effective January 15, 2025.

FOR FURTHER INFORMATION CONTACT:

Stephen M. Kunze, Deputy Chief Financial Officer and Director for Financial Management, Office of Financial Management, at (202) 482-1207, Department of Commerce, 1401 Constitution Avenue NW, Room D200, Washington, DC 20230. The Department of Commerce's Civil Monetary Penalty Adjustments for Inflation are available for downloading from the Department of Commerce, Office of Financial Management's website at the following address: <https://www.commerce.gov/ofm/publications>.

SUPPLEMENTARY INFORMATION:

Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410; 28 U.S.C. 2461), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134), provided for agencies' adjustments for inflation to CMPs to ensure that CMPs continue to maintain their deterrent value and that CMPs due to the Federal Government were properly accounted for and collected.

A CMP is defined as any penalty, fine, or other sanction that:

1. Is for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; and,
2. Is assessed or enforced by an agency pursuant to Federal law; and,
3. Is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

On November 2, 2015, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L. 114-74) further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to improve the effectiveness of CMPs and to maintain their deterrent effect. This amendment

(1) required agencies to adjust the CMP levels in effect as of November 2, 2015, with initial catch up adjustments for inflation through a final rulemaking to take effect no later than August 1, 2016; and (2) requires agencies to make subsequent annual adjustments for inflation to CMPs that shall take effect not later than January 15. The Department of Commerce's previous 2024 adjustments for inflation to CMPs were published in the **Federal Register** on December 27, 2023, and the new CMP levels became effective January 15, 2024.

The Department of Commerce's 2025 adjustments for inflation to CMPs apply only to CMPs with a dollar amount, and will not apply to CMPs written as functions of violations. These 2025 adjustments for inflation apply only to those CMPs, including those whose associated violation predated such adjustment, which are assessed by the Department of Commerce after the effective date of the new CMP level.

This regulation adjusts for inflation CMPs that are provided by law within the jurisdiction of the Department of Commerce. The actual CMP assessed for a particular violation is dependent upon a variety of factors. For example, the National Oceanic and Atmospheric Administration's (NOAA) Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions (Penalty Policy), a compilation of NOAA internal guidelines that are used when assessing CMPs for violations for most of the statutes NOAA enforces, will be interpreted in a manner consistent with this regulation to maintain the deterrent effect of the CMPs. The CMP ranges in the Penalty Policy are intended to aid enforcement attorneys in determining the appropriate CMP to assess for a particular violation. NOAA's Penalty Policy is maintained and made available to the public on NOAA's Office of the General Counsel, Enforcement Section website at: <https://www.noaa.gov/general-counsel/gc-enforcement-section>.

The Department of Commerce's 2025 adjustments for inflation to CMPs set forth in this regulation were determined pursuant to the methodology prescribed by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which requires the maximum CMP, or the minimum and maximum CMP, as applicable, to be increased by the cost-of-living adjustment. The term "cost-of-living adjustment" is defined by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. For the 2025 adjustments for inflation to CMPs, the cost-of-living

adjustment is the percentage for each CMP by which the Consumer Price Index for the month of October 2024 exceeds the Consumer Price Index for the month of October 2023.

Classification

Pursuant to 5 U.S.C. 553(b)(3)(B), there is good cause to issue this rule without prior public notice or opportunity for public comment because it would be unnecessary. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701(b)) requires agencies to make annual adjustments for inflation to CMPs notwithstanding section 553 of title 5, United States Code.

Additionally, the methodology used for adjusting CMPs for inflation is given by statute, with no discretion provided to agencies regarding the substance of the adjustments for inflation to CMPs. The Department of Commerce is charged only with performing ministerial computations to determine the dollar amounts of adjustments for inflation to CMPs. Accordingly, prior public notice and an opportunity for public comment are not required for this rule. For the same reasons, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104-13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because there are no new or revised recordkeeping or reporting requirements.

Regulatory Analysis

E.O. 12866, Regulatory Review

This rule is not a significant regulatory action as that term is defined in Executive Order 12866.

Regulatory Flexibility Act

Because notice of proposed rulemaking and opportunity for comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

List of Subjects in 15 CFR Part 6

Civil monetary penalties, Law enforcement.

Dated: December 20, 2024.

Stephen M. Kunze,

*Deputy Chief Financial Officer and Director
for Financial Management, Department of
Commerce.*

Authority and Issuance

■ For the reasons stated in the preamble, the Department of Commerce revises 15 CFR part 6 to read as follows:

PART 6—CIVIL MONETARY PENALTY ADJUSTMENTS FOR INFLATION

Sec.

6.1 Definitions.

6.2 Purpose and scope.

6.3 Adjustments for inflation to civil monetary penalties.

6.4 Effective date of adjustments for inflation to civil monetary penalties.

6.5 Subsequent annual adjustments for inflation to civil monetary penalties.

Authority: Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–134, 110 Stat. 1321 (31 U.S.C. 3701 note); Sec. 701 of Pub. L. 114–74, 129 Stat. 599 (28 U.S.C. 1 note; 28 U.S.C. 2461 note).

§ 6.1 Definitions.

(a) The *Department of Commerce* means the United States Department of Commerce.

(b) *Civil Monetary Penalty* means any penalty, fine, or other sanction that:

(1) Is for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; and

(2) Is assessed or enforced by an agency pursuant to Federal law; and

(3) Is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

§ 6.2 Purpose and scope.

The purpose of this part is to make adjustments for inflation to civil monetary penalties, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410; 28 U.S.C. 2461), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L. 114–74), of each civil monetary penalty provided by law within the jurisdiction of the United States Department of Commerce (Department of Commerce).

§ 6.3 Adjustments for inflation to civil monetary penalties.

The civil monetary penalties provided by law within the jurisdiction of the Department of Commerce, as set forth in paragraphs (a) through (f) of this section, are hereby adjusted for inflation in accordance with the Federal Civil Penalties Inflation Adjustment Act of

1990, as amended, from the amounts of such civil monetary penalties that were in effect as of January 15, 2024, to the amounts of such civil monetary penalties, as thus adjusted. The year stated in parenthesis represents the year that the civil monetary penalty was last set by law or adjusted by law (excluding adjustments for inflation).

(a) *United States Department of Commerce.* (1) 31 U.S.C. 3802(a)(1), Program Fraud Civil Remedies Act of 1986 (1986), violation, maximum from \$13,946 to \$14,308.

(2) 31 U.S.C. 3802(a)(2), Program Fraud Civil Remedies Act of 1986 (1986), violation, maximum from \$13,946 to \$14,308.

(3) 31 U.S.C. 3729(a)(1)(G), False Claims Act (1986); violation, minimum from \$13,946 to \$14,308; maximum from \$27,894 to \$28,619.

(b) *Bureau of Economic Analysis.* 22 U.S.C. 3105(a), International Investment and Trade in Services Act (1990); failure to furnish information, minimum from \$5,761 to \$5,911; maximum from \$57,617 to \$59,114.

(c) *Bureau of Industry and Security.* (1) 15 U.S.C. 5408(b)(1), Fastener Quality Act (1990), violation, maximum from \$57,617 to \$59,114.

(2) 22 U.S.C. 6761(a)(1)(A), Chemical Weapons Convention Implementation Act (1998), violation, maximum from \$46,901 to \$48,119.

(3) 22 U.S.C. 6761(a)(1)(B), Chemical Weapons Convention Implementation Act (1998), violation, maximum from \$9,380 to \$9,624.

(4) 50 U.S.C. 1705(b), International Emergency Economic Powers Act (2007), violation, maximum from \$368,136 to \$377,700.

(5) 22 U.S.C. 8142(a), United States Additional Protocol Implementation Act (2006), violation, maximum from \$38,116 to \$39,106.

(6) 50 U.S.C. 4819, Export Controls Act of 2018 (2018), violation, maximum from \$364,992 to \$374,474.

(d) *Census Bureau.* (1) 13 U.S.C. 304, Collection of Foreign Trade Statistics (2002), each day's delinquency of a violation; total of not to exceed maximum per violation, from \$1,696 to \$1,740; maximum per violation, from \$16,971 to \$17,412.

(2) 13 U.S.C. 305(b), Collection of Foreign Trade Statistics (2002), violation, maximum from \$16,971 to \$17,412.

(e) *International Trade Administration.* (1) 19 U.S.C. 81s, Foreign Trade Zone (1934), violation, maximum from \$3,558 to \$3,650.

(2) 19 U.S.C. 1677f(f)(4), U.S.-Canada Free Trade Agreement Protective Order

(1988), violation, maximum from \$255,964 to \$262,614.

(f) *National Oceanic and Atmospheric Administration.* (1) 51 U.S.C. 60123(a), Land Remote Sensing Policy Act of 1992, as amended (2010), violation, maximum from \$14,067 to \$14,432.

(2) 51 U.S.C. 60148(c), Land Remote Sensing Policy Act of 1992, as amended (2010), violation, maximum from \$14,067 to \$14,432.

(3) 16 U.S.C. 773f(a), Northern Pacific Halibut Act of 1982 (2007), violation, maximum from \$294,510 to \$302,161.

(4) 16 U.S.C. 783, Sponge Act (1914), violation, maximum from \$2,103 to \$2,158.

(5) 16 U.S.C. 957(d), (e), and (f), Tuna Conventions Act of 1950 (1962):

(i) Violation of 16 U.S.C. 957(a), maximum from \$105,105 to \$107,836.

(ii) Subsequent violation of 16 U.S.C. 957(a), maximum from \$226,380 to \$232,261.

(iii) Violation of 16 U.S.C. 957(b), maximum from \$3,558 to \$3,650.

(iv) Subsequent violation of 16 U.S.C. 957(b), maximum from \$21,022 to \$21,568.

(v) Violation of 16 U.S.C. 957(c), maximum from \$452,761 to \$464,524.

(6) 16 U.S.C. 957(i), Tuna Conventions Act of 1950,¹ violation, maximum from \$230,464 to \$236,451.

(7) 16 U.S.C. 959, Tuna Conventions Act of 1950,² violation, maximum from \$230,464 to \$236,451.

(8) 16 U.S.C. 971f(a), Atlantic Tunas Convention Act of 1975,³ violation, maximum from \$230,464 to \$236,451.

(9) 16 U.S.C. 973f(a), South Pacific Tuna Act of 1988 (1988), violation, maximum from \$639,908 to \$656,533.

(10) 16 U.S.C. 1174(b), Fur Seal Act Amendments of 1983 (1983), violation, maximum from \$30,461 to \$31,252.

(11) 16 U.S.C. 1375(a)(1), Marine Mammal Protection Act of 1972 (1972), violation, maximum from \$35,574 to \$36,498.

(12) 16 U.S.C. 1385(e), Dolphin Protection Consumer Information Act,⁴ violation, maximum from \$230,464 to \$236,451.

(13) 16 U.S.C. 1437(d)(1), National Marine Sanctuaries Act (1992), violation, maximum from \$216,972 to \$222,609.

(14) 16 U.S.C. 1540(a)(1), Endangered Species Act of 1973:

¹ This National Oceanic and Atmospheric Administration maximum civil monetary penalty, as prescribed by law, is the maximum civil monetary penalty per 16 U.S.C. 1858(a), Magnuson-Stevens Fishery Conservation and Management Act civil monetary penalty (paragraph (f)(15) of this section).

² See footnote 1.

³ See footnote 1.

⁴ See footnote 1.

(i) Violation as specified (1988), maximum from \$63,991 to \$65,653.

(ii) Violation as specified (1988), maximum from \$30,715 to \$31,513.

(iii) Otherwise violation (1978), maximum from \$2,103 to \$2,158.

(15) 16 U.S.C. 1858(a), Magnuson-Stevens Fishery Conservation and Management Act (1990), violation, maximum from \$230,464 to \$236,451.

(16) 16 U.S.C. 2437(a), Antarctic Marine Living Resources Convention Act of 1984,⁵ violation, maximum from \$230,464 to \$236,451.

(17) 16 U.S.C. 2465(a), Antarctic Protection Act of 1990,⁶ violation, maximum from \$230,464 to \$236,451.

(18) 16 U.S.C. 3373(a), Lacey Act Amendments of 1981 (1981):

(i) 16 U.S.C. 3373(a)(1), violation, maximum from \$32,942 to \$33,798.

(ii) 16 U.S.C. 3373(a)(2), violation, maximum from \$823 to \$844.

(19) 16 U.S.C. 3606(b)(1), Atlantic Salmon Convention Act of 1982,⁷ violation, maximum from \$230,464 to \$236,451.

(20) 16 U.S.C. 3637(b), Pacific Salmon Treaty Act of 1985,⁸ violation, maximum from \$230,464 to \$236,451.

(21) 16 U.S.C. 4016(b)(1)(B), Fish and Seafood Promotion Act of 1986 (1986); violation, minimum from \$1,394 to \$1,430; maximum from \$13,946 to \$14,308.

(22) 16 U.S.C. 5010, North Pacific Anadromous Stocks Act of 1992,⁹ violation, maximum from \$230,464 to \$236,451.

(23) 16 U.S.C. 5103(b)(2), Atlantic Coastal Fisheries Cooperative Management Act,¹⁰ violation, maximum from \$230,464 to \$236,451.

(24) 16 U.S.C. 5154(c)(1), Atlantic Striped Bass Conservation Act,¹¹ violation, maximum from \$230,464 to \$236,451.

(25) 16 U.S.C. 5507(a), High Seas Fishing Compliance Act of 1995 (1995), violation, maximum from \$200,174 to \$205,375,

(26) 16 U.S.C. 5606(b), Northwest Atlantic Fisheries Convention Act of 1995,¹² violation, maximum from \$230,464 to \$236,451.

(27) 16 U.S.C. 6905(c), Western and Central Pacific Fisheries Convention Implementation Act,¹³ violation, maximum from \$230,464 to \$236,451.

(28) 16 U.S.C. 7009(c) and (d), Pacific Whiting Act of 2006,¹⁴ violation, maximum from \$230,464 to \$236,451.

(29) 22 U.S.C. 1978(e), Fishermen's Protective Act of 1967 (1971):

(i) Violation, maximum from \$35,574 to \$36,498.

(ii) Subsequent violation, maximum from \$105,105 to \$107,836.

(30) 30 U.S.C. 1462(a), Deep Seabed Hard Mineral Resources Act (1980), violation, maximum, from \$90,702 to \$93,058.

(31) 42 U.S.C. 9152(c), Ocean Thermal Energy Conversion Act of 1980 (1980), violation, maximum from \$90,702 to \$93,058.

(32) 16 U.S.C. 1827a, Billfish Conservation Act of 2012,¹⁵ violation, maximum from \$230,464 to \$236,451.

(33) 16 U.S.C. 7407(b), Port State Measures Agreement Act of 2015,¹⁶ violation, maximum from \$230,464 to \$236,451.

(34) 16 U.S.C. 1826g(f), High Seas Driftnet Fishing Moratorium Protection Act,¹⁷ violation, maximum from \$230,464 to \$236,451.

(35) 16 U.S.C. 7705, Ensuring Access to Pacific Fisheries Act,¹⁸ violation, maximum from \$230,464 to \$236,451.

(36) 16 U.S.C. 7805, Ensuring Access to Pacific Fisheries Act,¹⁹ violation, maximum from \$230,464 to \$236,451.

(37) 16 U.S.C. 1857 note, James M. Inhofe National Defense Authorization Act for Fiscal Year 2023,²⁰ violation, maximum from \$230,464 to \$236,451.

(g) *National Technical Information Service*. 42 U.S.C. 1306c(c), Bipartisan Budget Act of 2013 (2013), violation, minimum from \$1,196 to \$1,227; maximum total penalty on any person for any calendar year, excluding willful or intentional violations, from \$298,887 to \$306,652.

(h) *Office of the Under Secretary for Economic Affairs*. 15 U.S.C. 113, Concrete Masonry Products Research, Education, and Promotion Act of 2018 (2018), violation, maximum from \$5,162 to \$5,296.

§ 6.4 Effective date of adjustments for inflation to civil monetary penalties.

The Department of Commerce's 2025 adjustments for inflation made by § 6.3, of the civil monetary penalties there specified, are effective on January 15, 2025, and said civil monetary penalties, as thus adjusted by the adjustments for inflation made by § 6.3, apply only to

those civil monetary penalties, including those whose associated violation predated such adjustment, which are assessed by the Department of Commerce after the effective date of the new civil monetary penalty level, and before the effective date of any future adjustments for inflation to civil monetary penalties thereto made subsequent to January 15, 2025 as provided in § 6.5.

§ 6.5 Subsequent annual adjustments for inflation to civil monetary penalties.

The Secretary of Commerce or his or her designee by regulation shall make subsequent adjustments for inflation to the Department of Commerce's civil monetary penalties annually, which shall take effect not later than January 15, notwithstanding section 553 of title 5, United States Code.

[FR Doc. 2024–31310 Filed 12–27–24; 8:45 am]

BILLING CODE 3510-DP-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–1457]

Schedules of Controlled Substances: Extension of Temporary Placement of Seven Specific Fentanyl-Related Substances in Schedule I of the Controlled Substances Act

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Temporary rule; temporary scheduling order; extension.

SUMMARY: The Administrator of the Drug Enforcement Administration is issuing this temporary scheduling order to extend the temporary schedule I status of seven specific fentanyl-related substances, as identified in this order, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers. These seven substances fall within the definition of fentanyl-related substances set forth in the February 6, 2018, temporary scheduling order. Through the Temporary Reauthorization and Study of Emergency Scheduling of Fentanyl Analogues Act, which became law on February 6, 2020, Congress extended the temporary control of fentanyl-related substances until May 6, 2021. This temporary order was subsequently extended multiple times, most recently on December 29, 2022, through the Consolidated Appropriations Act, 2023, which extended the order until December 31, 2024. This temporary order will extend

⁵ See footnote 1.

⁶ See footnote 1.

⁷ See footnote 1.

⁸ See footnote 1.

⁹ See footnote 1.

¹⁰ See footnote 1.

¹¹ See footnote 1.

¹² See footnote 1.

¹³ See footnote 1.

¹⁴ See footnote 1.

¹⁵ See footnote 1.

¹⁶ See footnote 1.

¹⁷ See footnote 1.

¹⁸ See footnote 1.

¹⁹ See footnote 1.

²⁰ See footnote 1.

the temporary scheduling of seven specific fentanyl-related substances for one year, or until the permanent scheduling action for these substances is completed, whichever occurs first.

DATES: This temporary scheduling order, which extends schedule I control of seven specific substances covered by an order (83 FR 5188, February 6, 2018), is effective December 31, 2024, and expires on December 31, 2025. If DEA publishes a final rule making this scheduling action permanent, this order will expire on the effective date of that rule, if the effective date is earlier than December 31, 2025.

FOR FURTHER INFORMATION CONTACT:

Terrence L. Boos, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152; Telephone: (571) 362-3249.

SUPPLEMENTARY INFORMATION: In this order, the Drug Enforcement Administration (DEA) extends the temporary scheduling of the following seven controlled substances in schedule I of the Controlled Substances Act (CSA), including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

- *para*-chlorofentanyl (*N*-(4-chlorophenyl)-*N*-(1-phenethylpiperidin-4-yl)propionamide),
- *ortho*-chlorofentanyl (*N*-(2-chlorophenyl)-*N*-(1-phenethylpiperidin-4-yl)propionamide),
- *meta*-fluorofuranyl fentanyl (*N*-(3-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)furan-2-carboxamide),
- *ortho*-methylcyclopropyl fentanyl (*N*-(2-methylphenyl)-*N*-(1-phenethylpiperidin-4-yl)cyclopropanecarboxamide),
- *beta*-methylacetyl fentanyl (*N*-phenyl-*N*-(1-(2-phenylpropyl)piperidin-4-yl)acetamide),
- tetrahydrothiofuranyl fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenyltetrahydrothiophene-2-carboxamide),
- *para*-fluoro valeryl fentanyl (*N*-(4-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)pentanamide).

Background and Legal Authority

On February 6, 2018, pursuant to 21 U.S.C. 811(h)(1), DEA published an order in the **Federal Register** temporarily placing fentanyl-related substances, as defined in that order, in schedule I of the CSA based upon a finding that these substances pose an

imminent hazard to the public safety.¹ As discussed below, the seven substances named in this rule meet the existing definition of fentanyl-related substances as they are not otherwise controlled in any other schedule (i.e., not included under another DEA Controlled Substance Code Number) and are structurally related to fentanyl by one or more of the five modifications listed under the definition.

Additionally, as required by 21 U.S.C. 811(h)(2), these specific seven substances have no exemption or approval in effect under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355). That temporary order was effective upon the date of publication. Pursuant to 21 U.S.C. 811(h)(2), the temporary control of fentanyl-related substances, a class of substances as defined in the order, as well as the seven specific substances already covered by that order, was set to expire on February 6, 2020. However, on February 6, 2020, as explained in DEA's April 10, 2020 correcting amendment,² Congress extended that expiration date until May 6, 2021, by enacting the Temporary Reauthorization and Study of the Emergency Scheduling of Fentanyl Analogues Act.³ This temporary order was subsequently extended multiple times, most recently on December 29, 2022, through the Consolidated Appropriations Act, 2023,⁴ which extended the order until December 31, 2024. Consequently, the temporary control of these seven substances will remain in effect until December 31, 2024, unless DEA permanently places them in schedule I prior to that date.

As defined in the February 6, 2018 temporary scheduling order, fentanyl-related substances include any substance not otherwise controlled in any schedule (i.e., not included under any other Administration Controlled Substance Code Number) that is structurally related to fentanyl by one or more of the following modifications:

(A) Replacement of the phenyl portion of the phenethyl group by any monocycle, whether or not further substituted in or on the monocycle;

(B) substitution in or on the phenethyl group with alkyl, alkenyl, alkoxy, hydroxyl, halo, haloalkyl, amino or nitro groups;

(C) substitution in or on the piperidine ring with alkyl, alkenyl, alkoxy, ester, ether, hydroxyl, halo, haloalkyl, amino or nitro groups;

(D) replacement of the aniline ring with any aromatic monocycle whether or not further substituted in or on the aromatic monocycle; and/or

(E) replacement of the *N*-propionyl group by another acyl group.

Further, according to the temporary scheduling order, the existence of a substance with any one, or any combination, of the above-mentioned modifications would meet the structural requirements of the definition of fentanyl-related substance. The present seven substances were not otherwise controlled under any schedule at the time of the temporary order and are covered by the order due to having the following modifications:

1. *para*-chlorofentanyl: substitution on the aniline ring (meets definition for modification D);

2. *ortho*-chlorofentanyl: substitution on the aniline ring (meets definition for modification D);

3. *meta*-fluorofuranyl fentanyl: substitution on the aniline ring and replacement of the *N*-propionyl group with another acyl group (meets definition for modifications D and E);

4. *ortho*-methylcyclopropyl fentanyl: substitution on the aniline ring and replacement of the *N*-propionyl group with another acyl group (meets definition for modifications D and E);

5. *beta*-methylacetyl fentanyl: substitution on the phenethyl group with an alkyl group and replacement of the *N*-propionyl group with another acyl group (meets definition for modifications B and E);

6. tetrahydrothiofuranyl fentanyl: replacement of the *N*-propionyl group with another acyl group (meets definition for modification E);

7. *para*-fluoro valeryl fentanyl: substitution on the aniline ring and replacement of the *N*-propionyl group with another acyl group (meets definition for modifications D and E).

As noted above, these specific seven substances have no exemption or approval in effect under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355). As explained above, the temporary control of these seven substances will remain in effect until December 31, 2024, unless DEA permanently places them in schedule I prior to that date. However, the CSA also provides that during the pendency of proceedings to permanently schedule a substance under 21 U.S.C. 811(a)(1), such temporary scheduling may be

¹ *Schedules of Controlled Substances: Temporary Placement of Fentanyl-Related Substances in Schedule I*, 83 FR 5188 (Feb. 6, 2018).

² *Schedules of Controlled Substances: Temporary Placement of Fentanyl-Related Substances in Schedule I; Correction*, 85 FR 20155 (Apr. 10, 2020).

³ Public Law 116-114, sec. 2, 134 Stat. 103.

⁴ Public Law 117-328, division O, title VI, sec. 601.

extended for up to one year.⁵ Proceedings under 21 U.S.C. 811(a) may be initiated by the Attorney General (delegated to the Administrator of DEA pursuant to 28 CFR 0.100) on his own motion, at the request of the Secretary of Health and Human Services,⁶ or on the petition of any interested party.⁷

The Administrator of DEA, on her own motion pursuant to 21 U.S.C. 811(a), has initiated proceedings under 21 U.S.C. 811(a)(1) to permanently schedule these seven fentanyl-related substances: *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl. DEA has gathered and reviewed the available information regarding the pharmacology, chemistry, trafficking, actual abuse, pattern of abuse, and the relative potential for abuse for these substances. On April 3, 2023, DEA submitted a request to HHS to provide DEA with a scientific and medical evaluation of available information and a scheduling recommendation for these seven fentanyl-related substances (*para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl) in accordance with 21 U.S.C. 811(b) and (c).

Upon evaluating the scientific and medical evidence, on October 25, 2024, HHS provided DEA with a scientific and medical evaluation and scheduling recommendation to place these seven fentanyl-related substances in schedule I of the CSA.

Upon receipt of the scientific and medical evaluation and scheduling recommendation from HHS, DEA reviewed the documents, and all other relevant data, and conducted its own eight-factor analysis of the abuse potential of these seven fentanyl-related substances in accordance with 21 U.S.C. 811(c). Based on this review, as discussed elsewhere in this issue of the

Federal Register, DEA is publishing a notice of proposed rulemaking for the placement of these seven fentanyl-related substances in schedule I of the CSA. If the proposed rule is finalized, DEA will publish a final rule in the **Federal Register**.

Pursuant to 21 U.S.C. 811(h)(2), the Administrator orders that the temporary scheduling of seven substances, covered by the February 6, 2018 temporary scheduling order, be extended for one year, or until the permanent scheduling proceeding is completed, whichever occurs first. These seven substances are: *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl, including their isomers, esters, ethers, salts and salts of isomers, esters, and ethers.

In accordance with this temporary scheduling order, the schedule I requirements for handling *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl, including their isomers, esters, ethers, salts and salts of isomers, esters, ethers, will remain in effect for one year, or until the permanent scheduling proceeding is completed, whichever occurs first.

Regulatory Matters

The CSA provides for an expedited temporary scheduling action where such action is necessary to avoid an imminent hazard to the public safety.⁸ This provision of the CSA allows the Attorney General, by order, to schedule a substance in schedule I on a temporary basis.⁹ It also provides that the temporary scheduling of a substance shall expire at the end of two years from the date of the issuance of the order scheduling such substance, except that the Attorney General may, during the pendency of proceedings to permanently schedule the substance, extend the temporary scheduling for up to one year.

To the extent that 21 U.S.C. 811(h) directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued and extended, the notice and comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this extension of the temporary scheduling

action.¹⁰ The APA expressly differentiates between orders and rules, as it defines an “order” to mean a “final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making.”¹¹ This contrasts with permanent scheduling actions, which are subject to formal rulemaking procedures done “on the record after opportunity for a hearing,” and final decisions that conclude the scheduling process and are subject to judicial review.¹² The specific language chosen by Congress indicates an intention for DEA to proceed through the issuance of an order instead of proceeding by rulemaking. Given that Congress specifically requires the Attorney General to follow rulemaking procedures for other kinds of scheduling actions,¹³ it is noteworthy that, in subsection 811(h), Congress authorized the issuance of temporary scheduling actions by order rather than by rule.

In the alternative, even if this action were subject to 5 U.S.C. 553, the Administrator finds that there is good cause to forgo the notice-and-comment requirements and the delayed effective date requirements of such section, as any further delays in the process for extending the temporary scheduling order would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety that these substances would present if scheduling expired, for the reasons expressed in the temporary scheduling order.¹⁴

Further, DEA believes that this order extending the temporary scheduling action is not a “rule” as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act (RFA). The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, DEA is not required by section 553 of the APA or any other law to publish a general notice of proposed

⁵ Though DEA has used the term “final order” with respect to temporary scheduling orders in the past, this document adheres to the statutory language of 21 U.S.C. 811(h), which refers to a “temporary scheduling order.” No substantive change is intended.

⁶ Because the Secretary of the Department of Health and Human Services has delegated to the Assistant Secretary for Health of the Department of Health and Human Services the authority to make domestic drug scheduling recommendations, for purposes of this temporary order, all subsequent references to “Secretary” have been replaced with “Assistant Secretary.”

⁷ 21 U.S.C. 811(a).

⁸ 21 U.S.C. 811(h).

⁹ *Id.*

¹⁰ Even if this action were subject to section 553 of the APA, the Administrator finds that there is good cause to forgo the notice and comment requirements of section 553, as any further delays in the process for extending the temporary scheduling order would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety.

¹¹ 5 U.S.C. 551(6) (emphasis added).

¹² 21 U.S.C. 811(a) and 877.

¹³ See 21 U.S.C. 811(a).

¹⁴ See *Schedules of Controlled Substances: Temporary Placement of Butonitazene, Etodesnitazene, Flunitazene, Metodesnitazene, Metonitazene, N-Pyrrolidino etonitazene, and Protonitazene in Schedule I*, 87 FR 21556 (Apr. 12, 2022).

rulemaking. Therefore, in this instance, since DEA believes this temporary scheduling action is not a “rule,” it is not subject to the requirements of the RFA when issuing this temporary action.

Additionally, in accordance with the principles of Executive Orders (E.O.) 12866, 13563, and 14094, this action is not a significant regulatory action. E.O. 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). E.O. 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in E.O. 12866. E.O. 12866, sec. 3(f), as amended by E.O. 14094, sec. 1(b), provides the definition of a “significant regulatory action,” requiring review by the Office of Management and Budget. Because this is not a rulemaking action, this is not a significant regulatory action as defined in section 3(f) of E.O. 12866.

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. Therefore, in accordance with Executive Order 13132 (Federalism), it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

As noted above, this action is an order, not a rule. Accordingly, the Congressional Review Act (CRA) is inapplicable, as it applies only to rules. However, if this were a rule, pursuant to the CRA, “any rule for which an agency for good cause finds that notice and public procedure thereon are

impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the federal agency promulgating the rule determines.”¹⁵

It is in the public interest to maintain the temporary placement of these seven substances in schedule I because they pose a public health risk. These substances are: *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl. The temporary scheduling action was taken pursuant to 21 U.S.C. 811(h), which is specifically designed to enable DEA to act in an expeditious manner to avoid an imminent hazard to the public safety. Under 21 U.S.C. 811(h), temporary scheduling orders are not subject to notice and comment rulemaking procedures. The CSA frames temporary scheduling actions as orders rather than rules to ensure that the process moves swiftly, and this extension of the temporary scheduling order for these seven substances continues to serve that purpose. For the same reasons that underlie 21 U.S.C. 811(h), that is, the need to keep these seven substances in schedule I because they pose an imminent hazard to public safety, it would be contrary to the public interest to delay implementation of this extension of the temporary scheduling order. Therefore, in accordance with section 808(2) of the CRA, this order extending the temporary scheduling order for seven specific substances, currently covered under the definition of fentanyl-related substances in the temporary order, shall take effect immediately upon its publication.

DEA has submitted a copy of this temporary order to both Houses of Congress and to the Comptroller General, although such filing is not required under the Small Business

Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act), 5 U.S.C. 801–808, because, as noted above, this action is an order, not a rule.

Signing Authority

This document of the Drug Enforcement Administration was signed on December 19, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the Federal Register.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, DEA amends 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.11, add paragraphs (h)(70) through (76) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(h) * * *

(70) <i>N</i> -phenyl- <i>N</i> -(1-(2-phenylpropyl)piperidin-4-yl)acetamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers; other name: <i>beta</i> -methylacetyl fentanyl	9868
(71) <i>N</i> -(3-fluorophenyl)- <i>N</i> -(1-phenethylpiperidin-4-yl)furan-2-carboxamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers; other name: <i>meta</i> -Fluorofuranyl fentanyl)	9871
(72) <i>N</i> -(2-chlorophenyl)- <i>N</i> -(1-phenethylpiperidin-4-yl)propionamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers; other name: <i>ortho</i> -Chlorofentanyl)	9828
(73) <i>N</i> -(2-methylphenyl)- <i>N</i> -(1-phenethylpiperidin-4-yl)cyclopropanecarboxamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers; other name: <i>ortho</i> -methylcyclopropylfentanyl)	9849
(74) <i>N</i> -(4-chlorophenyl)- <i>N</i> -(1-phenethylpiperidin-4-yl)propionamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers; other name: <i>para</i> -Chlorofentanyl)	9818
(75) <i>N</i> -(4-fluorophenyl)- <i>N</i> -(1-phenethylpiperidin-4-yl)pentanamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers; other name: <i>para</i> -fluoro valeryl fentanyl	9870
(76) <i>N</i> -(1-phenethylpiperidin-4-yl)- <i>N</i> -phenyltetrahydrothiophene-2-carboxamide, its isomers, esters, ethers, salts and salts of isomers, esters and ethers; other names: tetrahydrothiofuranyl fentanyl; tetrahydrothiophene fentanyl	9869

¹⁵ 5 U.S.C. 808(2).

[FR Doc. 2024–31130 Filed 12–27–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1****[TD 10020]****RIN 1545–BI22****Reissuance of State or Local Bonds****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Final regulations.

SUMMARY: This document contains final regulations that address when tax-exempt bonds are treated as retired for certain Federal income tax purposes. The final regulations are necessary to unify and to clarify existing guidance on this subject. The final regulations affect State and local governments that issue tax-exempt bonds.

DATES:

Effective date: These regulations are effective on December 30, 2024.

Applicability date: For dates of applicability, see § 1.150–3(f).

FOR FURTHER INFORMATION CONTACT:

Zoran Stojanovic, (202) 317–6980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Authority**

This document contains final regulations that amend the Income Tax Regulations (26 CFR part 1) by adding final regulations under section 150 and amending the regulations under section 1001 of the Internal Revenue Code (Code) to provide rules for determining when tax-exempt bonds are treated as retired for purposes of sections 103 and 141 through 150 of the Code (final regulations).

These final regulations are promulgated under the express delegation of authority in section 7805(a) of the Code, which authorizes the Secretary of the Treasury or her delegate to “prescribe all needful rules and regulations for the enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.”

Background

On December 31, 2018, a notice of proposed rulemaking (REG–141739–08) regarding retirement of tax-exempt bonds was published in the **Federal Register** (83 FR 67701) (proposed regulations). No public hearing was

requested or held. Five public comments responding to the proposed regulations were received and are available at <https://www.regulations.gov> or upon request. After careful consideration of all the written comments, the proposed regulations are adopted as amended by this Treasury decision in response to such comments as described in the *Summary of Comments and Explanation of Revisions*.

1. Overview

In general, under section 103, interest received by the holders of certain bonds issued by State and local governments is exempt from Federal income tax. To qualify for the tax exemption, a bond issued by a State or local government must satisfy various eligibility requirements under sections 141 through 150 at the time of issuance of the bond. If the issuer and holder agree after issuance to modify the terms of a tax-exempt bond significantly, the original bond may be treated as having been retired and exchanged for a newly issued, modified bond. Similarly, if the issuer or its agent acquires and resells the bond, the bond may be treated as having been extinguished upon acquisition and replaced upon resale with a newly issued bond.

The term “reissuance” commonly refers to the effect of a transaction in which a new bond is deemed to be issued in place of an old bond as a result of retirement of the old bond pursuant to such an exchange or extinguishment. In the case of a reissuance, the reissued bond must be retested for qualification under sections 103 and 141 through 150. The reissuance of an issue of tax-exempt bonds may result in various negative consequences to the issuer, such as changes in yield for purposes of the arbitrage investment yield restrictions under section 148(a), acceleration of arbitrage rebate payment obligations under section 148(f), and change-in-law risk.

2. Tender Option Bonds

Tender option bonds and variable rate demand bonds (collectively, tender option bonds) have special features that present reissuance questions. Specifically, tender option bonds have original terms that provide for a tender option interest rate mode, as described in this paragraph. Issuers of tax-exempt bonds often preauthorize several different interest rate modes in the bond documents and retain an option to switch interest rate modes under parameters set forth in the bond documents. During a tender option

mode, tender option bonds have short-term interest rates that are reset periodically at various short-term intervals (typically, every seven days) based on the current market rate necessary to remarket the bonds at par. In connection with each resetting of the interest rate, the holder of a tender option bond has a right or requirement to tender the bond back to the issuer or its agent for purchase at par. Tender option bonds generally are structured with these short-term features supported by put options to enable the bonds to be eligible for purchase by tax-exempt money market funds pursuant to 17 CFR 270.2a–7 (Rule 2a–7 under the Investment Company Act of 1940).

Tender option bonds also may have interest rate mode conversion options that permit the issuer or conduit borrower to change the interest rate mode on the bonds from a tender option mode to another short-term interest rate mode or to a fixed interest rate to maturity. At the time of a conversion to another interest rate mode, the holder of a tender option bond typically has the right or requirement to tender the bond for purchase at par.

Tender option bonds generally have third-party liquidity facilities from banks or other liquidity providers to ensure that there is sufficient cash to repurchase the bonds upon a holder's tender, and they also commonly have credit enhancement from bond insurers or other third-party guarantors. Upon a holder's exercise of its tender rights in connection with either a resetting of the interest rate during a tender option mode or a conversion to another interest rate mode, a remarketing agent or a liquidity provider typically will acquire the bonds subject to the tender and resell the bonds either to the same bondholders or to others willing to purchase such bonds.

3. Existing Guidance

To address reissuance questions related to tax-exempt bonds, on December 27, 1988, the Department of the Treasury (Treasury Department) and the IRS published Notice 88–130, 1988–2 CB 543, which provides rules for determining when a tax-exempt bond is retired for purposes of sections 103 and 141 through 150. Notice 88–130 provides in part that a tax-exempt bond is retired when there is a change to the terms of the bond that results in a disposition of the bond for purposes of section 1001. In addition, Notice 88–130 provides special rules for retirement of certain tender option bonds that meet a definition of the term “qualified tender bond.”

On June 26, 1996, the Treasury Department and the IRS published final regulations under § 1.1001–3 of the Income Tax Regulations (1996 final regulations) in the **Federal Register** (61 FR 32926). The 1996 final regulations provide rules for determining whether a modification of the terms of a debt instrument, including a tax-exempt bond, results in an exchange for purposes of section 1001. In recognition of a need to coordinate the interaction of the prior guidance in Notice 88–130 with the 1996 final regulations for particular tax-exempt bond purposes, the Treasury Department and the IRS stated their intention to issue regulations under section 150 on this subject in the preamble of the 1996 final regulations. See 61 FR 32930.

On April 14, 2008, the Treasury Department and the IRS published Notice 2008–41, 2008–1 CB 742. Like Notice 88–130, Notice 2008–41 provides rules for determining when a tax-exempt bond is retired for purposes of sections 103 and 141 through 150 and includes special rules for qualified tender bonds. While the retirement standards provided in these two notices are similar, Notice 2008–41 was intended to coordinate the retirement standards for tax-exempt bond purposes with the 1996 final regulations on modifications of debt instruments under § 1.1001–3 and to be more administrable than Notice 88–130. In order to preserve flexibility and to limit potential unintended consequences during the 2008 financial crisis, Notice 2008–41 permitted issuers to apply either notice. Generally, under Notice 2008–41, a tax-exempt bond is retired when a significant modification to the terms of the bond occurs under § 1.1001–3, the bond is acquired by or on behalf of its issuer, or the bond is otherwise redeemed or retired. The notice clarifies that, for purposes of these retirement standards, the purchase of a tax-exempt bond by a third-party guarantor or third-party liquidity facility provider pursuant to the terms of the guarantee or liquidity facility is not treated as a purchase or other acquisition by or on behalf of a governmental issuer. Although these general rules apply to a qualified tender bond, Notice 2008–41 also provides that certain features of qualified tender bonds will not result in a retirement. In Notice 2008–41, the Treasury Department and the IRS reiterated their intention to provide guidance on the retirement of tax-exempt bonds in regulations under section 150.

The proposed regulations provide rules for determining when tax-exempt bonds are treated as retired for purposes

of sections 103 and 141 through 150. The proposed regulations also amend § 1.1001–3(a)(2) of the 1996 final regulations to conform that section to the special rules in the proposed regulations for retirement of qualified tender bonds.

Summary of Comments and Explanation of Revisions

After consideration of the public comments, the Treasury Department and the IRS adopt the proposed regulations as amended by this Treasury decision. This section of the preamble discusses the public comments and the revisions made in the final regulations in response to those comments.

1. General Rules for Retirement of a Tax-Exempt Bond

The proposed regulations generally provide standards for determining when a tax-exempt bond is retired for purposes of sections 103 and 141 through 150, including certain special rules for determining when qualified tender bonds are retired.

One comment suggested expanding the scope of the final regulations to cover taxable tax-advantaged bonds, such as direct pay build America bonds and tax credit bonds, because some of those bonds were also issued as tender option bonds that would benefit from the special rules for qualified tender bonds. The authorizations for these taxable tax-advantaged bonds, however, have been very limited in both time and amount, and very few of these bonds have been issued as tender option bonds. Furthermore, section 13404 of Public Law 115–97, 131 Stat. 2054, 2138 (December 22, 2017), commonly referred to as the Tax Cuts and Jobs Act, repealed the existing authority in the Code for taxable tax-advantaged bonds. Because no taxable tax-advantaged bonds currently may be issued and very few historically have been issued as tender option bonds, the Treasury Department and the IRS have determined that expanding the scope of the final regulations to include those bonds lacks sufficient justification. Accordingly, the final regulations do not adopt this comment.

The proposed regulations generally provide that a tax-exempt bond is retired if a significant modification to the terms of the bond occurs under § 1.1001–3, the issuer or an agent acting on its behalf acquires the bond in a manner that liquidates or extinguishes the bondholder's investment in the bond, or the bond is otherwise redeemed (for example, redeemed at maturity).

The final regulations make one technical change to the second general rule regarding debt extinguishment to remove the reference to the “bondholder's investment” and thus to focus more clearly on the merger of interests and attendant extinguishment that occurs when an issuer acquires its own bond either directly or through an agent.

Two comments recommended allowing an issuer to make an election to treat a tax-exempt bond as retired and reissued under the final regulations. These comments noted that it is sometimes unclear whether a transaction results in the retirement and reissuance of a tax-exempt bond. The comments described several specific situations in which such an election could address this uncertainty. The Treasury Department and the IRS recognize that such an election could reasonably reduce the burden on issuers in certain specific situations. However, the Treasury Department and the IRS have concerns that an unrestricted right to elect retirement and reissuance of tax-exempt bonds could result in unintended consequences. In response to this comment and to provide flexibility to address this issue in appropriate, tailored circumstances, the final regulations authorize the Commissioner to publish guidance in the Internal Revenue Bulletin that allows issuers to elect to treat tax-exempt bonds as retired and reissued in specific circumstances for purposes of sections 103 and 141 through 150.

2. Exceptions to Retirement of a Tax-Exempt Bond

The proposed regulations provide three exceptions to the operation of the general rules that limit retirements of tax-exempt bonds. Two of these exceptions prevent the special features of tender option bonds from resulting in a retirement. A third exception applies to all tax-exempt bonds.

A. Definition of Qualified Tender Bond

The first two exceptions in the proposed regulations apply to qualified tender bonds, which are defined to cover tender option bonds that meet certain requirements. Specifically, a qualified tender bond is subject to certain limitations on interest rate, timing of interest payments, and maturity. A qualified tender bond must also include a qualified tender right. The proposed regulations generally define a qualified tender right as a right or obligation of the holder of a bond to tender the bond for purchase by the issuer, its agent, or another party at a purchase price equal to par plus any

accrued interest. Under the proposed regulations, a qualified tender right must also require the issuer or its remarketing agent to redeem the bond or to use reasonable best efforts to resell the bond within the 90 days of the tender at a purchase price equal to par plus any accrued interest.

Four comments urged the Treasury Department and the IRS to amend the definition of a qualified tender right in the final regulations to allow a bond to be resold at a premium or discount price relative to the par amount of the bond (rather than just at a price equal to par as under the proposed regulations) when the qualified tender right is exercised in connection with a conversion of the interest rate mode to a fixed rate for the remaining term of the bond. The comments noted that, when a long-term fixed rate bond is originally issued at par, a sustained upward trend in interest rates can result in the bond having market discount as it is resold in the secondary market. If that market discount exceeds the permitted de minimis amount, the discount will be taxed as ordinary income to the holder. Premium included in the sale price of a long-term fixed rate tax-exempt bond serves as a buffer against market discount as interest rates rise over time. Accordingly, qualified tender bonds resold at a premium upon conversion of the interest rate mode on the bonds to a fixed rate to maturity generally have greater market demand and a lower yield than they would have if resold at par. The comments also noted that, even when an issue of fixed rate tax-exempt bonds is resold at an aggregate net premium price, certain bonds within the issue may be resold at a discount. The comments further noted that Notice 2008–41 permitted qualified tender bonds to be resold at a premium or a discount upon conversion of the interest rate mode to a fixed rate to maturity and treated the premium received by the issuer upon resale of the bonds as additional sale proceeds for purposes of the arbitrage investment restrictions under section 148. The final regulations adopt this comment.

One comment pointed out a technical discrepancy in the proposed regulations under which a bond may be purchased pursuant to a qualified tender right by the issuer, the issuer's agent, or another party, whereas the bond must be resold under the terms of a qualified tender right by the issuer or a remarketing agent. The comment recommended that the final regulations clarify this technical issue in the definition of a qualified tender right so that the parties that may purchase the tendered bond (that is, the issuer, the issuer's agent, or

another party) are also permitted to resell the bond. The comment advised against use of the term “remarketing agent” on the grounds that the party charged with reselling the bond may not be an agent of the issuer and the resale may be a private placement rather than a remarketing. The final regulations adopt this comment.

B. Exceptions to Retirement of a Qualified Tender Bond

A qualified tender bond has two features that could result in retirement of the bond under the general rules for retirement in the proposed regulations. First, the existence or exercise of a qualified tender right in connection with an alteration under the terms of the bond could cause the alteration to be a modification under § 1.1001–3 and, if significant, that modification would result in retirement of the qualified tender bond under § 1.150–3(b)(1) of the proposed regulations. For example, when accompanied by a tender right, an exercise of the issuer's option to change the interest rate or the interest rate mode under the terms of the bond could be a modification under the rule in § 1.1001–3(c)(2)(iii) for alterations that result from the exercise of an option because the holder's resulting right to put the bond to the issuer or its agent under the qualified tender right upon the interest rate conversion could cause the issuer's option to fail to qualify as a unilateral option under § 1.1001–3(c)(3)(i). Similarly, an issuer may be uncertain as to whether the periodic change in interest rate that occurs pursuant to the terms of a bond operating in a tender option mode could be a modification under § 1.1001–3 when accompanied by a tender right. To address these circumstances, the proposed regulations provide a special exception that avoids retirement by disregarding a qualified tender right for purposes of applying § 1.1001–3 to determine whether an alteration of a qualified tender bond constitutes a significant modification under § 1.1001–3 that results in retirement of the bond.

One comment requested that the final regulations clarify whether this exception applies to a qualified tender right arising in connection with any alteration of the terms of the bond or only to a qualified tender right arising in connection with a change in interest rate or interest rate mode. The scope of the analogous provisions in Notices 88–130 and 2008–41 was limited to circumstances covering changes in the interest rate or interest rate mode only. The Treasury Department and the IRS intended for this special rule to be similarly limited in scope. In response

to the comment, the final regulations clarify that the special rule for disregarding a qualified tender right in applying § 1.1001–3 to a qualified tender bond applies only for the purpose of determining whether an alteration of the interest rate or interest rate mode pursuant to the terms of a qualified tender bond results in a retirement. The determination of whether any other alteration to the terms of a qualified tender bond, such as a change in maturity or collateral, results in a retirement under § 1.150–3(b)(1)(i) is made under the general rules in § 1.1001–3 without the benefit of the special exception in § 1.150–3(c)(1), even if the alteration occurs contemporaneously with a change in interest rate or interest rate mode on the bond.

One comment recommended that the final regulations include several additional exceptions to the general rule under § 1.150–3(b)(1) that a bond is retired for purposes of sections 103 and 141 through 150 when a significant modification occurs under § 1.1001–3. Specifically, this comment requested that the final regulations include a rule from Notice 2008–41 that a modification that changes the collateral or credit enhancement on a nonrecourse tax-exempt bond is significant only if the change results in a change in payment expectations under § 1.1001–3(e)(4)(vi). This special rule involved an accommodation for circumstances in the 2008 financial crisis. This comment also requested that the final regulations retain the exception in Notice 88–130 for qualified corrective changes. This exception from 1988 preceded the significant modification standard under § 1.1001–3, which was finalized in the 1996 final regulations. In most circumstances, these qualified corrective changes would not be significant modifications under § 1.1001–3. Further, a significant purpose of the final regulations is to improve administrability in a complex area of law by integrating the rules for retirement of a tax-exempt bond as closely as possible with the existing rules under § 1.1001–3. Accordingly, the final regulations do not adopt these comments.

The second feature of a qualified tender bond that could result in retirement of the bond under the general rules for retirement in the proposed regulations is the feature under which an issuer or its agent may acquire the bond upon the holder's exercise of the qualified tender right. The general rules for retirement treat an acquisition of a bond by an issuer or an issuer's agent in a manner that extinguishes the bond as

a retirement of the bond. To address this circumstance, the proposed regulations provide an exception under which the acquisition of a qualified tender bond pursuant to the exercise of a qualified tender right will not result in retirement, provided that neither the issuer nor its agent holds the bond for longer than 90 days. One comment recommended expanding this special rule to cover all tax-exempt bonds rather than just qualified tender bonds. This exception is limited to qualified tender bonds because the rate-setting mechanism on those bonds may require the issuer or its agent to purchase a tendered bond if a buyer for the bond cannot be found when the bond is tendered. The Treasury Department and the IRS have adopted this limited exception for the narrowly defined class of qualified tender bonds because the acquisition of those bonds occurs pursuant to the ordinary operation of the rate-setting mechanism on those bonds. In addition, qualified tender bonds represent a significant structured type of bonds in the tax-exempt bond market tailored to money market fund investors and the Treasury Department and the IRS have supported this structure with accommodating special rules consistently in all of the existing guidance in this area. Other tax-exempt bonds do not rely on this exception for the ordinary operation of their rate-setting mechanism. The Treasury Department and the IRS decline to expand this exception to allow issuers to hold their own bonds more generally because of concerns regarding the implications for the debt extinguishment principle. Accordingly, the final regulations do not adopt this comment.

One comment recommended continuing a special rule from Notice 2008–41 that modified the definition of program investment for purposes of arbitrage investment restrictions under § 1.148–1(b). Ordinarily, this definition prohibits a conduit borrower of tax-exempt bond proceeds from purchasing the bonds that financed the conduit loan in an amount that is related to the conduit loan. Notice 2008–41 modified this rule so that a conduit borrower could purchase any auction rate bonds that financed the conduit loan, provided the conduit borrower purchased the bonds to facilitate liquidity under adverse market conditions. This special rule permitted conduit borrowers to buy those bonds to address extraordinary circumstances in the 2008 financial crisis and to increase liquidity at a time of market crisis involving the collapse of the auction rate bond market and

downgrades of bond insurers. The Treasury Department and the IRS decline to extend this special rule beyond the conditions under which the rule was promulgated. Accordingly, the final regulations do not adopt this comment.

C. Additional Exceptions for All Tax-Exempt Bonds

The proposed regulations also provide an exception to the general rules of retirement for all tax-exempt bonds. This exception, carried forward from Notice 2008–41, provides that acquisition of a tax-exempt bond by a guarantor or liquidity facility provider acting as the issuer's agent does not result in retirement of the bond if the acquisition is pursuant to the terms of the guarantee or liquidity facility and the guarantor or liquidity facility provider is not a related party (as defined in § 1.150–1(b)) to the issuer. No public comments were received on this provision. The final regulations adopt this provision without change.

The proposed regulations provide that a tax-exempt bond is retired for purposes of sections 103 and 141 through 150 when a significant modification occurs under § 1.1001–3. Section 1.1001–3(e)(5)(i) generally provides that, subject to the special rule in § 1.1001–3(f)(7), a modification of a debt instrument that results in an instrument or property right that is not debt for Federal income tax purposes is a significant modification. Section 1.1001–3(f)(7)(ii)(A) generally provides that, in determining whether a modification of a debt instrument results in an instrument or property right that is not debt, any deterioration in the financial condition of the obligor between the issue date of the debt instrument and the date of the modification is not taken into account. One comment recommended that, when new bonds are issued and the proceeds are used to currently refund outstanding bonds, issuers be allowed to apply the credit deterioration rule in § 1.1001–3(f)(7) to treat the new bonds as a continuation of the refunded bonds for purposes of sections 103 and 141 through 150. The Treasury Department and the IRS have concluded that there is not sufficient justification to expand the scope of the final regulations to include rules for new issuances of tax-exempt bonds. Accordingly, the final regulations do not adopt this comment.

3. Effect of Retirement of a Tax-Exempt Bond

The proposed regulations prescribe certain consequences for a bond that is retired pursuant to a deemed exchange

under § 1.1001–3 or retired following the acquisition of the bond by the issuer or the issuer's agent. Upon a deemed exchange under § 1.1001–3, the bond is treated as a new bond issued at the time of the significant modification as determined under § 1.1001–3. Upon an issuer's acquisition of its own bond, absent any special rule, the bond is extinguished and retired. One comment recommended permitting an issuer that purchases its own tax-exempt bond to treat the resale of that bond as a refunding of the bond extinguished by the purchase. The comment suggested that the issuer be permitted to allocate the proceeds from the resale of the bond to the expenditure incurred in the purchase of the bond under rules similar to the rules for using proceeds of tax-exempt bonds to “reimburse” previous expenditures under the reimbursement expenditure rules in § 1.150–2. Section 1.150–2(g)(1), however, specifically prohibits using bond proceeds to reimburse expenditures incurred in repayment of tax-exempt bonds. Modification of the reimbursement rules to encompass refundings of extinguished and retired bonds is beyond the scope of the final regulations. The final regulations do not adopt this comment.

4. Applicability Dates

Under the proposed regulations, the final rules would apply to events and actions taken with respect to bonds that occur on or after the date that is 90 days after the date of publication of the final regulations in the **Federal Register**. The proposed regulations further state that issuers may apply the proposed regulations to events and actions taken with respect to bonds that occur before that date. One comment recommended applying the final regulations only to bonds issued after the applicability date of the final regulations. This comment noted that outstanding bonds are structured to avoid retirement under the existing guidance and potentially might not avoid retirement under the final regulations. The Treasury Department and the IRS are concerned that this approach would continue the application of the disparate existing guidance in this area for a substantial period of time for the entire current outstanding volume of tax-exempt bonds in the municipal bond market. The principal goals of the final regulations are to unify, clarify, and improve the administrability of the existing guidance on retirement of tax-exempt bonds. The Treasury Department and the IRS have determined that publishing the final regulations without also obsoleting

Notice 88–130 and Notice 2008–41 would undermine the unifying and streamlining purposes of the final regulations. In addition, the final regulations and Notice 2008–41 are similar and generally should produce similar results in most cases outside of special circumstances involving the 2008 financial crisis. Accordingly, the final regulations do not adopt this comment.

However, to provide a longer transition period for outstanding tax-exempt bonds, the final regulations provide a period of one year from the date the final regulations are published in the **Federal Register** during which issuers may continue to apply Notice 88–130 or Notice 2008–41. As a result, the final regulations apply to events occurring and actions taken with respect to bonds on or after December 30, 2025, though an issuer may choose to apply the final regulations to events occurring and actions taken with respect to bonds on or after December 30, 2024.

Effect on Other Documents

Notice 88–130 and Notice 2008–41 are obsolete as of December 30, 2025.

Special Analyses

I. Regulatory Planning and Review

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

II. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA), it is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities. The final regulations affect State and local governments that issue tax-exempt bonds. States are not considered small entities for purposes of the RFA but small governmental jurisdictions (jurisdictions with populations less than 50,000) are considered small entities. The Treasury Department and the IRS do not have data on how many small governmental jurisdictions may be affected by these regulations, but it may be a substantial number.

Even if a substantial number of small entities are affected, the economic impact of these regulations will not be significant. These final regulations consolidate and clarify the existing guidance on retirement and reissuance of tax-exempt bonds published in

Notices 88–130 and 2008–41. Therefore, these final regulations will not create additional obligations for, or impose an economic impact on, a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small governmental jurisdictions and no comments were received.

III. Unfunded Mandates Reform Act

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

IV. Executive Order 13132: Federalism

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

V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Statement of Availability of IRS Documents

Any IRS Revenue Procedure, Revenue Ruling, Notice, or other guidance cited in this document is published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office,

Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

Drafting Information

The principal author of these regulations is Zoran Stojanovic of the Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.150–3 is added to read as follows:

§ 1.150–3 Retirement standards for state and local bonds.

(a) *General purpose and scope.* This section provides rules to determine when a tax-exempt bond is retired solely for purposes of sections 103 and 141 through 150 of the Internal Revenue Code (Code).

(b) *Retirement of a tax-exempt bond—*(1) *General rules.* Except as otherwise provided in paragraph (c) of this section, a tax-exempt bond is retired when:

- (i) A significant modification of the bond occurs under § 1.1001–3;
- (ii) The issuer or its agent acquires the bond in a manner that extinguishes the bond; or
- (iii) The bond is otherwise redeemed (for example, redeemed at maturity).

(2) *Elective retirement.* In guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(a) of this chapter), the Commissioner may set forth specific circumstances under which an issuer may elect to treat a tax-exempt bond as retired for purposes of sections 103 and 141 through 150 of the Code.

(c) *Exceptions to general rules for retirement of a tax-exempt bond—*(1) *Qualified tender right disregarded for certain purposes.* In applying § 1.1001–3 to a qualified tender bond for purposes of paragraph (b)(1)(i) of this section, both the existence and exercise of a qualified tender right are disregarded for purposes of determining whether an alteration of the interest rate

or interest rate mode that occurs pursuant to the terms of the bond is a modification. Thus, an issuer's exercise of an option to alter the interest rate or interest rate mode on a qualified tender bond generally is not a modification under § 1.1001–3 because the alteration occurs by operation of the terms of the bond and the holder's resulting right to put the bond to the issuer or the issuer's agent pursuant to the disregarded qualified tender right does not prevent the issuer's option from qualifying as a unilateral option under § 1.1001–3(c)(3) that would not give rise to a modification.

(2) *Acquisition pursuant to a qualified tender right.* An acquisition of a qualified tender bond by the issuer or its agent does not result in the retirement of the bond under paragraph (b)(1)(ii) of this section if the acquisition is pursuant to the operation of a qualified tender right and neither the issuer nor its agent continues to hold the bond after the close of the 90-day period beginning on the date of the tender.

(3) *Acquisition of a tax-exempt bond by a guarantor or liquidity facility provider.* An acquisition of a tax-exempt bond by a guarantor or liquidity facility provider acting on the issuer's behalf does not result in the retirement of the bond under paragraph (b)(1)(ii) of this section if the acquisition is pursuant to the terms of the guarantee or liquidity facility and the guarantor or liquidity facility provider is not a related party (as defined in § 1.150–1(b)) to the issuer.

(d) *Effect of retirement.* If a bond is retired pursuant to paragraph (b)(1)(i) of this section (that is, in a transaction treated as an exchange of the bond for a bond with modified terms), the bond is treated as a new bond issued at the time of the modification as determined under § 1.1001–3. If the issuer or its agent resells a bond retired pursuant to paragraph (b)(1)(ii) of this section, the bond is treated as a new bond issued on the date of resale. The rules of § 1.150–1(d) apply to determine if the new bond is part of a refunding issue.

(e) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Issuer* means the State or local governmental unit (as defined in § 1.103–1) that actually issues the tax-exempt bond and any related party (as defined in § 1.150–1(b)) to the actual issuer (as distinguished, for example, from a conduit borrower that is not a related party to the actual issuer).

(2) *Qualified tender bond* means a tax-exempt bond that, pursuant to the terms of the bond, has all of the following features:

(i) During each authorized interest rate mode, the bond bears interest at a

fixed interest rate, a qualified floating rate under § 1.1275–5(b), or an objective rate for a tax-exempt bond under § 1.1275–5(c)(5);

(ii) Interest on the bond is unconditionally payable (as defined in § 1.1273–1(c)(1)(ii)) at periodic intervals of no more than one year;

(iii) The bond has a stated maturity date that is not later than 40 years after the issue date of the bond; and

(iv) The bond includes a qualified tender right.

(3) *Qualified tender right* means a right or obligation of a holder of a tax-exempt bond pursuant to the terms of the bond to tender the bond for purchase as described in this paragraph (e)(3). The purchaser under the tender may be the issuer, its agent, or another party. The tender right is available on at least one date before the stated maturity date. For each such tender, the purchase price of the bond is equal to par (plus any accrued interest). Following each such tender, the issuer, its agent, or another party either redeems the bond or uses reasonable best efforts to resell the bond within the 90-day period beginning on the date of the tender. Upon any such resale, the resale price of the bond is equal to the par amount of the bond (plus any accrued interest), except that, if the tender right is exercised in connection with a conversion of the interest rate mode on the bond to a fixed rate for the remaining term of the bond, the bond may be resold at any price, including a premium price above the par amount of the bond or a discount price below the par amount of the bond (plus any accrued interest). Any premium received by the issuer pursuant to such a resale is treated solely for purposes of the arbitrage investment restrictions under section 148 of the Code as additional sale proceeds of the bonds.

(f) *Applicability date*—(1) *General applicability.* This section applies to events occurring and actions taken with respect to bonds on or after December 30, 2025.

(2) *Permissive applicability.* An issuer may choose to apply this section to events occurring and actions taken with respect to bonds on or after December 30, 2024.

■ **Par. 3.** Section 1.1001–3 is amended by revising paragraph (a)(2) to read as follows:

§ 1.10011.1001–3 Modifications of debt instruments.

(a) * * *

(2) *Tax-exempt bonds.* For special rules governing whether tax-exempt bonds are retired for purposes of

sections 103 and 141 through 150 of the Internal Revenue Code, *see* § 1.150–3.

* * * * *

Douglas W. O'Donnell,

Deputy Commissioner.

Approved: December 8, 2024.

Aviva R. Aron-Dine,

Deputy Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0205]

RIN 1625–AA11

Regulated Navigation Area; Port of Miami, Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a regulated navigation area for certain waters surrounding the Port of Miami. This action is necessary to enhance the protection of high-risk vessel and port operations while reducing navigational hazards to waterway users and mariners by controlling vessel speeds. This rule will establish a slow speed zone throughout Fisherman's Channel and the Main Ship Channel for vessels less than 50 meters in length.

DATES: This rule is effective January 29, 2025.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2024–0205 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Mr. David Lieberman, District 7 Dpw, U.S. Coast Guard; telephone (206) 827–3637, email David.L.Lieberman2@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations

COTP Captain of the Port

DHS Department of Homeland Security

FR Federal Register

LNG Liquefied Natural Gas

NAVCEN Coast Guard Navigation Center

NOI Notice of Intent

NPRM Notice of proposed rulemaking
PAWSA Port and Waterways Safety
Assessment
RNA Regulated Navigation Area
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Captain of the Port (COTP) Miami has determined that the Port of Miami is at increased navigational risk as the port continues to expand and vessel traffic increases. On May 10–11, 2023, Coast Guard Navigation Center (NAVCEN) and Sector Miami conducted a Ports and Waterways Safety Assessment (PAWSA) with key stakeholders of the Port of Miami. The core finding of workshop participants was the presence of increased hazards to navigational safety in the Port of Miami created by high-speed vessel operations and the resulting large and damaging wakes they often introduce into the congested and geographically confined waterway. Over the last few years, a growing number of near misses prompted concern for the safety of life as both the volume of vessel traffic and speeds of vessels have increased. On June 25, 2023, around 3:30 a.m., a recreational vessel, traveling at a high rate of speed through the Main Ship Channel, collided with a crossing vehicle ferry, killing one person and seriously injuring another. The incident not only resulted in the tragic loss of life but also caused a significant disruption of 30,000 cruise ship passengers and cargo movements within the Port of Miami for over 12 hours. Additionally, on February 12, 2024, a recreational vessel collided with an inspected passenger vessel in a critical point of Fisherman's Channel. This incident resulted in 13 injuries with one person in critical condition. This regulated navigation area (RNA) will reduce the navigational risk associated with one of the world's largest ports, reduce the loss of life, and mitigate the chance of disruption to port operations.

On April 11, 2024, under docket USCG–2024–0205, the Coast Guard published a Notice of Intent (NOI) entitled Regulated Navigation Area; Port of Miami, Miami, FL in the **Federal Register** (89 FR 25553) seeking comments on a potential RNA around the Port of Miami. The Coast Guard received 47 comments that had a predominantly positive tone.

On August 28, 2024, under docket USCG–2024–0205, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) entitled Regulated Navigation Area; Port of Miami, Miami, FL in the **Federal Register** (89 FR

68843). The NPRM provided official notice of the proposed RNA and invited comment on the proposed regulatory action. The comment period ended on September 28, 2024, with 32 comments received that reflected a predominantly positive tone.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority in 46 U.S.C. 70034. The COTP Miami has determined the potential hazards associated with increased vessel traffic and wake created by vessels transiting at high speeds poses a concern for navigational safety surrounding the Port of Miami. In addition, the Port of Miami is expanding its cruise ship terminals and will soon be the largest cruise ship port in the world, moving tens of thousands of passengers every day. With this, the Port of Miami also experienced an increase in Liquefied Natural Gas (LNG) powered cruise ships and cargo vessels resulting in an increase of hazardous bunkering operations within the port. The existing security risk associated with the Port of Miami is already high and this expansion only increases that risk. Establishing the RNA will reduce the speed of vessels and aid law enforcement officials in monitoring vessel traffic, as vessels not complying with slow speed zones will quickly draw attention, giving law enforcement officials more time to assess the situation and take appropriate action to protect vessels within the port and port facilities. The purpose of this rule is to ensure safe navigation and promote the safety of life at sea.

IV. Discussion of Comments, Changes, and the Rule

There are no changes in the regulatory text of this rule from the proposed language in the NPRM. This rule establishes an RNA for certain waters surrounding the Port of Miami. This rule will establish a slow speed zone throughout Fisherman's Channel and the Main Ship Channel for vessels less than 50 meters in length. This action is necessary to provide for the safety of life by enhancing the protection of increased high-risk vessel traffic while reducing the navigational hazards to the mariners who operate throughout the port.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration and time of day of the regulated area. The regulated navigation area will only affect vessels entering and passing within the Main Ship Channel, Fisherman's Channel, and Meloy Channel. Vessels may continue to operate within the regulated navigation area with the only restriction being the requirement to operate at slow speeds and not create an excessive wake. Moreover, upon activating the regulated navigation area, the Coast Guard will notify the local maritime community through various means including, Local Notice to Mariners and Broadcast Notice to Mariners issued on VHF–FM marine radio channel 16.

B. Impact on Small Entities

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a regulated navigation area requiring vessels 50 meters or less to transit the regulated area at a slow speed that creates minimum wake. It is categorically excluded from further review under paragraph L[60a] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to

coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

- 2. Add § 165.792 before the center heading “Eighth Coast Guard District” to read as follows:

§ 165.792 Regulated Navigation Area; Port of Miami, Miami, Florida.

(a) *Location.* The following area is a Regulated Navigation Area (RNA): All waters of the Port of Miami, from Fisherman’s Channel Daybeacon 16 at 25°46.40’ N, 080°10.84’ W proceeding southeasterly through Fisherman’s Channel south of Dodge Island to Miami Main Channel Light 15 at 25°45.86’ N, 080°08.24’ W in Government Cut, thence northwesterly through the Main Ship Channel north of Dodge Island to Biscayne Bay Light 50 at 25°46.90’ N, 080°10.88’ W. Additionally, the Meloy Channel from Miami Main Channel Lighted Buoy 16 at 25°46.04’ N, 080°08.41’ W proceeding northwesterly to the MacArthur Causeway Bridge. The coordinates used in this paragraph are based on the World Geodetic System (WGS) 1984.

(b) *Definitions.* As used in this section, slow speed means the speed at which a vessel proceeds when it is fully off plane, completely settled in the water and not creating excessive wake. Due to the different speeds at which vessels of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to slow speed. A vessel is not proceeding at slow speed if it is:

- (1) On plane;
 - (2) In the process of coming up on or coming off plane; or
 - (3) Creating an excessive wake.
- (c) *Regulations.* Vessels less than 50 meters entering and transiting through the regulated navigation area shall proceed at a slow speed. Nothing in this

section alleviates vessels or operators from complying with all state and local laws in the area including manatee slow speed zones. Nor should anything in this section be construed as conflicting with the requirement to operate at safe speed under the Inland Navigation Rules, (33 CFR chapter I, subchapter E).

(d) *Enforcement.* The Coast Guard may be assisted in the patrol and enforcement of the Regulated Navigation Area by other Federal, State, and local agencies.

(e) *Contact information.* If you observe violations of the regulations in this section, you may notify the COTP via the Coast Guard Sector Miami Command Center via VHF channel 16, by phone at 305–535–4472, or by email at SectorMiamiWaterways@uscg.mil.

Dated: December 20, 2024.

Douglas M. Schofield,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 2024–31268 Filed 12–27–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2024–1065]

Safety Zone; Annual Fireworks Displays and Other Events in the Eighth Coast Guard District Requiring Safety Zones

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the Crescent City Countdown Club/New Year’s Celebration fireworks display, from 11:30 p.m. on December 31, 2024, through 12:30 a.m. on January 1, 2025, to provide for the safety of life on the navigable waterways during this event. Our regulation for annual fireworks displays and other events in the Eighth Coast Guard District identifies this safety zone for this event on the Mississippi River in New Orleans, LA. During the enforcement period, entry into this zone is prohibited unless authorized by the Captain of the Port or a designated representative.

DATES: The regulations in 33 CFR 165.801 will be enforced for the Crescent City Countdown Club/New Year’s Celebration safety zone listed in item 10 in table 5 to § 165.801 from 11:30 p.m. on December 31, 2024, through 12:30 a.m. on January 1, 2025.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Lieutenant Commander Xiaobin Tuo, Sector New Orleans, U.S. Coast Guard; 504-365-2246, email Xiaobin.Tuo@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a safety zone for the Crescent City Countdown Club/New Year's Celebration fireworks display from 11:30 p.m. on December 31, 2024, through 12:30 a.m. on January 1, 2025, to provide for the safety of life on the navigable waterways during this event. Our regulation for annual fireworks displays and other events in the Eighth Coast Guard District, 33 CFR 165.801 identifies this safety zone on the Lower Mississippi River MM 93.5-96.5, New Orleans, LA. During this enforcement period, as reflected in § 165.801(a) through (d), entry into this zone is prohibited unless authorized by the Captain of the Port or a designated representative.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via Marine Safety Information Bulletin and Broadcast Notice to Mariners.

Dated: December 19, 2024.

G.A. Callaghan,

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

[FR Doc. 2024-31274 Filed 12-27-24; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0914]

RIN 1625-AA00

Safety Zone; Taylor Bayou Turning Basin, Port Arthur, TX

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary interim rule and request for comments.

SUMMARY: The Coast Guard is extending the period of a temporary safety zone on the upper reaches of Taylor Bayou Turning Basin in Port Arthur, TX. This action is necessary to provide protection to the levee protection wall located at the north end of the turning basin until permanent repairs can be affected. This rule prohibits persons and vessels from entering the safety zone unless authorized by the Captain of the Port

Marine Safety Unit Port Arthur or a designated representative.

DATES: The effective period of § 165.T08-0914 is extended through September 30, 2027. The amendments in this rule are effective from December 30, 2024, through September 30, 2027. Comments are due on or before February 28, 2025.

ADDRESSES: For instructions on submitting comments, see section VI of the **SUPPLEMENTARY INFORMATION**. To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2017-0914 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Sean Yanez, Marine Safety Unit Port Arthur, TX, U.S. Coast Guard; telephone 571-610-0193, email sean.p.yanez@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port, Marine Safety Unit Port Arthur
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
USACE U.S. Army Corps of Engineers
U.S.C. United States Code

II. Background Information and Regulatory History

On August 14, 2017, the Coast Guard established this temporary safety zone for the upper reaches of Taylor Bayou Basin in Port Arthur, TX. That emergency action was necessary to protect the damaged flood protection levee and bulkhead during stabilization efforts. On July 18, 2018, the Coast Guard published the temporary final rule establishing the safety zone until January 31, 2023 (83 FR 33842). In August 2022, the USACE informed the Coast Guard that permanent repairs to the flood protection wall would not be completed for another two years. The Coast Guard extended the effective period of the temporary safety zone through January 31, 2025 (87 FR 73256, November 29, 2022).

In October 2024, the USACE informed the Coast Guard that permanent repairs to the flood protection wall would not be completed until 2027. The Coast Guard must extend the effective period of the temporary safety zone through September 30, 2027. It would be impracticable to publish an NPRM

because the safety zone must be extended prior to January 31, 2025.

The Coast Guard is issuing this temporary interim rule under the authority in 5 U.S.C. 553(b)(B). This statutory provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be impracticable. It is impracticable because this safety zone must be extended by January 31, 2025, to provide for the safety of life on the navigable waters during levee protection repair work, and we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing this rule.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this temporary interim rule would be impracticable because it is necessary to protect the damaged flood protection levee and bulkhead during stabilization efforts.

Although this regulation is published as an interim rule without prior notice, public comment is nevertheless desirable to ensure that the regulation is both workable and reasonable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under **ADDRESSES** in this preamble. Commenters should include their names and addresses, identify the docket number for the regulation, and give reasons for their comments. If the Coast Guard determines that changes to the temporary interim rule are necessary, we will publish a temporary final rule or other appropriate document.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port, MSU Port Arthur (COTP) has determined that potential damage to temporary repairs would make the surrounding community susceptible to flooding during storm surge or extreme tide events that may endanger persons and property in the surrounding community. The USACE has requested, and the Coast Guard concurs, that protection measures must be instituted until permanent repairs are completed.

IV. Discussion of the Rule

On August 14, 2017, the Coast Guard established a temporary safety zone for the upper reaches of Taylor Bayou Basin in Port Arthur, TX. That emergency action was necessary to protect the damaged flood protection levee and bulkhead during stabilization efforts. This safety zone was extended in November of 2022, this temporary rule further extends the effective date of these safety zones until September 30, 2027.

No vessel or person is permitted to enter or remain in the safety zone without obtaining permission from the COTP or a designated representative of the COTP. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG) assigned to units under the operational control of the COTP. To seek permission to enter, contact the COTP or a designated representative via VHF-FM channel 16, or through Marine Safety Unit Port Arthur at 409-719-5070. Persons and vessels permitted to enter the safety zone must comply with all lawful orders or directions issued by the COTP or designated representative. The COTP or a designated representative will inform the public of the effective period for the safety zone as well as any changes in the dates and times of enforcement through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration and entities impacted by the safety zone. This safety zone affects

approximately 350-yards of Taylor Bayou Turning Basin north of latitude 29°50′57.45″ N. A facility receives vessels within this zone and that facility would be permitted to receive vessels based on previously agreed to maneuvering calculations and plans.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves extending the effective period of the temporary safety zone on the upper reaches of Taylor Bayou Turning Basin in Port Arthur, TX. It is categorically excluded from further review under paragraph L[60(a)] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions

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

G. Protest Activities

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

VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG–2017–0914 in the search box and click “Search.” Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Viewing material in the docket. To view documents mentioned in this rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of this rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more information about privacy and submissions to the docket in response to this document, see DHS’s eRulemaking System of Records Notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Amend § 165.T08–0914 by revising paragraph (d) to read as follows:

§ 165.T08–0914 Safety Zone; Taylor Bayou Turning Basin, Port Arthur, TX.

* * * * *

(d) *Enforcement date.* The safety zone in paragraph (a) of this section will be enforced from December 30, 2024, through September 30, 2027. It will be subject to enforcement the entire period unless the COTP determines it is no longer needed, in which case the Coast Guard will inform mariners via Notice to Mariners.

Dated: December 20, 2024.

Anthony R. Migliorini,

Captain, U.S. Coast Guard, Captain of the Port Marine Safety Unit Port Arthur.

[FR Doc. 2024–31127 Filed 12–27–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0820]

RIN 1625–AA00

Safety Zone; Kernwood Avenue Bridge Repairs—Danvers River, Salem, MA, and Beverly, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule and request for comments.

SUMMARY: The Coast Guard is amending the current temporary safety zone in the vicinity of the Kernwood Avenue Bridge between Salem, MA and Beverly, MA. We are extending the effective period by 11 months to November 30, 2025, and are updating the enforcement schedule of the safety zone. The temporary safety zone is necessary to protect personnel, vessels, and the marine environment

from potential hazards created during emergency bridge repairs. When enforced, entry of vessels or persons into this zone will be prohibited unless specifically authorized by the Captain of the Port Boston or a designated representative.

DATES: This rule is effective without actual notice from December 30, 2024 through 11:59 p.m. on November 30, 2025. For the purposes of enforcement, actual notice will be used from December 20, 2024, until December 30, 2024.

Comments and related material must be received by the Coast Guard on or before March 31, 2025.

ADDRESSES: You may submit comments identified by docket number USCG–2024–0820 using the Federal e-Rulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email Mr. Timothy Chase, Waterways Management Division, U.S. Coast Guard Sector Boston, telephone 617–447–1620, or email Timothy.w.chase@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Boston
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
NAD 83 North American Datum 1983
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On November 21, 2024, the Massachusetts Department of Transportation bridge division notified the Waterways Management Division of U.S. Coast Guard Sector Boston that more extensive repair operations need to be conducted to the Kernwood Avenue Bridge, spanning the Danvers River between Salem, MA, and Beverly, MA, and are anticipated to be completed by November 30, 2025. An earlier TIR published on September 23, 2024, established the first safety zone regulation for that waterway in 33 CFR 165.T01–0820 (89 FR 77451).

The Coast Guard is issuing this temporary rule under the authority in 5 U.S.C. 553(b)(B). This statutory provision authorizes an agency to issue a rule without prior notice and

opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the construction schedule for Kernwood Avenue Bridge was only recently finalized, and prompt action is needed to respond to the potential safety hazards associated with this project. It is impracticable and contrary to the public interest to publish an NPRM because prompt action is needed to establish this safety zone by December 20, 2024, to allow for the timely repairs to the Kernwood Avenue Bridge and ensure the safety of mariners transiting the area from the dangers associated with the operations associated with these repairs.

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 because prompt action is needed to ensure public safety during repair operations to the Kernwood Avenue Bridge.

Although the first regulation was published as an interim rule without prior notice, public comment was nevertheless desirable to ensure that the regulation is both workable and reasonable. No comments were received during a 30-day comment period that ended October 23, 2024. Accordingly, an additional 90-day comment period for this temporary interim rule will allow persons wishing to comment to do so by submitting written comments as set out under **ADDRESSES** in this preamble. Commenters should include their names and addresses, identify the docket number for the regulation, and give reasons for their comments. If the Coast Guard determines that additional changes to the temporary interim rule are necessary, we will publish a temporary final rule or other appropriate document.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Boston (COTP) has determined that potential hazards associated with bridge repair operations continuing through November 30, 2025, will be a safety concern for anyone within a 100-yard radius of the center point of the Kernwood Avenue Bridge. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety

zone while bridge repair operations are taking place.

IV. Discussion of Rule

The Coast Guard is making the following amendments to the current temporary safety zone on the navigable waters at mile 1.0 Danvers River, within a 100-yard radius of the center point of the Kernwood Avenue Bridge between Salem, MA and Beverly, MA:

i. We are extending the effective period by 11 months to accommodate more extensive repairs to the bridge. The existing safety zone was effective until 11:59 p.m. December 31, 2024. The 11-month extension will make the safety zone effective until 11:59 p.m. on November 30, 2025.

ii. We are adjusting the enforcement of the safety zone. The existing safety zone was subject to an enforcement schedule from 9 p.m. to 5 a.m. Sunday through Thursday. With this rule we are moving away from that schedule. The Coast Guard is establishing a safety zone from December 20, 2024, through 11:59 p.m. on November 30, 2025. The safety zone will be enforced only during active repair operations, when work barges and cranes will be placed in the narrow navigable channel, or other instances which may create a hazard to navigation. The active repair operations will take place in multiple phases which will be announced in the Local Notice to Mariners. Additionally, each phase will allow for bridge openings and transits through the regulated area during repairs with advanced notification to the on-scene contractor.

The safety zone will cover all navigable waters within a 100-yard radius of the center point of the MassDOT Kernwood Avenue Bridge, at mile 1.0, spanning the Danvers River, between Salem, MA, and Beverly, MA, in approximate position 42°32'34.8" N 70°53'54.2" W (NAD 83). During times of enforcement, all persons or vessels will be prohibited from entering the safety zone without permission from the COTP or a designated representative.

The Coast Guard will make notice of the enforcement period of the safety zone via the Local Notice to Mariners and issue a Broadcast Notice to Mariners via marine channel 16 (VHF-FM) as soon as practicable in response to an emergency or hazardous condition. In addition, if the project is completed before 11:59 p.m. on November 30, 2025, enforcement of the safety zone will be suspended, and notice given via Local Notice to Mariners. The First Coast Guard District Local Notice to Mariners can be found at: <http://www.navcen.uscg.gov>.

These amendments are being made to maintain safe navigation in the project area and to prevent accidental or intentional damage to persons or property on the work site.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration. When enforced, vessel traffic will not be able to safely transit around this safety zone. As a result, to reduce the regulator burden, with advance notice, vessels may request permission from the on-scene contractor to safely transit the safety zone. Enforcement of the safety zone will be limited in duration during active repair operations, when work barges and cranes will be placed in the narrow navigable channel. Additionally, the Salem, Beverly, and Danvers Harbor Masters will be on scene during active repair operations to inform any potential vessels of the safety zone. The Coast Guard will make notice of this safety zone via the Local Notice to Mariners and issue a Broadcast Notice to Mariners via marine channel 16 (VHF-FM) as soon as practicable in response to an emergency or hazardous condition. Again, this rule also allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator because they are able to transit with permission from COTP or the COTP's designated representative.

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 will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,

because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule amends a previously created temporary safety zone for the navigable waters within 100-yard radius of the center point of the MassDOT Kernwood Avenue Bridge, at mile 1.0, spanning the Danvers River between Salem, MA, and Beverly, MA, in two ways. First, we are extending the effective period by 11 months to November 30, 2025. Second, by updating the schedule the safety zone is subject to enforcement to accommodate more extensive repairs to the bridge. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without

jeopardizing the safety or security of people, places, or vessels.

VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. If we determine that changes to the temporary interim rule are necessary, the Coast Guard will publish a temporary final rule or other appropriate document. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG–2024–0820 in the search box and click “Search.” Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this temporary interim rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions web page. Also, if you click on the Dockets tab and then the temporary interim rule, you should see a “Subscribe” option for email alerts. The option will notify you when comments are posted, or a subsequent document is published.

We review all comments received, but we will only post comments that address the topic of the rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

- 2. Revise and republish § 165.T01–0820 to read as follows:

§ 165.T01–0820 Safety Zone; Kernwood Avenue Bridge Repairs—Danvers River, Salem, MA, and Beverly, MA.

(a) *Location.* The following area is a safety zone: all navigable waters within a 100-yard radius of the center point of the Massachusetts Department of Transportation (MassDOT) Kernwood Avenue Bridge, at mile 1.0 spanning the Danvers River between Salem, MA, and Beverly, MA, in approximate position 42°32′34.8″N 70°53′54.2″W.

(b) *Enforcement period.* The safety zone in paragraph (a) of this section is effective from December 20, 2024, through 11:59 p.m. on November 30, 2025. The section is subject to enforcement only during periods the navigable channel is restricted by the contractor's work vessels, when the span cannot be mechanically operated, or in response to an emergency or hazardous condition during this period. The Coast Guard will make notice of this safety zone via the Local Notice to Mariners and issue a Broadcast Notice to Mariners via marine channel 16 (VHF–FM) as soon as practicable in response to an emergency or hazardous condition. In addition, if the project is completed before 11:59 p.m. on November 30, 2025, enforcement of the safety zone will be suspended, and notice given via Local Notice to Mariners. The First Coast Guard District Local Notice to Mariners can be found at: <http://www.navcen.uscg.gov>.

(c) *Definitions.* As used in this section:

(1) *Designated representative* means any Coast Guard commissioned, warrant, petty officer, or any federal, state, or local law enforcement officer who has been designated by the Captain of the Port Boston (COTP) to act on his or her behalf. The designated representative may be on an official

patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) *Official patrol vessels* mean any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP to enforce this section.

(d) *Regulations.* When this safety zone is enforced, the following regulations, along with those contained in 33 CFR 165.23 apply:

(1) No person or vessel may enter or remain in this safety zone without the permission of the COTP or the COTP's designated representatives. Any person or vessel permitted to enter the safety zone must comply with the lawful directions and orders of the COTP or the COTP's designated representatives.

(2) To seek permission to enter the safety zone, individuals may reach the COTP or a COTP-designated representative via Channel 16 (VHF–FM) or (857) 416–3015 (Sector Boston Command Center).

Dated: December 20, 2024.

J.C. Frederick,

Captain, U.S. Coast Guard, Captain of the Port Boston.

[FR Doc. 2024–31311 Filed 12–27–24; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA–R06–OAR–2019–0212; FRL–10997–04–R6]

Air Plan Disapproval; Louisiana; Removal of Excess Emissions Provisions; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action; correction.

SUMMARY: The Environmental Protection Agency (EPA) is determining that a portion of a December 7, 2023, final disapproval action of a state implementation plan (SIP) revision submitted by the State of Louisiana was in error and making a correction pursuant to the Clean Air Act (CAA). **DATES:** This final action is effective on December 30, 2024.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA–R06–OAR–2019–0212. 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:

General questions concerning this publication should be addressed to Michael Feldman, Regional Haze and SO₂ Section, Air & Radiation Division, U.S. Environmental Protection Agency, Region VI, 1201 Elm Street, Dallas, Texas 75270; by telephone (214) 665–9793 or by email at feldman.michael@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information****A. How is the preamble organized?**

The information presented in this preamble is organized as follows:

Table of Contents**I. General Information****A. How is the preamble organized?****II. Background****III. What is the EPA correcting?****IV. What action is the EPA taking?****V. Statutory and Executive Order Reviews****II. Background**

On November 8, 2024, the EPA proposed to correct an error in an earlier EPA action, using the authority of section 110(k)(6) of the CAA. Specifically, the proposed action explained that the error occurred in a December 7, 2023, EPA action¹ disapproving revisions to the SIP for the State of Louisiana submitted in response to the 2015 SSM SIP Action.² On June 12, 2015, the EPA finalized the 2015 SSM SIP Action, which clarified, restated, and updated the EPA's national policy regarding SIP provisions applying to excess emissions during periods of startup, shutdown, and malfunction (SSM). As part of the 2015 SSM SIP Action, the EPA issued a finding that certain SIP provisions for 36 states that were applicable in 45 statewide and local jurisdictions were

¹ 88 FR 85112 (December 7, 2023).

² State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction, 80 FR 33840 (June 12, 2015).

substantially inadequate to meet CAA requirements due to how those SIP provisions treated excess emissions during SSM periods. Further, the EPA issued a “SIP call” to each of those 45 air agencies, including the State of Louisiana on the basis that Louisiana’s SIP contained impermissible automatic and discretionary exemptions that were substantially inadequate to meet CAA requirements.³ To respond to the EPA’s SIP call in the 2015 SSM SIP Action, each affected state was required to submit its corrective SIP revision by November 22, 2016. On December 7, 2023, the EPA took final action⁴ to disapprove certain portions of a SIP revision submitted by the State of Louisiana on November 20, 2016, and supplemented on June 9, 2017, because the EPA found that Louisiana’s SIP revision did not correct the deficiency identified in Louisiana’s SIP in the 2015 SSM SIP Action.⁵

As a result of the March 1, 2024, decision from the United States Court of Appeals for the District of Columbia Circuit in *Environ. Comm. Fl. Elec. Power v. EPA*, 94 F.4th 77 (D.C. Cir. 2024), certain portions of the EPA’s SIP call in the 2015 SSM SIP Action were vacated by the D.C. Circuit and therefore have no legal effect. Thus, certain states subject to the 2015 SSM SIP Action no longer have a legal obligation to submit the revisions that the EPA had originally determined were required to correct the deficiencies identified in the SIP call.⁶ In other words, by partially vacating the EPA’s 2015 SSM SIP Action, the D.C. Circuit’s decision rendered Louisiana’s SIP submission in response to the 2015 SSM SIP Action voluntary rather than mandatory. As a result, the EPA proposed to correct the EPA’s December 7, 2023, disapproval action with respect to the consequences of that disapproval.

A more complete explanation of the reasons for the proposed error correction can be found in the November 8, 2024, proposed action. Comments on the November 8, 2024,

proposed action were due on or before December 9, 2024. The EPA did not receive any comments on the November 8, 2024, proposed action.

III. What is the EPA correcting?

In this action, the EPA is correcting the erroneous triggering of mandatory sanctions under CAA section 179 and 40 CFR 52.31 for the state of Louisiana following its December 7, 2023, disapproval of Louisiana’s SIP revision submitted in response to the 2015 SSM SIP Call. The EPA is also correcting the erroneous triggering of the EPA’s obligation to issue a Federal Implementation Plan (FIP) under CAA section 110(c)(1)(B). As a result, in finalizing this error correction action, the imposition of sanctions for the State of Louisiana and the FIP obligation for the EPA that were triggered as a result of the December 7, 2023, final disapproval action are no longer in effect.

IV. What action is the EPA taking?

As a result of the D.C. Circuit’s decision in *Environ. Comm. Fl. Elec. Power v. EPA*, the EPA is determining that, pursuant to section 110(k)(6) of the CAA, a portion of the EPA’s December 7, 2023, final disapproval action of Louisiana’s SIP revision was in error with respect to the consequences of that disapproval. By partially vacating the EPA’s 2015 SSM SIP Action, the D.C. Circuit’s decision rendered Louisiana’s SIP submission in response to the 2015 SSM SIP Action voluntary rather than mandatory. Thus, the EPA is finding that the triggering of mandatory sanctions and FIP obligation following the December 7, 2023, final disapproval was erroneous and, through this action, is terminating the imposition of sanctions for the State and the FIP obligation for the EPA triggered by that disapproval as they are no longer legally valid.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. However, this action, which seeks to correct an error in a prior SIP disapproval action under section 110(k)(6) of the CAA, is neither an approval nor a disapproval. This action merely corrects an error in EPA’s prior action and does not impose additional

requirements beyond those imposed by state law.

- 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 is an error correction taken under section 110(k)(6) of the CAA and does not directly or disproportionately affect children.

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

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

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. 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

³ See 78 FR 12460, 12521–12522 (February 22, 2013) and 80 FR 33840 at 33967 (June 12, 2015).

⁴ See 88 FR 85112 (December 7, 2023).

⁵ On October 5, 2022, EPA Region 6 finalized approval of a portion of Louisiana’s SIP revision that corrected six of Louisiana’s seven deficient SIP provisions originally identified in EPA’s 2015 SSM SIP Call. See 87 FR 60292. On December 7, 2023 (88 FR 85112), the EPA Region 6 finalized disapproval of Louisiana’s SIP revision that sought to correct the remaining deficient provision.

⁶ In vacating certain portions of the 2015 SSM SIP Action, the D.C. Circuit’s decision did not determine whether the SIP-called provisions were otherwise lawful under the CAA. See *e.g.* 94 F.4th at 110 (“We thus do not reach the question whether the called SIPs’ relevant emission restrictions in fact amount to (or must amount to) ‘emission limitations’ per the statutory definition.”).

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

The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. Although not a basis for that action, the EPA performed an EJ analysis for informational purposes only in its June 13, 2023, proposed disapproval of Louisiana’s SIP revision. See 88 FR 38448, 38453–38455 (June 13, 2023) and 88 FR 85112, 85123–85124 (December 7, 2023) for more information. The EPA views this action as a necessary procedural step following the D.C. Circuit decision and vacatur of portions of the 2015 SIP call. 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 communities with EJ concerns.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 28, 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedures, Air pollution control, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

Dated: December 19, 2024.

Earthea Nance,

Regional Administrator, EPA Region 6.

[FR Doc. 2024–30747 Filed 12–27–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2024–0529; FRL–12471–01–R5]

Air Plan Approval; Ohio; Nitrogen Oxide Standards Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Ohio State Implementation Plan (SIP) submitted by the Ohio Environmental Protection Agency (Ohio EPA) on November 4, 2024. Ohio EPA requested that EPA approve the revised rules for nitrogen oxide standards in the Ohio Administrative Code (OAC) into Ohio’s SIP. The revised rules include non-substantive updates to rule language and updates to referenced material. The revisions will assist with Ohio’s efforts to attain and maintain the National Ambient Air Quality Standards (NAAQS) for nitrogen dioxide (NO₂).

DATES: This direct final rule will be effective February 28, 2025, unless EPA receives adverse comments by January 29, 2025. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2024–0529 at <https://www.regulations.gov> or via email to langman.michael@epa.gov. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy,

information about CBI, PBI, or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Delaney Kilgour, Air and Radiation Division (AR–1–8J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1106, kilgour.delaney@epa.gov. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

I. What is the background for these actions?

Ohio EPA is subject to requirements in Ohio Revised Code 106.03 and 106.031 to review each of its regulations every five years to assess whether any updates to the regulations are warranted and for other purposes. Accordingly, Ohio EPA reviewed its regulations in OAC Chapter 3745–23, entitled “Nitrogen Oxide Standards.” OAC Chapter 3745–23 is part of Ohio’s strategy for attainment and maintenance of the NAAQS for NO₂.

As a result of its review, Ohio EPA concluded that rule revisions were needed to modify the wording of selected text to correct typos and reflect new formatting guidelines, and to update publication and referenced material titles, effective dates, addresses, and websites. Ohio EPA adopted these various minor revisions and updated their rules on August 15, 2024, and then requested that EPA approve these revisions into the Ohio SIP in a submittal dated November 4, 2024.

II. What is EPA’s analysis of Ohio’s SIP revision?

Ohio EPA has requested that EPA approve revised rules under Chapter 3745–23 of the OAC. These rules include 3745–23–01 (Definitions) and 3745–23–02 (Methods of measurement). These revised rules are intended to assist in maintaining the NO₂ NAAQS. The revisions are described in detail below. EPA is determining that these revisions are approvable since they are primarily administrative in nature and serve to strengthen the SIP.

A. 3745–23–01 Definitions

This rule contains the applicable definitions and referenced material for OAC Chapter 3745–23. The rule is being

revised to include updates to the publication dates and website URLs of referenced material, and to adopt minor changes in rule language to correct typos and meet updated style and formatting guidelines. No terms or definitions were added or removed from this section. Since the revised definitions do not make this rule less stringent, EPA finds that 3745–23–01 is approvable.

B. 3745–23–02 Methods of measurement

This rule contains methods for measuring and determining the concentration of NO₂ in ambient air. The rule is being revised to adopt minor language adjustments, including removal of the word “shall” and rearrangement of sentences. Since the revisions to the rule language are minor in nature and do not affect the scope or intent of the rules, EPA finds that 3745–23–02 is approvable.

III. What action is EPA taking?

EPA is approving the November 4, 2024, submission by Ohio EPA as a revision to the Ohio SIP. Specifically, EPA is approving updates to OAC Chapter 3745–23.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective February 28, 2025 without further notice unless we receive relevant adverse written comments by January 29, 2025. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective February 28, 2025.

IV. Incorporation by Reference

In this rule, 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 the Ohio Regulations described in section II of this preamble and set forth in the amendments to 40 CFR part 52 below. EPA has made, and will continue to make, these documents generally available through www.regulations.gov and at the EPA Region 5 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 Clean Air Act (CAA) as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.¹

V. Statutory and Executive Order Reviews

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

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

Order 13132 (64 FR 43255, August 10, 1999);

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

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. Executive Order 14096 (Revitalizing Our Nation’s Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements E.O. 12898 and defines EJ as, among other things, the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, or Tribal affiliation, or disability in agency decision-making and other Federal activities that affect human health and the environment.

Ohio EPA did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898/14096 of achieving EJ for communities with EJ concerns.

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

¹ 62 FR 27968 (May 22, 1997).

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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 28, 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section

of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements.

Dated: December 19, 2024.

Debra Shore,
Regional Administrator, Region 5.

For the reasons stated in the preamble, title 40 CFR part 52 is amended as follows:

EPA-APPROVED OHIO REGULATIONS

Ohio citation	Title/subject	Ohio effective date	EPA Approval date	Notes
*	*	*	*	*
Chapter 3745–23 Nitrogen Oxide Standards				
3745–23–01	Definitions	8/15/2024	12/30/2024, [INSERT FIRST PAGE OF Federal Register CITATION].	
3745–23–02	Methods of Measurement	8/15/2024	12/30/2024, [INSERT FIRST PAGE OF Federal Register CITATION].	
*	*	*	*	*

* * * * *
[FR Doc. 2024–30734 Filed 12–27–24; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2024–0228; EPA–R09–OAR–2022–0338; FRL–11830–02–R9]

Federal Implementation Plan for Nonattainment New Source Review Program; Mojave Desert Air Quality Management District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing a Federal Implementation Plan (FIP) under the Clean Air Act (CAA) that consists of Nonattainment New Source Review (NNSR) rules for areas within the jurisdiction of the Mojave Desert Air Quality Management District

(MDAQMD or “District”) in which air pollutant concentrations are above specific National Ambient Air Quality Standards (NAAQS). The NNSR rules will apply to construction of new major stationary sources and major modifications at existing major stationary sources of air pollution. The FIP will be implemented by the EPA, unless and until it is replaced by an EPA-approved state implementation plan (SIP). In this action, the EPA is also responding to a September 5, 2024 decision of the United States Ninth Circuit Court of Appeals for the Ninth Circuit, which remanded the EPA’s disapproval of a MDAQMD rule provision related to the calculation and generation of emissions offsets. This response again disapproves MDAQMD Rule 1304(C)(2)(d) and provides additional information to support that decision.

DATES: This final rule is effective on February 28, 2025.

ADDRESSES: The EPA has established a docket for the FIP rulemaking under Docket ID No. EPA–R09–OAR–2024–

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.*

■ 2. In § 52.1870, the table in paragraph (c) is amended by revising entries “3745–23–01” and “3745–23–02” under “Chapter 3745–23 Nitrogen Oxide Standards” to read as follows:

§ 52.1870 Identification of plan.

* * * * *
(c) * * *

0228. The EPA established a different docket (EPA–R09–OAR–2022–0338), for its 2023 limited approval/limited disapproval of a MDAQMD state implementation plan submission, which contained provisions addressing the calculation and generation of emissions offsets for the nonattainment area permitting program. This notification will be placed in both dockets, which are each accessible via the Federal eRulemaking Portal at <https://www.regulations.gov/>. Although listed in the indices for these rules, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at <https://www.regulations.gov/> or in hard copy at the U.S. Environmental Protection Agency, EPA Docket Center, William Jefferson Clinton West Building, Room 3334, 1301 Constitution Ave. NW,

Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Office of Air and Radiation Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Tanya Abrahamian, Air and Radiation Division, Rules Office (AIR-3-2), Environmental Protection Agency, Region IX, telephone number: (213) 244-1849; email address: Abrahamian.Tanya@epa.gov.

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

The information presented in this preamble is organized as follows:

Table of Contents

- I. Summary of the Proposed Action
- II. EPA Response to the Ninth Circuit’s Remand
- III. Public Comments on FIP and EPA Responses to Comments and Court Remand
- IV. Final Action
- V. Supporting Information
- VI. Statutory and Executive Order Reviews

Preamble Glossary of Terms and Abbreviations

The following are abbreviations of terms used in the preamble.

APA Administrative Procedure Act
 Appendix S 40 CFR part 51, appendix S
 BACT Best Available Control Technology
 CAA or Act Clean Air Act
 CARB California Air Resources Board
 CFR Code of Federal Regulations
 EPA we, us, or our The United States Environmental Protection Agency
 ERC Emission Reduction Credit
 FIP Federal Implementation Plan
 FR Federal Register
 LAER Lowest Achievable Emission Rate
 LA/LD Limited Approval-Limited Disapproval
 MDAQMD The Mojave Desert Air Quality Management District
 NAAQS National Ambient Air Quality Standards
 NO_x Nitrogen Oxides
 NSR New Source Review
 NNSR Nonattainment New Source Review
 PSD Prevention of Significant Deterioration
 PAL Plantwide Applicability Limit
 PM₁₀ Particulate Matter with a diameter of 10 micrometers or less
 PTE Potential To Emit
 RACT Reasonably Available Control Technology
 RFP Reasonable Further Progress
 SER Simultaneous Emission Reduction
 SIP State Implementation Plan
 TSD Technical Support Document
 VOC Volatile Organic Compound
 2023 LA/LD The EPA’s rulemaking action at 88 FR 42258, which was published on June 30, 2023, in the **Federal Register**.

I. Final Action To Establish Federal Implementation Plan

On July 9, 2024 (89 FR 56237), the EPA proposed to establish a Federal Implementation Plan (FIP), pursuant to (Clean Air Act) section 110(c), for a nonattainment New Source Review (NNSR) program within the Mojave Desert Air Quality Management District (MDAQMD).¹ This FIP relates to a finding of failure to submit issued by the EPA on February 3, 2017, and EPA’s action to disapprove a part of the MDAQMD’s Nonattainment New Source Review (NNSR) permitting program regulations on June 30, 2023 (88 FR 42258) (“2023 LA/LD”). The latter action was a limited approval/limited disapproval action in which EPA disapproved MDAQMD’s Rule 1304(C)(2)(d) because this rule failed to meet requirements for determining the quantity of offsets needed to issue a permit for a major modification.

This FIP implements NNSR program requirements and will apply to the construction of new major sources and major modifications at existing major sources that are located within areas that are designated as nonattainment with specific National Ambient Air Quality Standards (NAAQS). This FIP will apply to pollutants for which the area is designated nonattainment. Therefore, this action applies only in the areas within the MDAQMD’s jurisdiction that are designated nonattainment, specifically, the San Bernardino County portion of the West Mojave Desert ozone nonattainment area and the San Bernardino County and Trona Planning Area Particulate Matter with a diameter of 10 micrometers or less (PM₁₀) nonattainment areas.² The EPA will implement the FIP in these areas until such time as the EPA approves a SIP submission from the MDAQMD that fully resolves the deficiencies identified in the EPA’s June 30, 2023 limited approval/limited disapproval (“2023 LA/LD”) action on the MDAQMD’s NNSR program and identifies no new deficiencies.³ This FIP satisfies the statutory requirements for SIPs and NNSR programs in CAA

¹ The EPA’s finding of failure to submit triggered an obligation under CAA section 110(c) for the EPA to promulgate a FIP within two years (*i.e.*, by March 6, 2019). 82 FR 9158, 9161 (February 3, 2017).

² See 40 CFR 81.305. The ozone nonattainment area is located within San Bernardino County. The PM₁₀ nonattainment areas consist of all of the MDAQMD portion of San Bernardino County: the Trona Planning Area and the portion of San Bernardino County that excludes both the Trona Planning Area and the portion of San Bernardino County that is located in the South Coast Air Basin. A map of this area is available in the docket for this action.

³ 89 FR 56237, 56241.

sections 110(c)(1), 172(c)(5), 173, 182(c) and (d), 189(a)(1)(A) and (e), 301(a), and 302. The provisions of the FIP are also designed to meet the requirements for state plans in the EPA regulations at 40 CFR 51.165, 40 CFR 51.1114, and 40 CFR 51.1314.

The FIP that is finalized in this action addresses the deficiencies the EPA identified in the MDAQMD’s NNSR program by incorporating requirements from 40 CFR part 51, appendix S (“Appendix S”), as well as additional requirements to make the program administrable. Upon the effective date of this action, permit applicants will need to obtain two permits—one permit from the EPA under this FIP and one permit from the MDAQMD under the rules in the SIP. Where permit approval criteria between the MDAQMD’s SIP and this FIP conflict—for example, the procedures to determine the quantity of offsets at a major modification, a deficiency in the MDAQMD’s NNSR program—permit applicants need to demonstrate compliance with the requirements of this FIP, since this FIP fills the gaps in the MDAQMD’s NNSR program. To the extent that there are any differences in the required permit application materials under the FIP versus the SIP, the applicant will need to comply with both requirements when submitting its permit application. The EPA will enforce the FIP as provided under CAA section 113(a). Our notification proposing this action includes further information on the implementation, purpose, components, and severability of this FIP.⁴

II. EPA Response to the Ninth Circuit’s Remand

In this rulemaking, the EPA is also taking final action in response to a remand to the Agency by the U.S. Court of Appeals for the Ninth Circuit in *Mojave Desert Air Quality Management District v. U.S. Environmental Protection Agency* (“MDAQMD v. EPA”).⁵ As background, on July 10, 2023, the MDAQMD filed a petition for review in the Ninth Circuit Court of Appeals of the EPA’s 2023 LA/LD of the MDAQMD’s NNSR program. The focus of the litigation was the EPA’s disapproval of the MDAQMD’s Rule 1304(C)(2)(d). The MDAQMD argued that the EPA had failed to adequately explain the disapproval in light of the Agency’s 1996 approval of a

⁴ 89 FR 56237.

⁵ *Mojave Desert Air Quality Mgmt. Dist. v. U.S. Env’t. Prot. Agency*, No. 23-1411 (9th Cir. September 5, 2024), Docket No. EPA-R09-OAR-2022-0338, available in the docket for this action and at <https://cdn.ca9.uscourts.gov/datastore/memoranda/2024/09/05/23-1411.pdf>.

substantially similar, earlier version of the rule. On September 5, 2024, the Ninth Circuit found that the EPA’s disapproval of Rule 1304(C)(2)(d) was arbitrary and capricious because the Agency had failed to adequately explain “the reversal of its prior approval of a similar Mojave rule.”⁶ The court granted the District’s petition and remanded the matter “for further proceedings before the agency on an open record consistent with this decision.”⁷

In response to a remand from a court and agency can choose one of two paths. The agency may offer a fuller explanation of its reasoning at the time of the remanded agency action, or EPA may take a new agency action that need not be limited to its prior reasons but must comply with the procedural requirements for a new agency action.⁸ The EPA is choosing to follow the second of these paths to respond to the Ninth Circuit’s remand, reexamining the remanded action and providing a fresh justification for the disapproval of Rule 1304(C)(2)(d), including an explanation for the reversal of EPA’s 1996 approval.

The EPA also received comments referencing our 1996 rulemaking action on the proposal for the FIP. In light of the overlapping subject matter, we have elected to include the following two final actions in one rulemaking: (1) a new EPA final action to disapprove Rule 1304(C)(2)(d), as authorized under CAA

sections 110(k)(3) and 301(a), that responds to the Ninth Circuit’s remand of a portion of our 2023 LA/LD; and (2) EPA’s final action on the FIP, as authorized under CAA section 110(c), described above. Our responses to comments in Section III of this action both respond to the comments received on the proposed FIP and provide additional explanation that supports EPA new final action to disapprove Rule 1304(C)(2)(d), consistent with the 2023 LA/LD rule.

For the former action, the EPA must comply with the procedural requirement for a new agency action. Considering the grounds for the court’s remand, there is no need for the EPA to provide an additional opportunity for public comment before taking final action to disapprove Rule 1304(C)(2)(d). The EPA provided notice and opportunity to comment on the disapproval of Rule 1304(C)(2)(d) in the 2023 LA/LD action. In reviewing that action, the Ninth Circuit held that EPA’s response to one of the public comments on that action was not adequate. The court found that the MDAQMD had sufficiently raised in its comment the contention that EPA’s 2023 action was inconsistent with the Agency’s prior approval of comparable rule in 1996. Then, the court held that the EPA did not sufficiently articulate a basis for our change of position to support the 1993 disapproval of MDAQMD Rule

1304(C)(2)(d). In this action, the EPA is responding to the MDAQMD’s comment in the manner that the Ninth Circuit directed. We have opened the record to the 2023 LA/LD action and provided additional information to support a new disapproval of Rule 1304(C)(2)(d). Considering that the court remanded for the EPA to provide a response to a comment, there is no need to provide an opportunity to submit comments.⁹

III. Public Comments on FIP and EPA Responses to Comments and Court Remand

The public comment period on the proposed FIP rule opened on July 9, 2024, the date of the proposal’s publication in the **Federal Register**, and closed on August 23, 2024. The EPA held a virtual public hearing on July 24, 2024, for members of the public to provide oral comments. This section summarizes the written and oral public comments the EPA received on the proposed FIP rule and provides responses to those comments. The written comments as well as a transcript of the public hearing are available in the docket for this action. The responses below also provide additional analysis and explanation that supports the EPA’s disapproval of Rule 1304(C)(2)(d) in the 2023 LA/LD rule.

Twelve written comments were submitted to <https://regulations.gov>. The commenters are listed in Table 1.

TABLE 1—LIST OF COMMENTERS PROVIDING WRITTEN COMMENTS

Commenter ID	Commenter name	Commenter organization	Type of commenter	Notes
01	Brad Poiriez, Executive Director	MDAQMD	State or Local Government Representative/Agency.	This is the first comment letter submitted by the MDAQMD.
02	Brad Poiriez, Executive Director	MDAQMD	State or Local Government Representative/Agency.	This is the second comment letter submitted by the MDAQMD regarding the MDAQMD’s August 7, 2024 SIP submittal.
03	Garden Hills Org. & Co. Ltd .....	.....	.....	This comment is not relevant to the proposed action and the EPA will therefore not be providing a response to this comment.
04	Clean Future .....	.....	.....	This commenter submitted four separate comments, two that supported the proposed FIP as drafted and two that made additional recommendations.
05	Karnig Ohannessian, Deputy Assistant Secretary of the Navy (Environment and Mission Readiness).	U.S. Department of Defense	Government Representative/Agency.	
06	L. Dugan	Marine Air Ground Task Force Training Command, Marine Corps Air Ground Combat Center (MAGTFTC–MCAGCC).	Government Representative/Agency.	
07	Nicole Valentine	Pacific Gas and Electric Company	Industry.	
08	Catalina Elias, Environmental Manager.	CalPortland Company	Industry.	

⁶ Id. at 2. The court wrote that its disposition of the case “is not appropriate for publication and is not precedent. . . .” Id. at 1.
⁷ Id. at 5.

⁸ See, *Biden v. Texas*, 597 U.S. 785, 807–809 (2022); *Fischer v. Pension Benefit Guarantee Corporation*, 994 F.3d 664, 669–70 (D.C. Cir. 2021).

⁹ See, *Fischer*, 994 F.3d. at 670 (additional administrative appeal not needed on remand where the factual record was fully developed).

TABLE 1—LIST OF COMMENTERS PROVIDING WRITTEN COMMENTS—Continued

Commenter ID	Commenter name	Commenter organization	Type of commenter	Notes
09	Michael Meinen, V.P. Environmental and Decarbonization Efforts.	Mitsubishi Cement Corporation	Industry.	

The EPA also received a total of three comments on the proposed rule during the public hearing. The commenters are listed in Table 2.

TABLE 2—LIST OF COMMENTERS IN JULY 24, 2024 PUBLIC HEARING

Commenter ID	Commenter name	Commenter organization	Type of commenter
AA	Brad Poiriez, Executive Director	Mojave Desert Valley Air Quality Management District (MDAQMD).	State or Local Government Representative/ Agency.
BB	Pedro Dumaua	Ducommun, Inc	Industry.
CC	Daniel McGivney	Southern California Gas Company (SoCalGas)	Industry.

As we stated in the July 24, 2024 public hearing, the EPA considers written comments and oral comments equally in reaching its final decision on the proposed FIP. For clarity, we have divided our responses to the comments we received into two sections: the written comments we received during the public comment period and the oral comments we received during the public hearing.

A. Summaries of Written Comments and the EPA's Responses

1. Basis and Timing for the FIP

Comment A.1.1: Commenter 01 asserts that the EPA proposed the FIP in “haste,” that the proposed FIP relates to a single issue, and that it is unnecessary because it rests on an erroneous assumption.

Response to Comment A.1.1: The EPA disagrees with the characterization that the EPA proposed the FIP in haste. As explained in our proposed rulemaking,¹⁰ the EPA’s FIP authority and obligation arises from our February 3, 2017 finding of failure to submit, in which we found that the State of California had failed to submit a SIP revision for NNSR rules that apply to a “Severe” classification for the 2008 ozone NAAQS, as required under subpart 2 of part D of title 1 of the CAA and the 2008 Ozone SIP Requirements Rule.¹¹ The EPA’s finding of failure to submit triggered an obligation under CAA section 110(c) for the EPA to promulgate a FIP no later than two years from the finding of failure to submit a complete SIP (*i.e.*, by March 6, 2019).¹² Specifically, the finding stated that if the State did not make the required SIP

submission and the EPA did not take final action to approve the submission within two years of the effective date of the finding, the EPA would be required to promulgate a FIP for the affected nonattainment area.¹³ On June 7, 2022, the Center for Biological Diversity (CBD) filed a lawsuit against the EPA alleging that the EPA had failed to promulgate a FIP or approve a SIP by the statutory deadline of March 6, 2019 (“2023 CBD Consent Decree”).¹⁴ On June 15, 2023, the U.S. District Court of the Northern District of California entered a consent decree resolving this claim and requiring the EPA to sign a final rulemaking action to either promulgate a FIP or approve a SIP no later than November 29, 2024, although on November 8, 2024, the EPA and CBD agreed to extend the deadline to January 10, 2025.¹⁵ The EPA proposed and is finalizing this FIP for the NNSR program in the MDAQMD to fulfill the EPA’s statutory duty by the deadline established under the consent decree.¹⁶

Relatedly, the 2015 Ozone NAAQS Implementation Rule required the MDAQMD to submit an updated NNSR rule to the EPA by August 1, 2021, no later than three years from the effective date of its nonattainment designation.¹⁷

¹³ Id. at 9158.

¹⁴ *Center for Biological Diversity et al., v. Regan*, No. 3:22-cv-03309-RS (N.D. Cal.) (“2023 CBD Consent Decree”). The consent decree, as entered by the court on June 15, 2023, is available in the docket for this action.

¹⁵ Id. Prior to court’s entry of the 2023 CBD Consent Decree, the EPA published a notice in the **Federal Register** announcing the proposed settlement and providing an opportunity for interested persons to submit comments. 88 FR 20166 (April 5, 2023). The EPA received no comments on the proposed settlement. The parties’ joint stipulation to extend the consent decree deadline is available in the docket for this action.

¹⁶ 2023 CBD Consent Decree, *supra* n. 13.

¹⁷ 83 FR 62998 (December 6, 2018).

On July 23, 2021, CARB submitted to the EPA the MDAQMD’s revised NNSR rules for the 2015 ozone NAAQS, which the MDAQMD adopted in March 2021.¹⁸ On June 30, 2023, the EPA finalized an LA/LD of the District’s NNSR rules.¹⁹ In this rulemaking, the EPA evaluated the SIP submission to determine its compliance with NNSR requirements for the 2008 and 2015 ozone NAAQS and for the 1987 PM₁₀ NAAQS. The EPA’s rulemaking for the submitted rules explained that the EPA had identified six deficiencies in the submitted rules that did not fully satisfy the relevant requirements for preconstruction review and permitting in nonattainment areas under section 110 and part D of title I of the Act. These deficiencies prevented full approval.²⁰ As noted in that final action, this disapproval imposed an obligation on the EPA to promulgate a FIP pursuant to CAA section 110(c) within 24 months of the effective date of the action (*i.e.*, July 31, 2023, setting a deadline of July 31, 2025, for the EPA to promulgate a FIP), unless the EPA approved a SIP revision correcting the deficiencies. The June 2023 final action also noted the EPA’s existing obligation under the 2023 CBD Consent Decree to promulgate a FIP for new source review (NSR) SIP elements that the Agency had not approved.²¹ The EPA is therefore finalizing this FIP for the NNSR program in the MDAQMD to fulfill the EPA’s statutory duty by the deadline

¹⁸ 88 FR 42258 (June 30, 2023). CARB’s submittal stopped the sanctions clocks that started as a result of the 2017 Finding of Failure to Submit, but not the FIP clock, since the latter requires approval of the SIP submission.

¹⁹ Id.

²⁰ Id.

²¹ Id. at 42268.

¹⁰ 89 FR 52637, 52639.

¹¹ 82 FR 9158 (February 3, 2017).

¹² Id. at 9161.

established under the 2023 CBD Consent Decree.

Comment A.1.2: Commenter 08 states that it understands that the EPA is proposing the FIP under both a statutory deadline established by a consent decree resulting from its failure to act in a timely manner on various SIP submissions and under a regulatory deadline required by CAA section 110(c). Commenter 08 states that the EPA acted to propose the FIP nearly five months sooner than required by the consent decree. Commenter 08 believes that the proposed FIP presumes the outcome of the ongoing litigation, and the hasty action on the EPA's part does not demonstrate a good faith effort to allow the MDAQMD to continue to implement its own NNSR program.

Response to Comment A.1.2: The EPA proposed this FIP for the MDAQMD NNSR program to fulfill the EPA's statutory duty by the deadline established under the 2023 CBD Consent Decree.²² The terms of the consent decree require the EPA to sign a notice of final rulemaking to approve a revised SIP submission, to promulgate a FIP, or to approve in part a revised SIP submission and promulgate a partial FIP for the Severe NNSR SIP element in the MDAQMD no later than January 10, 2025.²³ Because the FIP can only be promulgated through a notice and comment rulemaking, it was necessary for the EPA to propose the FIP several months before the final signature deadline to give time for the public to review the draft rulemaking, provide comments, and allow for the EPA to consider and respond to those comments in a final agency action.

Commenter 08's assessment of the basis for the EPA's promulgation of the FIP and the timing of the FIP is not correct. The EPA's obligation to promulgate a FIP stems from our 2017 Finding of Failure to Submit the NNSR SIP element for a Severe-15 ozone nonattainment area.²⁴ Our 2017 action started the clock for when the EPA would need to promulgate a FIP, consistent with CAA section 110(c). Thus, since March 6, 2019 (two years after the effective date of the action, under CAA section 110(c)), the EPA has had an obligation to promulgate a FIP unless it approved the MDAQMD's

NNSR program. Because the EPA has not fully approved the MDAQMD's NNSR program, the EPA remains obligated to promulgate a FIP unless the MDAQMD addresses the deficiencies identified in the 2023 LA/LD.

After extensive coordination between the EPA and MDAQMD, the MDAQMD adopted revised NSR rules on March 22, 2021, which CARB, as the governor's designee, submitted to the EPA on July 23, 2021, for approval into the SIP. In the transmittal letter from the MDAQMD to CARB accompanying the amended NNSR rules, the MDAQMD wrote that the issue regarding MDAQMD Rule 1304(C)(2)(d) may need to be resolved in court.²⁵ The EPA's 2023 LA/LD was the final action on the 2021 submittal. The FIP clock that commenced with the 2023 LA/LD is separate from the FIP clock that began with the 2017 finding of failure to submit, in contrast to the statements Commenter 08 made in its comment number 1 on the proposed FIP; again, that deadline passed in 2019.

Following the EPA's finalization of the 2023 LA/LD on June 30, 2023, the MDAQMD filed a petition for review of that action in the U.S. Court of Appeals for the Ninth Circuit Court on July 10, 2023. On September 5, 2024, the Ninth Circuit Court of Appeals in the case *Mojave Desert Air Quality Management District v. EPA* remanded to the EPA the Agency's determination that the MDAQMD Rule 1304(C)(2)(d) is unlawful under the CAA. The Ninth Circuit did not render a substantive ruling on the legality of the MDAQMD Rule 1304(C)(2)(d); rather, it remanded to the EPA to explain the EPA's finding that the MDAQMD rule was deficient, specifically in the context of the EPA's 1996 approval of the MDAQMD's NNSR program containing similar provisions to today's Rule 1304(C)(2)(d). The EPA therefore finds the MDAQMD SIP remains deficient with respect to Rule 1304(C)(2)(d) and inconsistent with CAA requirements. Regardless of the Ninth Circuit's remand, the EPA is required to promulgate the FIP, and it must do so by the consent decree deadline of January 10, 2025.²⁶

Comment A.1.3: Commenter 02 states that since the MDAQMD made changes to address all but one of the six

deficiencies the EPA identified in the 2023 LA/LD, there is no longer a need to address those particular issues in the FIP other than to note that resolution has been reached and approval of those five issues is forthcoming.

Commenter 08 states that because CARB submitted the MDAQMD's revised rules to the EPA on August 7, 2024, it is the commenter's understanding that the FIP will only pertain to Simultaneous Emission Reduction ("SER") calculations under MDAQMD Rule 1304(C)(2)(d). The commenter states that with CARB's submission of the MDAQMD's revised rules, the deficiencies in the MDAQMD's rules are no longer broad in scope, nor do they affect multiple aspects of the program. The commenter urges the EPA to work cooperatively with the MDAQMD and not put the onus of the FIP on facilities.

Commenter 07 states that the MDAQMD has made many changes to its NSR rules to meet the requirements of the 1990 Clean Air Act and requests that the EPA reevaluate its decision to promulgate the FIP. Similarly, Commenter 05 states that the EPA should reconsider or postpone implementing the FIP until it can resolve its disagreement with the MDAQMD regarding Rule 1304(C)(2)(d). Commenter 09 urges the EPA to defer the FIP until the ongoing litigation between the EPA and the MDAQMD is resolved.

Response to Comment A.1.3: Section III.H of our FIP proposal described how SIP replacement of all or any part of the proposed FIP would work, noting that changes to the MDAQMD's rules, if approved into the SIP, could replace the corresponding requirements of the FIP.²⁷ The EPA received CARB's submission of the MDAQMD's revised rules (adopted by the MDAQMD on March 25, 2024) on August 7, 2024, which was after our July 9, 2024 proposed action. For the EPA to narrow the scope of the FIP to just the remaining issue—the quantification and generation of offsets under MDAQMD Rule 1304(C)(2)(d)—the EPA would first need to approve the August 7, 2024 CARB submittal containing the MDAQMD's revised NNSR rules, which requires a 30-day notice and comment period. We are currently reviewing the submission for completeness and substance, as required under section 110(k) of the CAA. Therefore, there is not enough time before the January 10, 2025 consent decree deadline to accommodate the required notice and comment rulemaking on any action the

²² Id.

²³ *Center for Biological Diversity et al., v. Regan*, No. 3:22-cv-03309-RS (N.D. Cal.). The consent decree, as entered by the court on June 15, 2023, is available in the docket for this action. On November 8, 2024, the parties stipulated to an extension of the consent decree deadline to January 10, 2025. The joint stipulation is available in the docket for this action.

²⁴ 82 FR 9158 (February 3, 2017).

²⁵ Cover Letter, MDAQMD March 22, 2021 Amendments to MDAQMD Regulation XIII—New Source Review and Rule 1600—Prevention of Significant Deterioration, sent from the MDAQMD to CARB. May 17, 2021, p. 2.

²⁶ On November 8, 2024, CBD and the EPA filed a joint stipulation to extend the original November 29, 2024 deadline to January 10, 2025. *Center for Biological Diversity et al., v. Regan*, No. 3:22-cv-03309-RS (N.D. Cal.). This consent decree is also available in the docket for this action.

²⁷ 89 FR 56237, 56243.

EPA takes on the August SIP submittal.²⁸

Case law also supports the conclusion that the EPA is not required to act on the MDAQMD's August 7, 2024 submittal prior to finalizing the FIP. As the court held in *Keystone-Conemaugh Projects LLC v. EPA*, a case in which the EPA promulgated a FIP before acting on a revised SIP submittal, CAA section 110(c) "contains no language requiring the EPA to act on the SIP revision before promulgating the FIP."²⁹ (Emphasis in original.) Likewise, as Commenter 02 indicates in its comment letter, the MDAQMD's revised NNSR rules submitted by CARB on August 7, 2024, does not include any revisions of MDAQMD Rule 1304(C)(2)(d).

Similar to the situation at issue in *Arizona ex rel. Darwin v. United States*, there is no reason to think that, after nearly five years of discussions of the MDAQMD's NNSR program between EPA and the MDAQMD, additional time to correct Rule 1304(C)(2)(d) would lead to MDAQMD's revising its NNSR program to resolve the deficiency.³⁰

Comment A.1.4: Commenter 09 states that the proposed FIP is not necessary because the EPA already has authority under the existing MDAQMD rules to review applications for major facilities and enforce applicable federal NNSR requirements. This commenter states that MDAQMD Rule 1203(B)(1) requires that the EPA be given an opportunity to review and comment on applications for Federal Operating Permits (FOP), Significant Modifications to FOPs, and Renewals to FOPs. The commenter

states that the EPA already has the discretion and authority to deny applications for a Major Facility that it believes has not complied with applicable federal NNSR requirements.

Response to Comment A.1.4: The EPA disagrees with the comment. While the EPA can comment on, and enforce, Title V permits issued under the MDAQMD's approved CAA Title V program,³¹ the Title V operating permit program is not the same permitting program as a NNSR pre-construction permitting program. Title I of the CAA has a separate requirement that the MDAQMD SIP contain a fully approved NNSR permitting program for the 2008 and 2015 ozone NAAQS.³² Federal Operating Permits issued under Title V of the CAA (and under Regulation XII of MDAQMD's approved Title V program) are not the same as pre-construction NNSR permits issued under a SIP-approved program under Title I of the CAA, and the EPA's authority to review, comment on, and object to Title V permits does not remedy the deficiencies in the MDAQMD's NNSR program, nor does the EPA's authority under Title V fulfill the EPA's FIP obligation under CAA section 110(c). MDAQMD Regulation XIII, which contains the MDAQMD's NNSR program, still needs to be approved into the SIP for the 2008 and 2015 ozone NAAQS. The EPA therefore has a statutory duty to promulgate a FIP as the result of its finding of failure to submit published in the **Federal Register** on February 6, 2017, and the EPA is now subject to a court order to either promulgate a FIP or approve a SIP submission that corrects all the deficiencies identified in the finding of failure to submit no later than January 10, 2025.³³

2. Comments on MDAQMD Rule 1304(C)(2)(d)

Comment A.2.1: Commenter 01 asserts that the EPA erroneously assumed that SERs (Simultaneous Emissions Reductions) created under MDAQMD Rule 1304(C)(2)(d) (referred to by Commenter 01 as "1304(C)(2)(d) Offsets") are unlawful under the CAA. The commenter states that 1304(C)(2)(d) Offsets are created by a reduction in a source's allowable emissions that were fully offset in a previous action. Commenter 01 states that 1304(C)(2)(d) Offsets are adjusted to reflect otherwise required reductions, may only be used

to offset contemporaneous emission increases at the facility, and cannot be banked for future use. Commenter 01 further asserts that 40 CFR 51.165(a)(3)(ii)(J) does not relate to creditable emission reductions and that even that provision, through a cross-reference to the definition of "actual emissions" at 40 CFR 51.165(a)(1)(xii), allows permitting agencies to "presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit."

Commenter 06 similarly asserts that while 40 CFR 51.165(a)(3)(ii)(J) requires offsets to be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification (as defined in paragraph (a)(1)(xii)), paragraph (a)(1)(xii)(C) allows the MDAQMD to presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

Therefore, Commenters assert, 1304(C)(2)(d) Offsets and the potential-to-emit to potential-to-emit or potential-to-potential (PTE-to-PTE) test are valid and consistent with sections 173(c)(1), 173(c)(2), and 182 of the CAA and the implementing regulations at 40 CFR 51.160–165.

Response to Comment A.2.1: The EPA disagrees with the assertion that the EPA made an erroneous finding that 1304(C)(2)(d) Offsets are inconsistent with statutory and regulatory requirements. As the EPA previously explained in the 2023 LA/LD and reiterated in our proposed action for the FIP, 1304(C)(2)(d) Offsets are inconsistent with the CAA and the EPA's regulations because they allow facilities to satisfy major NSR offset obligations using a baseline of allowable emissions before construction rather than a baseline of actual emissions before construction. We provide a more detailed explanation below.

CAA sections 173(a)(1)(A) and 173(c)(1) require that NNSR permits issued by states (or local air districts) pursuant to EPA-approved SIPs must require all proposed new or modified major sources that trigger NNSR to obtain sufficient offsetting emissions reductions. For example, section 173(c)(1) requires owners or operators of new or modified major stationary sources to obtain emission reductions that "assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area."

²⁸ The CBD Consent Decree deadline was November 29, 2024, until CBD and the EPA agreed to extend the deadline, following the EPA's showing of need for an extension. Despite this extension, the EPA maintains that the extension of the CBD Consent Decree deadline to January 10, 2025, is still an insufficient amount of time to act on the MDAQMD's submittal and narrow the scope of the FIP before the deadline to finalize it.

²⁹ *Keystone-Conemaugh Projects LLC v. EPA*, 100 F.4th 434, 447 (3d Cir. 2024). The court further stated that "... if the EPA were required to act on each and every SIP revision submitted before it could issue a FIP, an untenable scenario could ensue. For instance, if a state were to submit multiple inadequate SIP revisions, it could effectively nullify the EPA's ability to issue a FIP and thus delay the implementation of any emission limits." (FN7)

³⁰ See, *Ariz. ex rel. Darwin v. United States*, 815 F.3d 519, 543–544 (9th Cir. 2016), in which the Ninth Circuit Court of Appeals upheld the EPA's combined partial SIP disapproval and FIP, which the agency promulgated to meet a consent decree deadline stemming from a previous finding of failure to submit. The court stated that "it is unlikely that a different outcome would have resulted if EPA had provided [the State] with additional time to correct its ... SIP ... [the State] made no effort to correct its SIP in light of these comments. There is no reason to think it would have done so after the Final Rule disapproving the SIP issued either."

³¹ See 40 CFR part 70, appendix A.

³² 42 U.S.C. 7410(a).

³³ *Center for Biological Diversity et al., v. Regan*, No. 3:22-cv-03309-RS (N.D. Cal.). This consent decree is also available in the docket for this action.

(Emphasis added.)³⁴ Rule 1304(C)(2)(d) is inconsistent with section 173(c)(1) because it allows sources that have offset their allowable emissions at any point in time to avoid the CAA obligation to offset future increases in actual emissions from future major modifications. The EPA also disagrees with Commenter 01's assertion that Rule 1304(C)(2)(d) is consistent with CAA section 173(c)(2). In addition to the phrase referenced by the commenter, CAA section 173(c)(2) also states that “[i]ncidental emission reductions which are not otherwise required by this chapter shall be creditable as emission reductions for such purposes if such emission reductions meet the requirements of [CAA section 173(c)(1)].”

The regulations at 40 CFR 51.165 require the District to use actual emissions as the baseline for determining the total tonnage of offsets that must be obtained by an owner or operator of a stationary source undergoing NNSR permitting. 40 CFR 51.165(a)(3)(i) requires:

[T]hat the offset baseline shall be the *actual* emissions of the source from which offset credit is obtained where . . . [t]he demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area for which the preconstruction review program was adopted. (Emphasis added.)

Moreover, under 40 CFR 51.165(a)(3)(ii)(f), which the EPA codified in 2002, SIPs “shall . . . provide that” “[t]he total tonnage of increased emissions . . . that must be offset . . . shall be determined by summing the difference between the *allowable* emissions *after* the modification (as defined by paragraph (a)(1)(xi) of this section) and the *actual* emissions *before* the modification (as

defined in paragraph (a)(1)(xii) of this section)[.]” (Emphasis added.)

Although Commenters 01 and 06 cite 40 CFR 51.165(a)(1)(xii) as authority to assert that MDAQMD is allowed to presume that the source-specific allowable emissions for a unit are equivalent to the actual emissions of the unit, any flexibility allowed under that provision is limited by section 40 CFR 51.165(a)(3)(i), which requires states or air districts that base reasonable further progress (RFP) and attainment planning on actual emissions³⁵ to use actual emissions as the baseline for all offset purposes.³⁶ The MDAQMD's RFP and attainment demonstrations are based on actual emissions, not allowable emissions.³⁷

The EPA also disagrees with Commenter 01's suggestion that the EPA erroneously relied on 40 CFR 51.165(a)(3)(ii)(f) in its disapproval of Rule 1304(C)(2)(d) because that paragraph “addresses calculating emission increases[,] not creditable emission reductions.”³⁸ Both provisions require the use of actual emissions as a baseline to calculate either the offset obligation (emission increase) or the satisfaction of that obligation (credit for emissions reductions), and the commenter does not dispute that 40 CFR 51.165(a)(3)(i) requires that emissions reductions for offset credits must use actual emissions as a baseline if actual emissions are used to demonstrate reasonable further

progress and attainment. The MDAQMD's RFP and attainment demonstrations are based on actual emissions—not allowable emissions.³⁹

Based on the requirements of the CAA and its implementing regulations regarding offsets,⁴⁰ Rule 1304(C)(2)(d) does not ensure that the required quantity of emissions associated with a major modification in the MDAQMD will be offset and the provision is therefore not approvable in the SIP. Accordingly, the EPA must promulgate a FIP that contains the requirements stated in the CAA and its implementing regulations. The MDAQMD regulates an area that is classified as a Severe ozone nonattainment area and a “Moderate” PM₁₀ nonattainment area. It is important that sources in the nonattainment area make real reductions in emissions to offset emissions increases consistent with the goal of bringing the area into attainment for these air pollutants.

Comment A.2.2: Commenter 01 states that although 1304(C)(2)(d) Offsets result from reductions in allowable emissions, “they produce real reductions in actual emissions.” The commenter states that to “originally secure the allowable emissions, the facility had to previously effect permanent actual emission reductions” either by curtailing its own emissions or by purchasing emission reduction credits. The commenter states that if the facility agrees to permanently reduce those offset allowable emissions, the permanent emission reductions continue to exist. Commenter 01 then states that where those emission reductions “exceed the volume of reductions required to sufficiently offset historical actual emissions (*i.e.*, the facility was able to curtail the source's emissions below the now eliminated allowable emission levels), those reductions exceed the obligation to assure that the total tonnage of increased emissions of an air pollutant from the new or modified source is offset by a reduction of actual emissions of that air pollutant in accordance with 42 U.S.C. 7503(c)(1) and in the quantities required by 42 U.S.C. 7511a.” Commenter 01 further states that Rule 1304(C)(2)(d) complies with 42 U.S.C.

³⁴ In *New York v. EPA*, a case regarding the applicability of NSR requirements, the U.S. Court of Appeals for the District of Columbia held that “the plain language of the CAA indicates that Congress intended to apply NSR to changes that increase actual emissions instead of potential or allowable emissions,” when describing the definition of the term “modification” in CAA section 111(a)(4). 413 F.3d 3, 40 (D.C. Cir. 2005). CAA section 173(c)(1) is at least as clear as CAA section 111(a)(4) regarding the import of using actual emissions for baseline purposes—it specifically uses the term “actual emissions,” and it omits terms like “potential to emit,” “emission limitations,” or similar references when addressing the baseline. Although the D.C. Circuit did not construe the Act's offset requirement at section 173(c)(1), its interpretation of a similar statutory provision bearing on when a proposed source's emissions increases trigger the need for an NSR permit, CAA section 111(a)(4), is instructive.

³⁵ See 86 FR 24809, 24813 (May 10, 2021), “The 2018 SIP Update explains that 2012 ‘stationary source emissions reflect actual emissions reported from industrial point sources’ and include stationary aggregate sources, such as gasoline dispensing facilities . . . MDAQMD Rule 107, ‘Certification of Submissions and Emission Statements,’ require[s] all stationary sources within the nonattainment area that emit more than 25 tons per year (tpy) or more of VOC or NO_x to report and certify annual emissions.” The MDAQMD does not assert or document use of allowables for RFP or attainment.

³⁶ Furthermore, Commenter 01 states the presumption incorrectly—40 CFR 51.165(a)(1)(xii)(C) allows the permitting authority to presume that allowable emissions are equivalent to the actual emissions, it does not say that the permitting authority may presume that the actual emissions are equivalent to the allowable emissions. This is important because a source's actual emissions will almost always be lower than its allowable emissions since an exceedance of the allowable emissions could constitute a violation of the permit.

³⁷ MDAQMD's 2008 and 2015 ozone NAAQS attainment plans are based on actual emissions. The 2008 ozone NAAQS plan is available at: https://ww2.arb.ca.gov/sites/default/files/classic/planning/sip/planarea/wmdaqmp/2016sip_mdplan.pdf, pp. 7, 34 (EPA approved this plan, see 86 FR 53223 (September 27, 2021)). The 2015 ozone NAAQS is available at: <https://www.mdaqmd.ca.gov/home/showpublisheddocument/9693/638131029372000000>, pp. 4–5, 24, 80.

³⁸ Commenter 01 letter, p. 4, footnote 30.

³⁹ MDAQMD's 2008 and 2015 ozone NAAQS attainment plans are based on actual emissions. The 2008 ozone NAAQS plan is available at: https://ww2.arb.ca.gov/sites/default/files/classic/planning/sip/planarea/wmdaqmp/2016sip_mdplan.pdf, pp. 7, 34 (EPA approved this plan, see 86 FR 53223 (September 27, 2021)). The 2015 ozone NAAQS is available at: <https://www.mdaqmd.ca.gov/home/showpublisheddocument/9693/638131029372000000>, pp. 4–5, 24, 80.

⁴⁰ See *e.g.*, CAA sections 173(a)(1)(A), 173(c)(1) and 40 CFR 51.165(a)(3)(i), 40 CFR 51.165(a)(3)(ii)(G), and 40 CFR 51.165(a)(3)(ii)(f).

7503(c)(2) by identifying excess emission reductions and credits that exceeds the law's requirements as an available offset.

Moreover, Commenter 05 believes that emissions that were previously offset under the MDAQMD's rules represent actual emission reductions as required by CAA section 173(c)(1) and can be used for calculating emission reductions pursuant to Rule 1304(C)(2)(d). Commenter 05 asserts that fully offset emissions are not "paper reductions" because they represent actual emission reductions that are banked and used following approved regulatory procedures.

Response to Comment A.2.2: The EPA does not agree with the comment that 1304(C)(2)(d) Offsets result in real reductions in actual emissions, as required by the Act. Rule 1302(C)(2)(d) requires that (i) a federally enforceable emission limitation specify the PTE for the specific Emissions Unit; (ii) the resulting emissions change result in a decrease in emissions from the emissions unit; and (iii) any excess Simultaneous Emissions Reductions (SERs) generated from a calculation using the Rule are not eligible for banking. For emissions units that have allowable emissions limits that were fully offset at some point in the past, Rule 1304(C)(2)(d) allows *any* reduction in a facility's *allowable* emissions to be used to avoid CAA requirements to offset *actual* emissions increases.⁴¹ As a hypothetical example, under MDAQMD Rule 1304(C)(2)(d), a facility might at the time of its original construction, "secure the allowable emissions," (using the commenter's phrasing) in the amount of 200 tons per year (tpy) through "permanent actual emission reductions" in that amount. If the facility subsequently submits a permit application to construct a project that would increase its actual emissions by 40 tpy, Rule 1304(C)(2)(d) allows the facility to decrease its allowable emissions limit of 200 tpy by a nominal amount, even just 1 tpy or less, to establish that the project would result in an "emissions decrease," rather than the actual emissions increase of 40 tpy that would actually occur and that would be subject to a requirement to offset the increase in actual emissions.⁴² Rule

1304(C)(2)(d) is contrary to the CAA because it allows increases in actual emissions without *any* offsetting reductions in actual emissions. In other words, Rule 1304(C)(2)(d) allows real increases in emissions to be added to the air without requiring any offsetting decrease in real emissions.

It should also be noted that, in the hypothetical example presented in the previous paragraph, although the facility would have offset 200 tpy of emissions at the time of its initial construction by obtaining or surrendering 200 tpy of emissions reduction credits ("ERCs"), it used those ERCs to obtain a 200 tpy allowable emissions limit in that project.⁴³ Therefore, those ERCs are no longer available to offset subsequent increases in actual emissions resulting from future construction and modification projects. According to Commenter 01, Rule 1304(C)(2)(d) allows NNSR permit applicants to obtain permits by relying on previously relied upon emission reductions or previously surrendered emission reduction credits; however, because those emission reductions were used in a prior permitting action, they are not "surplus" under 40 CFR 51.165(a)(3)(ii)(G). 40 CFR 51.165(a)(3)(ii)(G) states: [The SIP] "shall further provide that . . . [c]redit for an emissions reduction can be claimed to the extent that the reviewing authority has not relied on it in issuing any [NNSR] permit . . . or the State has not relied on it in demonstrat[ing] attainment or reasonable further progress." Thus, 40 CFR 51.165(a)(3)(ii)(G) prevents facilities from re-using credits to obtain a permit for a major modification.

3. Comments Regarding EPA's 1996 Approval of 1304(C)(2)(d) Offsets

Comment A.3.1: Commenter 01 states that in 1996, EPA approved 1304(C)(2)(d) Offsets and that the associated 1995 technical support document explained that 1304(C)(2)(d) Offsets constitute real reductions in actual emissions, are not otherwise required by the CAA (once adjusted) and comply with CAA section 173. The commenter also states that since 1996 neither the relevant law nor the 1304(C)(2)(d) Offsets have materially changed.

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⁴³ These required offset quantities do not reflect the adjustment based on the area's nonattainment, which would require an even greater quantity of offsets for higher levels of nonattainment. CAA 182(d)(2), 40 CFR 51.165(a)(9).

Commenter 01 further states that the proposed FIP is arbitrary and capricious because the EPA fails to explain the reversal of its 1996 position in approving the District's Rule 1304(C)(2)(d) Offsets. The commenter states that EPA's contention that 1304(C)(2)(d) Offsets allow reductions on paper that do not represent real emissions reductions and that sources must reduce actual emissions to below historic actual emission levels to generate offset credit are complete reversals of the positions the EPA took in 1996 when it determined that SERs, including 1304(C)(2)(d) Offsets, constitute real reductions in actual emissions that are not otherwise required by the CAA and offset credit could be lawfully generated from reductions of surplus, fully-offset allowable emissions. The commenter states that, while the Administrative Procedure Act (APA) allows the EPA to reverse its policy on the 1304(C)(2)(d) Offsets, the EPA must "display awareness that it is changing position and show that there are good reasons for the new policy."⁴⁴

Response to Comment A.3.1: The EPA's response to this comment serves as both our response to this comment in the context of the proposed FIP, the rulemaking for which the comment was submitted, and as the Agency's new final action to disapprove Rule 1304(C)(2)(d) in response to the Court of Appeals' ruling in the case *Mojave Desert Air Quality Management District v. EPA*, in which the Ninth Circuit granted petitioner MDAQMD's petition for review and remanded to the EPA "for further proceedings before the agency on an open record consistent with this decision."⁴⁵ The MDAQMD, in its comments on the EPA's proposal of the 2023 LA/LD, criticized the EPA's proposed rulemaking for failing to explain why the EPA approved similar provisions into the SIP in 1996 that it now finds deficient. The MDAQMD sought review of EPA's 2023 LA/LD action in the Ninth Circuit. The court agreed that the EPA failed to provide sufficient explanation in that action for the change in direction after 1996 and therefore directed the EPA to address the issue through further proceedings. Commenter 01—the MDAQMD—makes the comment again in the context of the FIP. Since both matters address the same subject, the EPA has determined that it is appropriate to use one notice

⁴¹ Rule 1304(C)(2)(d)(ii) requires that "the resulting Emissions Change from a calculation using this provision is a decrease in emissions from the Emissions Unit(s)," hence why a source must demonstrate a reduction in allowable emissions from the subsequent modification.

⁴² The example presented here is similar to a recent MDAQMD permitting action that the EPA described in the 2023 LA/LD. 88 FR 42258, 42263 (MDAQMD, "Preliminary Determination/

⁴⁴ Citing *Ass'n of Irrigated Residents v. U.S. Env't Prot. Agency*, 10 F.4th 937, 945 (9th Cir. 2021).

⁴⁵ Memorandum, *Mojave Desert Air Quality Management District v. United States Environmental Protection Agency*, 9th Circuit Court of Appeals No. 23–1411, September 5, 2024, p. 5.

to both respond to the MDAQMD's comments in the context of the FIP and to respond to the court's remand regarding the 2023 LA/LD disapproval of Rule 1304(C)(2)(d).

First, we note that significant regulatory changes occurred or were proposed in the 1990s, federally and in California, where the State and local air districts were implementing State legislation that was passed in 1988 to address air quality issues.⁴⁶ Later in this action, we discuss the CAA and regulatory requirements at the time of the EPA's October 1995 proposed approval and November 1996 final approval of the MDAQMD's NSR rules. We then describe the Agency's contemporaneous consideration of options for regulatory flexibility during the 1990's. These documents, taken together, provide context for the regulatory landscape that existed during the EPA's review and approval of the MDAQMD's rules in 1995–1996. We also analyze our 1996 approval of MDAQMD's offset rules in light of the EPA's 2002 final rulemaking revising significant aspects of the NSR program ("2002 NSR Reform Rule").⁴⁷ In sum, this analysis is sufficient for the EPA, now, to conclude that the EPA's 1996 approval of the MDAQMD's offset rules was inconsistent with the CAA and its implementing regulations. Based on the documents discussed in this response, the EPA apparently believed in 1996 that the District's rules, which required the application of Best Available Control Technology (BACT) and offsets for a modification on the PTE of the entire facility rather than the modification alone, were sufficiently stringent to satisfy federal requirements.⁴⁸ As we explain in this response and in our responses to comments A.2.1 and A.2.2, however, our justification in 1996 for approving MDAQMD rule provisions that were similar to Rule 1304(C)(2)(d) is deficient, the EPA's 2002 NSR Reform Rule did not include revisions that would ratify or authorize MDAQMD's approach, and therefore our 2023

disapproval of Rule 1304(C)(2)(d) is correct.

Federal Regulatory Scheme Regarding Offsets in Effect in 1996

On August 7, 1980, the EPA promulgated NSR rules for attainment and nonattainment areas.⁴⁹ The 1980 NSR rulemaking codified 40 CFR 51.18(j)(3)(i), requiring an offset baseline to be based on actual emissions of the source from which offset credit is obtained where demonstrations of reasonable further progress and attainment are based on actual emissions.⁵⁰ As stated in the rule's preamble, the EPA's rationale was, "to be consistent with RFP, sources must reduce their actual, rather than their allowable, emissions. Otherwise, sources could claim credit for offsets in situations where the offset would actually interfere with RFP."⁵¹ On November 7, 1986, the EPA promulgated NSR rules specifically for nonattainment areas at 40 CFR 51.165 and codified the text at 40 CFR 51.18(j)(3)(i) into 40 CFR 51.165(a)(3)(i), where it was in 1996, in 2023 (at the time of our LA/LD rulemaking), and today.⁵²

The EPA's 1980 NSR rulemaking also codified 40 CFR 51.18(j)(3)(g), allowing credit for emissions reductions only "to the extent that the reviewing authority has not relied on [the reductions] in issuing any permit under regulations approved pursuant to 40 CFR 51.18 or the state has not relied on [the reductions] in demonstrating attainment or reasonable further progress."⁵³ The EPA's 1986 NSR rulemaking codified the text at 40 CFR 51.165(a)(3)(ii)(G), where it was in 1996, in 2023 (at the time of our LA/LD rulemaking) and today.⁵⁴

Likewise, EPA guidance issued during the 1990s addressed the quantity of emissions to be offset. Specifically, in the proposed rulemaking action titled, "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," the EPA clarified that CAA section 173(c)(1) "provides that emissions increases from the new or modified source must be

offset by real reductions in actual emissions."⁵⁵

The EPA's 1995–1996 Rulemaking for the MDAQMD's 1993 and 1996 Adopted Versions of Rule 1304(C)(2)(d)

On October 27, 1993, the MDAQMD adopted a series of NSR rules, which CARB submitted to the EPA as a SIP revision on March 29, 1994.⁵⁶ On October 31, 1995, the EPA published a proposed action in the **Federal Register** to approve the rules contingent upon the MDAQMD's adoption and submittal, as a SIP revision, of revised rules that would correct a number of deficiencies that EPA had identified.⁵⁷ The EPA based its proposed "approval with a contingency and disapproval in the alternative" on a set of draft rules that the MDAQMD transmitted to the EPA on October 11, 1995 ("October 11, 1995 draft rules") that MDAQMD had not yet adopted or submitted to CARB.⁵⁸ The EPA's proposed action explained that the 1993 adopted version of the rules contained numerous deficiencies that precluded full approval but that the October 11, 1995 draft rules were intended to address those deficiencies and that the EPA's proposed approval was conditioned upon MDAQMD's adoption and submission of the revised rules.⁵⁹ Thus, the EPA's proposed rule and technical support document (TSD) summarized the rules as adopted on March 29, 1993, including bases for findings of rule deficiencies, as well as statements regarding the October 11, 1995 draft rules that the MDAQMD had

⁵⁵ 57 FR 13498, 13553 (April 16, 1992). The EPA further stated that if RFP and attainment plans "are based on allowable emissions, offset credit for reductions in allowable emissions . . . is appropriate, but will be deemed inadequate if there is not a real reduction in actual emissions that equals or exceeds, as applicable, the increase in emissions resulting from the operation of the major new or modified source." Id.

⁵⁶ Although EPA has not been able to locate a copy of the NSR rules as adopted by the MDAQMD in October 1993, we are able to determine the adoption date from the MDAQMD's headings on later versions of the rules that provide a chronology of adoption dates. The 1995 TSD and proposed rulemaking reference the submittal date. 1995 TSD at 2; 60 FR 55356.

⁵⁷ 61 FR 58133 (November 13, 1996). In the proposed rulemaking, the EPA proposed "to approve with a contingency, and disapprove in the alternative." 60 FR 55355 (October 31, 1995).

⁵⁸ 60 FR 55355.

⁵⁹ Id. ("The submitted rules contain a number of deficiencies that prevent EPA from approving them as revisions to the SIP. However, MDAQMD has agreed to correct these deficiencies, and has sent draft rules . . . to EPA which contain acceptable language. This proposed approval is therefore contingent upon MDAQMD adopting and submitting to EPA revised rules which correct the deficiencies identified in this document before EPA promulgates a final rulemaking on the submitted rules.")

⁴⁶ For example, the California Clean Air Act uses different offsets thresholds than the federal regulations. See California Health and Safety Code sections 40918, 40919, 40920, and 40920.5; compare to 40 CFR 51.165. California air districts must implement State requirements under California law and satisfy the federal requirements under the CAA and its implementing regulations. Any provision that conflicts with the CAA and its implementing regulations is not approvable.

⁴⁷ 67 FR 80186, 80205 (December 31, 2002).

⁴⁸ 1995 TSD accompanying the EPA's proposed rule (60 FR 55355 (October 31, 1995)) ("1995 TSD"), p. 17.

⁴⁹ 45 FR 52676 (August 7, 1980).

⁵⁰ Id. at 52745.

⁵¹ Id. at 52728.

⁵² 51 FR 40656, 40672 (November 7, 1986); 40 CFR 51.165(a)(3)(i) (1996) (a copy of the CFR as of July 1, 1996 is in the docket for this rulemaking). See also, 57 FR 13498, 13552 (April 16, 1992) ("The EPA interprets section 173(a)(1)(A) to ratify current EPA regulations requiring that the emissions baseline for offset purposes be calculated in a manner consistent with the emissions baseline used to demonstrate RFP.")

⁵³ 45 FR 52746.

⁵⁴ 51 FR 40672; 40 CFR 51.165(a)(3)(ii)(G) (1996).

committed to adopt and submit to EPA before EPA finalized its rulemaking.

In the EPA's proposed action on this submission, the EPA concluded that MDAQMD's Rule 1306 "Calculating Emissions Changes" as adopted in March 1993 was deficient because the rule uses a source's pre-modification PTE rather than pre-modification actual emissions, as the baseline to calculate the offset requirement and that the method is not acceptable unless the source has already offset its entire pre-modification PTE.⁶⁰

In the 1995 TSD accompanying the EPA's proposed rule, the EPA further explained that Rule 1306 as adopted in March 1993 "has several deficiencies that prevent its full approvability by EPA" and provided a list of deficiencies, "along with the changes which would make the rule approvable." As stated in the 1995 TSD:

The rule uses a source's potential to emit as a baseline for calculating emissions changes, rather than its actual emissions. In general, use of potential to emit in this calculation is unacceptable, however, for most purposes in this rule it is acceptable. For example, the submitted rules require the application of BACT and offset for a modification if the PTE of the *entire source* (not just the increase caused by the modification) would exceed the applicable threshold after the modification. Thus, applicability is determined by the total PTE of the source, not the size of the calculated emissions change resulting from the modification. However, this method is not acceptable for calculating the amount of offsets required as the result of an increase, unless the source has already offset its entire PTE.⁶¹

Section 1305(A)(2)(b)(iii) of the proposed revision of the District's rules contains the necessary changes to these provisions.⁶²

⁶⁰ Id. at 55356 ("This section uses a source's pre-modification potential to emit (PTE), rather than its pre-modification actual emissions, as the baseline for calculating the offset requirement for major modifications in nonattainment areas. This method is not acceptable unless the source has already offset its entire pre-modification PTE. The District must amend the rule to calculate the offset requirement in this case as the source's new PTE minus the source's pre-modification actual emissions.")

⁶¹ 1995 TSD, p. 17.

⁶² Id. at 17. In March 1996, the MDAQMD adopted Rule 1305(A)(2)(b)(iii), which the EPA approved into the California SIP in November 1996, and is the equivalent of current Rule 1304(C)(2)(d). Rule 1305(A)(2)(b)(iii) stated: "For emissions increases from a Modification to a Major Facility the base quantity of Offsets shall be determined as follows: (a) When the Modification is a Major Modification to a Major Facility within a nonattainment area, the base quantity of Offsets shall be the amount equal to the difference between the Facility's Proposed Emissions and the HAE [historic actual emissions] unless the Facility's HPE [Historic Potential Emissions] has been completely offset in prior permitting actions pursuant to this Regulation; or (b) The amount equal to the difference between the Facility's Proposed Emissions, as modified, and the HPE."

(Emphasis in original.)

The statements in the EPA's proposed rule and TSD are brief. It appears, however, that we concluded that the MDAQMD's approach—using PTE (*i.e.*, allowable emissions) rather than actual emissions as a baseline to evaluate NNSR applicability for modifications—would be acceptable because it would require the MDAQMD to impose BACT and offsets requirements for any modification at a major source, regardless of whether the modification qualified as "significant," whereas the EPA's regulations apply BACT and Lowest Achievable Emission Rate (LAER) to facility modifications only if the source is already major and the emissions increase from the modification itself is "significant," or if the modification is itself above the applicable major source threshold. Therefore, it appears that applying this rationale, the EPA found that the MDAQMD's approach to determining NNSR applicability for modifications was at least as stringent as the federal approach and therefore was approvable.

As described in the EPA's final rulemaking, the MDAQMD adopted revised NSR rules on March 25, 1996, that CARB submitted as a SIP revision to the EPA on July 23, 1996.⁶³ The EPA's final rulemaking contains no additional analysis, but it simply states: "The submitted rules contain the changes necessary for approval, in a manner that is identical to that described in the TSD for the proposed approval." ⁶⁴ As part of this final action, the EPA approved MDAQMD rules, such as 1304(C)(1)(b), that allow SERs to be based on reductions in PTE (allowable emissions) and that allow such SERs to satisfy federal offset obligations.

Thus, we have been unable to discern in the EPA's 1995–1996 rulemaking documents any legal rationale or support for the MDAQMD's use of a PTE baseline to determine that the amount of offsets is acceptable if a "source has already offset its entire PTE." The statement is inconsistent with statutory and regulatory requirements that existed at the time (and are still in effect), such as CAA section 173, 40 CFR 51.165(a)(3)(i) and 40 CFR 51.165(a)(3)(ii)(G).⁶⁵ Furthermore, the EPA appears to have mistakenly concluded in 1995–1996 that the MDAQMD's approach for applicability would be sufficient to consistently

ensure issuance of NNSR permits that would be at least as stringent as required by federal law. First, as we have explained in our response to comment A.2.2, MDAQMD Rule 1304(C)(2)(d) allows facilities that are "fully offset" at any time in the past to increase actual emissions without having to offset those actual emission increases. These increases would be impermissible if MDAQMD applied the federal requirements.⁶⁶ Second, we note that the EPA's regulations at 40 CFR 51.165(a)(2)(ii) allow states to use different calculation methodologies to determine applicability upon the state's demonstration that its approach is at least as stringent as the EPA's approach. The EPA's regulations do not contain a similar provision that would allow states to apply an alternative methodology to calculate the quantity of required offsets based on a demonstration that the alternative is more stringent.

The 80 Percent Compromise for Calculating Emissions Increases

In a letter dated October 30, 1995, from the EPA to the MDAQMD, transmitting the 1995 TSD that provided the EPA's analysis of the MDAQMD's October 1993 NSR rules, the EPA referenced an NSR flexibility option that the EPA, the MDAQMD, and CARB had discussed since at least 1993. The flexibility option pertains to how an applicant could calculate emissions changes at its facility, and it is therefore relevant to the offset generation and quantification issues in 1304(C)(2)(d). This portion of the EPA's response to comment A.3.1 focuses on that flexibility option, beginning with the earliest document EPA staff were able to locate on the subject.

A letter dated September 8, 1993, from CARB to MDAQMD documents that the EPA had provided a comment regarding the MDAQMD's calculation procedures during MDAQMD's process of amending its NSR rules.⁶⁷ Specifically, the letter documents that the EPA had identified a conflict in determining "historic emissions" (*i.e.*, emissions that could be used as a baseline in evaluating emissions changes resulting from facility modifications) between federal requirements requiring the use of actual

⁶⁶ We provide a hypothetical example in our response to comment A.2.2 and reference the real-world example that we described in our 2023 LA/LD, wherein a facility that should have been required to obtain offsets under the federal requirements was exempted from doing so under MDAQMD Rule 1304(C)(2)(d).

⁶⁷ CARB Letter to MDAQMD, dated September 8, 1993.

⁶³ 61 FR 58133.

⁶⁴ Id. at 58134.

⁶⁵ As noted elsewhere, the provision is also inconsistent with 40 CFR 51.165(a)(3)(ii)(J), which the EPA promulgated in 2002.

emissions and California guidelines that allowed PTE. In an apparent attempt to resolve this conflict, the letter references a “compromise” that “will allow potential to emit to be used in some instances but actual emissions in others.”⁶⁸ The letter included an enclosure with text for the MDAQMD to include in its Rule 1306 stating that the EPA had “tentatively” agreed to the draft text. Included in the draft text are definitions for the terms “historic emissions” and “normal operations” as follows:

Historic Emissions: The potential to emit of an existing emissions unit prior to modification. In determining the potential to emit, daily emission limitations shall be treated as part of an emission unit’s design only if the limitations are representative of normal operations, or, if the facility has provided offsets for previous permitting actions . . .

Normal Operations: Usual or typical daily operating of an emissions unit resulting in actual emissions which are at least 80% of the specific limits contained in the unit’s authority to construct or permit to operate.

Based on this letter, it appears that the EPA agreed to allow emissions changes from facility modifications to be calculated using a baseline of 80 percent of a facility’s allowable emissions, rather than actual emissions, which, as the letter acknowledges, was the federal requirements for such calculations. The letter does not provide sufficient detail to determine whether the calculations in question were for the purpose of determining emissions changes for applicability or for determining the offset obligation or both. The letter also does not provide any legal analysis or support to justify the use of allowable emissions as a baseline in situations in which actual emissions are at least 80 percent of allowable emissions, in contrast to the EPA’s statutory and regulatory requirements to use actual emissions to calculate emissions changes when the air district uses actual emissions for reasonable further progress and attainment planning purposes.

Later, in the 1995 TSD transmittal letter, the EPA wrote:

The proposed rules contain one provision that should be removed prior to adoption and submittal of the rules. This provision, located at 1304(C)(3)(a) and 1305(B)(2)(b)(i), allows for reductions in a facility’s potential to emit to be used as simultaneous emission offsets if the facility’s actual emissions were equal to or greater than 80% of its potential emissions. EPA has discussed this provision with the California Air Resources Board and

both agencies agree that it should not be included in the District’s rules.⁶⁹

As explained earlier in this response, the EPA’s 1995 TSD (transmitted with this letter) also discussed the use of PTE as a baseline to calculate offset obligations, but it allowed that approach if a source had already offset its entire PTE. There is no explanation in the October 30, 1995 letter or the 1995 TSD to reconcile the EPA’s apparent position that PTE *could not* be used to calculate the offset requirement if actual emissions were equal to or greater than 80 percent of PTE (as expressed in the October 30, 1995 letter) with the EPA’s stated position that PTE *could be* used to calculate the offset requirement if the source’s PTE had been fully offset in a previous permitting decision (as stated in the 1995 TSD).

A subsequent document with the handwritten notation “Mojave Compromise,” is possibly relevant. This document appears to have been sent by CARB to the MDAQMD on November 14, 1995, and reflects discussions between EPA and the MDAQMD (“November 14, 1995 Memo”).⁷⁰ The document states:

General: Rule 1304, Section (C)(3)(a), states that “actual emissions reductions may be calculated using a facility’s “historic potential to emit” if the “historic actual emissions” of the emissions unit(s) prior to modification is greater than or equal to 80 percent of the “historic potential to emit” for that emission unit.

The ARB and the U.S. Environmental Protection Agency have agreed that in one specific case a facility may use an emission unit’s “historic potential to emit” in lieu of the emission unit’s “historic actual emissions.” Both agencies agreed that districts could use this “compromise” when determining the applicability of federal New Source Review. The intention of this “compromise” was to give a facility more flexibility when making this determination. It was not intended to be used when calculating the quantity of offsets required for mitigation by a facility. The use of “historic potential to emit” in lieu of “historic actual emissions” should only be used in the “federal netting process,” and it only applies to quantifying emissions increases.

As you know, 40 CFR 51.165 (a)(1)(vi), which defines “net emissions increase,” in general stipulates that all increases/decreases

must be actual emissions. This compromise allowed a facility to reduce the increase in emissions by a factor no greater than 20 percent. Unfortunately, the District has also applied the “compromise” provision when calculating emission decreases in the netting process.

The District has included the above provision in both Rules 1304 and 1305. The net effect of using the “compromise” when calculating emission decreases is that it generates “paper credits.” Further, Rule 1305, Section (B)(2)(b) proposes to allow the use of these credits to offset “actual” emission increases.

We strongly recommend that the District delete Subsection (C)(3)(a) from Rule 1304, and Subsection (B)(2)(b)(i) from Rule 1305. In addition, we recommend that definitions (V) “Historic Potential Emissions” and (DD) “Normal Operation” in your current Rule 1302 (Amended 10/27/93) be added to your proposed Rule 1301. Once these changes have been made, the District should apply the “compromise” provision as intended by the ARB and U.S. EPA.⁷¹

Based on the November 14, 1995 Memo, it appears that the EPA generally objected to the MDAQMD’s use of PTE as a baseline when calculating emissions decreases, either in the context of determining NSR applicability or calculating an offset obligation, but would allow the use of PTE as a baseline when calculating emissions increases if PTE was within 80 percent of actual emissions. However, these documents (CARB’s September 8, 1993 letter to the MDAQMD, the EPA’s October 30, 1995 TSD transmittal letter, and the November 14, 1995 Memo) contain no explanation to reconcile (i) the objection by CARB and the EPA to use of PTE to calculate emissions decreases because such an approach would “generate ‘paper credits,’” which could then be used to offset actual emission increases” (as stated in the November 14, 1995 Memo) with (ii) the acceptance by CARB and the EPA of the MDAQMD’s use of PTE to calculate simultaneous emission reductions if an emissions unit’s PTE had been fully offset in a previous permit action (as stated in the 1995 TSD).⁷²

In a letter dated January 26, 1996 from the MDAQMD to CARB, with a courtesy copy to the EPA, the MDAQMD proposes an alternative to the compromise that had previously been discussed among the three agencies.⁷³ The letter references the MDAQMD’s new text for Rules 1303 and 1304 as “attached,” but the EPA has not been

⁶⁹ 1995 TSD, Transmittal Letter.

⁷⁰ CARB Memo, November 14, 1995. The November 14, 1995, CARB Memo appears substantially similar to an October 20, 1995, CARB Memo, apparently transmitted by CARB to the EPA, that reflects CARB’s comments regarding the MDAQMD’s draft rules, specifically Rule 1304 “Emissions Calculations” and Rule 1305 “Emissions Offsets.” The October 20, 1995, CARB memo also references communications between the EPA, CARB, and the MDAQMD regarding MDAQMD Rules 1304, “Emissions Calculations” and 1305, “Emissions Offsets.”

⁷¹ November 14, 1995, CARB staff comments on 1995 MDAQMD draft Regulation XIII.

⁷² See 1995 TSD, p. 17 (regarding MDAQMD Rule 1306 (as adopted in March 1993)).

⁷³ Letter from the MDAQMD to CARB, dated January 26, 1996.

⁶⁸ Id.

able to locate these attachments. The EPA is also unable to locate copies of the October 11, 1995 draft rules; therefore, the EPA is unable to track revisions to the rules MDAQMD adopted in October 1993 to the rules MDAQMD adopted in March 1996, which the EPA approved in November 1996. Although it is apparent from the correspondence among the EPA, CARB and the MDAQMD that the agencies were involved in multi-year discussions over the calculation of emissions increases and decreases and the application of emissions decreases to new projects, it is not clear why the EPA and CARB objected to the use of PTE to calculate offsets (as well as emissions decreases related to the applicability analysis) but allowed the use of PTE to calculate offsets if emissions units had been fully offset as part of previous permitting action.

1996 Proposal To Revise the Federal NSR Rules and 2002 NSR Reform Rule

While EPA Region 9 was reviewing the MDAQMD's proposed revisions to its NSR program in 1993–1996, the EPA was also in the process of revising its nationally applicable NSR regulations for major stationary sources in both attainment and nonattainment areas based on input from stakeholders from industry, state and local agencies, and environmental organizations. Towards this end, in July 1996, the EPA published in the **Federal Register** a proposed rulemaking to comprehensively overhaul the federal NSR program for the first time in 15 years.⁷⁴ The proposal provides a roughly contemporaneous insight to concepts that the EPA was exploring to provide states greater flexibility to customize their own NSR programs.⁷⁵ One such concept was a revision to the NSR regulations to allow the use of the PTE-to-PTE test for NSR applicability as well as for calculating offsets, netting credits, and other emissions reductions credits.⁷⁶ This proposal, referred to as the “Exhibit B approach,” would provide sources with the alternative of using their hourly potential emissions to determine baselines for NSR applicability and other NSR purposes.⁷⁷ The EPA acknowledged in the proposed rulemaking that the Exhibit B approach would provide flexibility requested by industry, but we expressed concern for environmental consequences, providing examples of how the proposal could lead to increases in actual emissions

that would escape NSR review.⁷⁸ The EPA's analysis of potential environmental impacts of the proposal revealed that, in the two states studied, actual emissions comprised 30 to 86 percent of allowable emissions, depending on source category and pollutant.⁷⁹ Because the analysis showed actual emissions were substantially below allowable emissions levels, the use of an emissions baseline based on actual or allowable emissions could significantly impact whether a source would need to comply with NSR requirements.

The EPA's 1996 proposed rulemaking included the following analysis of a PTE-to-PTE test for calculation of offsets:

[Exhibit B's] proposal on offsets may conflict with the 1990 Amendments. That is, section 173(c) of the Act requires that a source secure sufficient emissions reductions to assure that “the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction . . . in the *actual emissions* of such air pollutants.” Thus, offsetting emissions reductions (including emissions reduction credits used for offsets) must be calculated in terms of actual emissions.⁸⁰

(Emphasis in original.)

The EPA sought comment in the 1996 proposed rulemaking as to whether the Exhibit B proposal “is consistent with the air quality planning goals of the NSR program. That is, while Exhibit B could allow significant increases in actual emissions to be unreviewed, section 173 of the Act required offsets to be based on actual emissions.”⁸¹

After seeking comment on the Exhibit B proposal in 1996, the EPA ultimately decided not to adopt it for reasons explained in the 2002 NSR Reform Rule (which also added 40 CFR 51.165(a)(3)(ii)(J)). The EPA reiterated that the Exhibit B proposal would allow sources to “use this potential-to-potential test for NSR applicability, as well as for calculating offsets, netting credits, and other ERCs.”⁸² While acknowledging the “maximum flexibility” the PTE-to-PTE test would provide to existing sources, the EPA also re-stated concerns associated with the calculation methodology for calculating emission reductions to be used for netting or ERCs, stating that Exhibit B would allow facilities to

generate netting credits and ERCs for offsets based on potential hourly emissions, even if never actually emitted, which could allow greater actual emissions increases without any preconstruction review.⁸³

In the 2002 NSR Reform Rule, the EPA acknowledged that it was unable to determine the specific environmental impact from using a PTE-to-PTE test, but we observed that its analysis showed that typical source operation frequently results in actual emissions that are below allowable emission levels.⁸⁴ This observation reinforces concerns that a calculation methodology that relies on allowable emissions will fail to regulate actual emissions increases. Regarding the offsets implications of Exhibit B specifically, the EPA wrote in the response to comments that:

[The Exhibit B] methodology would also be problematic for generating ERCs, particularly for use as offsets. The use of potential emissions for offset credits is in direct conflict with the Act. Under section 172(c) of the Clean Air Act, emissions offsets must be based on reductions in actual emissions. Allowing sources to get credit for reductions in potential emissions would result in “paper” credits, and could allow sources to receive credit for reducing emissions that never actually occurred. Thus, our rules have not changed with regard to the calculation of reductions in actual emissions for offsetting purposes.⁸⁵

It is important to note that, along with rejecting Exhibit B, the 2002 NSR Reform Rule also codified at 40 CFR 51.165(a)(3)(ii)(J) a specific requirement that, for each major modification, a source must offset the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.⁸⁶ The EPA's statement in the response to comments that it was not changing regulatory requirements for offset calculations establishes that the addition of new section 40 CFR 51.165(a)(3)(ii)(J) was merely a codification of an existing requirement for calculating offsets.⁸⁷

⁸³ Id.

⁸⁴ Id.

⁸⁵ “Technical Support Document for the Prevention of Significant Deterioration and Nonattainment Area New Source Review Regulations,” November 2002, page 1–6–11.

⁸⁶ See 67 FR 80186, 80249.

⁸⁷ “Technical Support Document for the Prevention of Significant Deterioration and Nonattainment Area New Source Review Regulations,” November 2002, page 1–6–11. The need to establish a regulatory requirement for calculating offsets was perhaps necessary in light of the numerous changes to NSR applicability promulgated throughout the 2002 NSR Reform Rule. See, e.g., 67 FR 80186, 80189–91; see also, 67

⁷⁸ Id. at 38269. The EPA also acknowledged, however, that the “magnitude of the environmental impact of Exhibit B, if promulgated, is difficult to predict.” Id. at 38270.

⁷⁹ Id. at 38270.

⁸⁰ Id. at 38269, footnote 31.

⁸¹ Id. at 38270.

⁸² 67 FR 80186, 80205.

⁷⁴ 61 FR 38250, 38251 (July 23, 1996).

⁷⁵ Id.

⁷⁶ Id. at 38268.

⁷⁷ Id. at 38268–69.

Conclusion: The EPA's 1996 SIP Action Was Inconsistent With the Act and Regulations

For the reasons we articulate today, and that we articulated in the 2023 LA/LD, the MDAQMD's program that we approved in 1996 is not consistent with the requirements of the Act and its implementing regulations. The EPA acknowledges that its 2023 disapproval of Rule 1304(C)(2)(d) is at odds with its 1996 approval of the MDAQMD's rules that allowed facilities to use emissions reductions that were previously relied upon as a basis for using a PTE-to-PTE test to not require a project to obtain offsets. The EPA's 1995 TSD and 1995–1996 rulemaking approving the MDAQMD's NNSR program do not explain how the EPA reconciled the MDAQMD's program's departure from the requirements that existed at the time (and continue to exist) in CAA section 173(c)(1), 40 CFR 51.165(a)(3)(i), 40 CFR 51.165(a)(3)(ii)(G), and the not-yet-codified 40 CFR 51.165(a)(3)(ii)(J), which the EPA promulgated in 2002. The EPA's 2023 LA/LD, however, does explain our disapproval of Rule 1304(C)(2)(d) in light of applicable statutory and regulatory requirements.

The preceding paragraphs describe the EPA's interest in exploring options for flexibility contemporaneously with our 1995–1996 rulemaking to approve MDAQMD's NNSR program. For example, from at least 1993 to 1996, the EPA, CARB, and the MDAQMD discussed how to calculate emissions changes for applicability, netting, and ERC purposes. The changes to the MDAQMD program, and the EPA's approval of them, occurred during the years following the passage of the California Clean Air Act (1988), the Federal Clean Air Act Amendments of 1990, and the numerous associated statutory deadlines for the EPA to act on revised NSR programs in the 1990s (similar to today, there were nearly three dozen air districts in California in the 1990s). In July 1996, between the EPA's proposed contingent approval of the MDAQMD's NNSR rules in October 1995 and its final approval of those rules in November 1996, the EPA proposed changes to the federal NSR program that contemplated a PTE–PTE test for NSR applicability and offsets. The timing of the many regulatory changes and proposals that occurred around the same time as the EPA's

approval of the MDAQMD's NNSR program is thus helpful context for understanding the EPA's unexplained approval of MDAQMD's provisions that conflict with CAA requirements. However, the EPA did not approve any regulatory revisions during the 1990s or thereafter that would allow the MDAQMD's program, as it existed in 1996 or 2023, to be approved. In 2002, the EPA clarified in its rejection of the 1996 Exhibit B proposal that we were not revising our rules regarding the calculation of reductions in actual emissions for offsetting purposes.⁸⁸ Furthermore, in 2002, the EPA codified 40 CFR 51.165(a)(3)(ii)(J) to make explicit in its regulations a requirement for major stationary sources to calculate their offset obligation using a pre-modification baseline of actual emissions (at least when the air district uses actual emissions for reasonable further progress and attainment planning purposes).

The MDAQMD's 1994, 2008, and 2015 attainment plans demonstrate RFP and attainment based on actual emissions, not allowable emissions.⁸⁹ Under 40 CFR 51.165(a)(3)(i), which was promulgated by the EPA in 1980, substantially predating the EPA's 1996 approval of the MDAQMD's NNSR rules, the offset baseline must be the actual emissions of the source from which the credit is obtained. Likewise, 40 CFR 51.165(a)(3)(ii)(G) prevents sources in the MDAQMD from relying on emissions reductions that were utilized in a prior permitting action. The EPA's 1996 approval of the MDAQMD's rules does not provide a justification for its conclusions that the MDAQMD's rules satisfied the offsetting requirements of the CAA or its implementing regulations. The EPA recognizes that we are changing our position as stated in our 1995–1996 rulemaking on the MDAQMD's rules on the specific question of whether Rule 1304(C)(2)(d) is consistent with the Act and the NSR regulations. This change in position is because the provisions that we approved in 1996 (which, as noted

above, are substantially similar to Rule 1304(C)(2)(d)) were not consistent with the CAA or our regulations at that time. As we wrote in the 1996 and 2002 NSR Reform rules, we are concerned about the potential environmental impacts of an NNSR program such as MDAQMD's that would use the PTE–PTE test along with or because of a unique offset generating scheme. The codification of 51.165(a)(3)(ii)(J) in 2002 meant that, when the EPA analyzed the MDAQMD's NNSR program for approvability in the context of the 2008 ozone NAAQS implementation rule, the program's inconsistency was apparent. MDAQMD Rule 1304(C)(2)(d) is not approvable, even though the EPA approved similar text in 1996.

4. Comments Regarding Reliance

Comment A.4.1: Commenter 01 states that while the EPA may reverse its policy on 1304(C)(2)(d) Offsets, the APA requires the EPA “‘to assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns,’ considering alternatives to accommodate such interests.”⁹⁰ The commenter states that the EPA is effectively nullifying valuable 1304(C)(2)(d) Offsets that were purchased with costly reductions in actual emissions on the EPA's promise that they could later be used to offset certain emission increases. The commenter also states that the proposed FIP does not consider these reliance interests or alternatives to the immediate invalidation of the 1304(C)(2)(d) Offsets that have existed with EPA's blessing for over 25 years.

Response to Comment A.4.1: The EPA has provided a comprehensive explanation in our response to comment A.3.1 regarding our changed position on the approvability of MDAQMD Rule 1304(C)(2)(d). Moreover, the EPA disagrees with the comment to the extent it is asserting that this action invalidates significant reliance interests. Commenter 01 cites *Dep't of Homeland Sec. v. Regents of the Univ. of California* as support for its assertion that there are reliance interests stemming from Rule 1304(C)(2)(d) and that the EPA failed to consider them in disapproving the provision.⁹¹ In *Regents*, the Supreme Court ruled against the government, finding that the government's decision to rescind the Deferred Action on Childhood Arrivals (“DACA”) program was arbitrary and capricious under the

⁸⁸ “Technical Support Document for the Prevention of Significant Deterioration and Nonattainment Area New Source Review Regulations,” November 2002, page I–6–11.

⁸⁹ MDAQMD 1994 ROP Plan, October 5, 1994. MDAQMD's 2008 and 2015 ozone NAAQS attainment plans are based on actual emissions. MDAQMD's 2008 and 2015 ozone NAAQS attainment plans are based on actual emissions. The 2008 ozone NAAQS plan is available at: https://ww2.arb.ca.gov/sites/default/files/classic/planning/sip/planarea/wmdaqmp/2016sip_mdplan.pdf, pp. 7, 34 (EPA approved this plan, see 86 FR 53223 (September 27, 2021)). The 2015 ozone NAAQS is available at: <https://www.mdaqmd.ca.gov/home/showpublisheddocument/9693/638131029372000000>, pp. 4–5, 24, 80.

⁹⁰ Citing *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 30, 33 (2020).

⁹¹ 591 U.S. 1, 30, 33 (2020).

FR 80241 (“Our decision is based primarily on our belief that the NSR program will work better as a practical matter and will produce better environmental results if all five of the new applicability provisions are adopted and implemented.”)

APA.⁹² DACA recipients (as well as their parents, under the related “DAPA” program) “enjoy[ed] . . . forbearance, work eligibility, and other benefits” under the programs.⁹³ The Supreme Court held that the government failed to provide a “reasoned explanation for its action” because it “failed to consider the conspicuous issues of whether to retain forbearance and what if anything to do about the hardship to DACA recipients.”⁹⁴

Regents, however, is materially distinguishable from the EPA’s disapproval of Rule 1304(C)(2)(d); the case does not support the MDAQMD’s assertions regarding reliance interests. In *Regents*, while the Attorney General had determined that the work-authorization aspect of the DACA program was illegal following an adverse judicial decision about the DAPA program, the Attorney General’s opinion was not comprehensive; *i.e.*, the Attorney General had “neither addressed the [deportation] forbearance policy at the heart of DACA nor compelled [the government] to abandon that policy.”⁹⁵ Further, as the Supreme Court found, the government had offered “no reason for terminating forbearance.”⁹⁶

In contrast, the EPA, in disapproving Rule 1304(C)(2)(d), proposed and finalized a comprehensive, outcome-controlling legal determination that Rule 1304(C)(2)(d) fails to comply with federal law. *Regents* does not stand for the proposition that agencies must consider reliance interests when federal law compels the outcome. Also, unlike the situation in *Regents*, the EPA provided an opportunity for public comment and has provided reasoned responses to all comments received. Thus, EPA fulfilled its obligations under the APA.

Furthermore, the commenter’s characterization of 1304(C)(2)(d) Offsets as “valuable” and as “purchased with costly reductions in actual emissions” is fundamentally a claim that sources hold compensable property rights in 1304(C)(2)(d) Offsets.⁹⁷ The EPA has repeatedly rejected similar assertions in the past and has never recognized a property right associated with emission

reductions to be used as offsets.⁹⁸ Also, it is unclear to what extent 1304(C)(2)(d) Offsets were, in fact, “purchased.” In the MDAQMD, as in all nonattainment areas, construction of a new major stationary source requires the facility owner to obtain emission reduction credits to offset the emissions from the new construction. Nonattainment NSR permits issued by the MDAQMD to such sources are contingent on the surrender of credits to offset emissions up to the allowable limits in the permits. The EPA acknowledges that facility owners purchase emission reduction credits and surrender them to obtain permits with allowable emissions limits to allow them to proceed with construction. The MDAQMD, however, claims that its rules should additionally allow those same emission reduction credits, which facility owners have already surrendered to obtain allowable emissions limits that authorized the facility to emit up to those levels, to be re-used to offset emissions increases associated with future construction projects. This system is inconsistent with federal NNSR requirements in multiple respects and therefore further delegitimizes any claim that 1304(C)(2)(d) Offsets are a property right with a compensable value.

First, as explained our response to comment A.2.2, the EPA’s regulations at 40 CFR 51.165(a)(3)(G) do not allow emission reduction credits to be re-used in subsequent permitting actions of, for example, facility modifications. The MDAQMD’s rules allow emission reduction credits that have already been applied to initial construction of a new facility to be used to offset emissions increases in the future and are therefore inconsistent with NNSR requirements. Second, as also explained in our response to comment A.2.1, the EPA’s regulations at 40 CFR 51.165(a)(3)(i)

allow the use of allowable emissions to be used as a baseline to calculate emission reductions that will be used as offsets only if demonstrations of RFP and attainment are also based on allowable emissions. MDAQMD’s RFP and attainment demonstrations are based on actual emissions; therefore, MDAQMD’s calculation of reductions to be used as offsets must also be based on actual emissions. Third, since 2002, the EPA’s regulations have clearly specified that emissions increases resulting from major modifications must be offset through a calculation that uses actual emissions before the modification. In fact, as explained above in our response to comment A.3.1, as part of the 2002 NSR Reform Rule, the EPA explicitly rejected a calculation that would use potential emissions as a baseline in this calculation. MDAQMD’s provision for 1304(C)(2)(d) Offsets clearly allow sources to offset emissions increases through reductions in allowable emissions and therefore fail to ensure compliance with the requirement that sources offset emissions increases through reductions in actual emissions. The fact that 1304(C)(2)(d) Offsets are inconsistent with federal law invalidates any claim of property right or compensable value.

Comment A.4.2: Commenter 05 states that the removal of Rule 1304(C)(2)(d) would “create a discriminatory situation, where a facility that has previously provided offsets for emission sources/processes is not differentiated from one that has received a permit without providing offsets.”

Response to Comment A.4.2: As explained in the response to comment A.4.1, Rule 1304(C)(2)(d) Offsets do not comply with CAA 173 and federal NNSR requirements for offsetting emissions increases at major stationary sources. The permit application process should be sufficient to enable the reviewing authority to determine the quantity and status of offset credits and reductions; diligent implementation of the federal requirements will avoid confusion and unfair outcomes. Rule 1304(C)(2)(d) Offsets are not valid under the CAA or the federal NNSR regulations. The FIP will bring the MDAQMD’s offset regulations into compliance with the CAA and federal regulations. The EPA disagrees that the removal of Rule 1304(C)(2)(d) would create a discriminatory situation.

Comment A.4.3: Commenter 08 states that MDAQMD Rule 1304(C)(2)(d) has developed a provision for major facilities to utilize existing allowable emissions as a mechanism to generate simultaneous emissions reductions during another permitting action and

⁹² Id. at 33.

⁹³ Id. at 2.

⁹⁴ Id. at 35.

⁹⁵ Id. at 28.

⁹⁶ Id.

⁹⁷ MDAQMD has made similar assertions in the past. See, *e.g.*, MDAQMD Regulation XIII Final Staff Report, March 22, 2021, page 44, footnote 188: “If the amount of offsets needed is calculated using the HAE of the emissions unit(s) involved many Facilities view this as a taking of property (namely the previously allowed PTE that was fully offset) without just compensation.”

⁹⁸ See, *e.g.*, Letter from John S. Seitz, Director, EPA Office of Air Quality Planning and Standards to Peter F. Hess, President, California Air Pollution Control Officers Association Joint Commission of Regulators & Business, July 8, 1996 (“Finally, your letter states that it is unfair for owners of banked ERC’s not to be able to sell or use them. However, please note that although ERCs are a limited authorization to emit, they are not and never have been an absolute property right.”); EPA, Office of Air and Radiation, “Improving Air Quality with Economic Incentive Programs,” January 2001, p. 80 (“Emission reductions and emission allowances generated, traded, and used in emission trading EIPs do not have property rights associated with them. They simply represent a limited authorization to emit for the entity holding the tradable reduction or allowance.”); see also South Coast Air Quality Management District (SCAQMD) Rule 2007, “Trading Requirements,” most recently approved into the California SIP at 73 FR 38122 (July 3, 2008), which states, in relevant part, at subsection (b)(3) that a RECLAIM Trading Credit “shall not constitute a security or other form of property . . .”

that this provision has been in effect since the 1990s. Commenter 08 urges the EPA to consider how the sudden change of a provision in effect for years will impact regulated facilities.

Response to Comment A.4.3: As explained above in the responses to comments A.2.1 and A.2.2, the MDAQMD's Rule 1304(C)(2)(d) is not consistent with the CAA or the EPA's NSR regulations. The EPA disagrees with the commenter's suggestion that the FIP represents a "sudden change," because the calculation method in Rule 1304(C)(2)(d) was specifically prohibited in the EPA's 2002 NSR Reform rule, which included 40 CFR 51.165(a)(3)(ii)(J).⁹⁹ Moreover, the MDAQMD and regulated entities in its jurisdiction have been aware of the EPA's position regarding Rule 1304(C)(2)(d) and the MDAQMD's practices regarding its emissions offset calculations since at least March 2021, when the MDAQMD responded to the EPA's concerns about Rule 1304(C)(2)(d) in the "Appendix G to Staff Report" document (an appendix to its 2021 final staff report and rules that the MDAQMD adopted), which is a public document. In December 2019, prior to the release of that document, the EPA wrote to the MDAQMD to inform the MDAQMD of its concern regarding the offset calculation method allowed under what is currently Rule 1304(C)(2)(d).¹⁰⁰ The EPA, the District, and CARB then committed significant resources to meeting, on a bi-weekly basis from approximately March 2020 to June 2021, for detailed discussions to address the deficiencies in the MDAQMD's NSR program. The EPA's obligation to promulgate a FIP is a consequence of a finding of failure to submit published in the **Federal Register** in February 2017; the subject of a lawsuit filed in the U.S. District Court for the Northern District of California in June 2022; and a court-ordered obligation as the result of a consent decree that was subject to a 30-day comment period as announced in the **Federal Register** on April 5, 2023.

Finally, the EPA notes that the FIP will apply prospectively, that is, to new major stationary sources and major modifications at existing major sources that commence construction after the effective date of the FIP.

5. Comments on Potential Impacts and Implementation of the FIP

Comment A.5.1: Commenter 01 states that the proposed FIP is arbitrary and capricious because the EPA fails to consider important aspects of the problem before the Agency, including the impacts of the proposed FIP on air quality. The commenter states that the EPA fails to substantiate its claim that the proposed FIP will result in greater emission reductions. The commenter states that this claim is false because Rule 1304(C)(2)(d) Offsets incentivize operators to voluntarily lower actual emissions to ensure the greatest volume of creditable emissions reductions for future projects. The commenter states that the EPA's disapproval of offset calculations allowed under Rule 1304(C)(2)(d) encourages source operators to retain older, dirty units and to replace those old and dirty units with comparably dirty units when the units fail. The commenter states that, under the proposed FIP, operators are particularly incentivized to run equipment to produce the maximum amount of emissions for the two years prior to applying for a modification to secure creditable emissions reductions.

Similarly, commenters 07, 08, and 09 state that MDAQMD Rule 1304(C)(2)(d) enables permit holders to plan for equipment upgrades and modernizations that will ultimately reduce actual major source emissions in the ozone nonattainment area. These commenters state that that removal of these offset provisions will hinder emission reduction projects and burden facilities with significant increased costs. Commenter 05 adds that the loss of previous offsets would create a disincentive for facilities to be upgraded to new technology. Commenter 09 states that regulated facilities may elect to cancel business expansions, facility improvements, or other major capital investments that would modernize equipment or otherwise benefit air quality.

Response to Comment A.5.1: The EPA disagrees with the comments. Preliminarily, we note that the commenters do not provide any analysis or support for their assertions that Rule 1304(C)(2)(d)'s approach to calculating offsets results in greater emission reductions than the federal requirements for offsets. We also note that in the 2002 NSR Reform Rule, we rejected an option similar to Rule 1304(C)(2)(d) that would have allowed sources "to generate netting credits and ERCs for offsets based on potential hourly emissions, even if never actually emitted," because we had determined

that such an approach "could sanction greater actual emission increases to the environment, often from older facilities, without any preconstruction review."¹⁰¹ In the 1996 NSR proposal, the EPA stated that its analysis of actual and allowable emissions in two states showed that "typical source operation frequently does result in actual emissions that are substantially below allowable emissions levels."¹⁰² In other words, the difference between actual and potential emissions may be up to 70 percent, depending on source category and pollutant.¹⁰³ Using actual emissions as a baseline to calculate emissions will reflect emissions increases and require offsets that would not be captured or regulated if allowable emissions were used as a baseline. As the EPA also stated in response to comments in the rulemaking for the 2002 NSR Reform Rule, "The use of potential emissions for offset credits is in direct conflict with the Act. Under section 172(c) of the Clean Air Act, emissions offsets must be based on reductions in actual emissions. Allowing sources to get credit for reductions in potential emissions would result in 'paper' credits, and could allow sources to receive credit for reducing emissions that never actually occurred."¹⁰⁴ Similarly, the MDAQMD Rule 1304(C)(2)(d) would allow sources to receive credit for "reductions" in emissions that do not actually occur and use them to offset actual emissions increases.

Moreover, we note that the federal regulations, such as 40 CFR 51.165(a)(3)(ii)(J) and 40 CFR 51.165(a)(3)(ii)(G), are more protective than Rule 1304(C)(2)(d). For example, 40 CFR 51.165(a)(3)(ii)(J) requires facilities to offset the difference between pre-project actual emissions and post-project allowable emissions that are associated with *each* major modification, and 40 CFR 51.165(a)(3)(ii)(G) requires those actual emissions reductions to be reductions that the facility has not relied upon in a prior permitting action.

The EPA also disagrees with comments claiming that the EPA's disapproval of Rule 1304(C)(2)(d) will encourage retention of older greater-emitting units and incentivize sources

¹⁰¹ 67 FR 80186, 80205.

¹⁰² 61 FR 38250, 38270.

¹⁰³ *Id.*

¹⁰⁴ U.S. EPA Office of Air Quality Planning and Standards, Technical Support Document for the Prevention of Significant Deterioration and Nonattainment Area New Source Review Regulations (November 2002) at page I-6-11, available at https://www.epa.gov/sites/default/files/2015-12/documents/nsr-td_11-22-02.pdf.

⁹⁹ Rule 1304(C)(2)(d) is also inconsistent with the federal regulations promulgated in 1980.

¹⁰⁰ Memorandum, Lisa Beckham, EPA Region IX, to Brad Poiriez, MDAQMD, "Re: Mojave Desert Air Quality Management District New Source Review Program," December 19, 2019. A copy of the letter is available in the docket for this rulemaking action.

to operate and emit more. Rather, the FIP encourages sources to take enforceable limits that reflect the source's actual emissions. We note in addition that the CAA does not require sources to offset emissions that they do not emit or intend to emit. Regarding commenters' concern that the FIP would discourage emissions-reduction projects, we note that a project that reduces actual emissions would not be subject to NSR requirements to offset and install pollution controls. Installation of cleaner equipment is therefore not in jeopardy under the FIP. Only projects at major stationary sources that would increase emissions will be required to undergo review to determine if emissions increases will trigger requirements to install emissions controls and to offset emissions increases. It is therefore unclear how sources would be incentivized to retain older, dirtier equipment if the installation of newer, cleaner equipment would result in emissions decreases.

Finally, we disagree that Commenter 01's quotations from the 2002 NSR Reform Rule support its claims that Rule 1304(C)(2)(d) Offsets "incentivize operators to voluntarily lower actual emissions to ensure the greatest volume of creditable emissions reductions for future projects." The statements quoted by Commenter 01 are irrelevant to this action, because they do not involve offsets.

Comment A.5.2: Commenter 01 states that the EPA fails to address the practical impacts the proposed FIP will have on facilities. More specifically, the commenter states that it is unclear what a new minor facility, existing minor facility remaining under the applicability threshold, or a synthetic minor facility retaining its permitted limitation on PTE would need to submit to the EPA to show that it is not subject to the FIP requirements. The commenter requests that the EPA clarify whether all new or modified facilities would need to submit applications to the EPA and that it appears every permit application would be required to be duplicated in EPA Region 9's electronic permit application system to ensure that a minor facility has not become subject to the FIP. The commenter also states that while the MDAQMD has the staffing and expertise to properly analyze and process applications under the current SIP, it has neither the time nor the resources to devote to analyzing each application for FIP applicability purposes.

Response to Comment A.5.2: As explained in the EPA's proposed action, the FIP will apply "(i) If you propose to construct a new major stationary source

and your source is a major source of nonattainment pollutant(s)" or "(ii) If you own or operate a major stationary source and propose to construct a major modification, where your source is a major source of nonattainment pollutant(s) and the proposed modification is a major modification for the nonattainment pollutant."¹⁰⁵ The relevant terms in the quoted provisions are defined in the definitions section of the FIP, in section 40 CFR 52.285(b). If the applicant believes that its proposed project would constitute a new major source or a major modification under the FIP, it is required to submit an application to the EPA or the designated reviewing authority (if not the EPA) to obtain a permit under the FIP. It is the permit applicant's responsibility to comply with the FIP provisions. Failure to obtain a permit in accordance with the FIP prior to construction and operation of the new or modified source would be a federally enforceable violation of the FIP and the CAA. Under the FIP, existing minor facilities remaining under the applicability threshold and synthetic minor facilities retaining the permitted limitation on PTE would not need to apply for a permit under the FIP unless they make a modification that would constitute a major stationary source by itself.¹⁰⁶

Regarding Commenter 01's concern over the MDAQMD's time and resources to devote to analyzing applications, the EPA would be responsible for implementation of the FIP unless and until the MDAQMD is delegated authority to implement it. The MDAQMD would only be delegated authority to implement the proposed FIP if it requested delegation. Under the FIP as implemented by the EPA, applicants would need to submit their applications to the EPA, not to the MDAQMD.

Comment A.5.3: Commenter 04 states that this action is crucial for ensuring that regions with air pollutant concentrations above the NAAQS are protected from further environmental degradation. This commenter presents information on the detrimental impact of air pollution to health and notes that these effects are felt mainly by minority communities, such as low-income families or people of color, who are more likely to live in areas with higher pollution levels. The commenter supports approval of the FIP and states that the FIP will provide a necessary regulatory framework to manage and reduce emissions, enhancing efforts to

meet and maintain NAAQS in the region.

Response to Comment A.5.3: The EPA has noted the commenter's support of this action.

Comment A.5.4: Commenters 01, 05, 06, 07, and 08 express concern about the permit processing timeline under the proposed FIP. Commenter 01 states that pursuant to these timelines, approximately 90 percent of permit applications submitted to the MDAQMD are processed and issued within 90 days but that no similar timelines are proposed in the FIP and that this may result in a detrimental impact to sources, especially minor facilities, to the extent they cannot proceed with their modifications due to the necessity of awaiting an EPA determination. Commenter 05 states that the FIP creates the potential for delays in permit issuances due to conflicts between California law and the FIP on items such as the completeness determination, BACT determinations, and offsetting and the use of SERs, and Commenter 06 adds that the differences between the requirements under the SIP and the FIP will add a level of complexity to the permit application process and in ensuring facilities comply with the permits. Commenters 05 and 06 state that potential timing issues would have an adverse impact on the national security mission at Department of Defense facilities because a facility cannot proceed with construction until it receives two permits—one from MDAQMD, and one from EPA. Commenters 01, 07, and 08 request that the EPA provide timeline estimates for the proposed permit processing.

Response to Comment A.5.4: Neither the CAA nor the existing NNSR FIP that applies in tribal areas, which is very similar to the FIP, includes a requirement for the reviewing authority to render a decision on a permit application within a certain period of time. Likewise, the EPA has not incorporated any temporal requirement to the issuance of permits under this FIP. Under the CAA, the EPA is required to make a permit decision on a Prevention of Significant Deterioration (PSD) permit application within one year after the application is determined complete by the EPA.¹⁰⁷ While no analogous provision exists in Part D of Title I of the CAA, which governs Plan Requirements for Nonattainment Areas, the EPA will endeavor to follow the PSD permit application processing timeline when we review applications submitted under the finalized FIP. Also, should the MDAQMD receive delegation as a

¹⁰⁵ 89 FR 56237, 56247; 40 CFR 52.285(c)(1)(i)–(ii) (as proposed).

¹⁰⁶ Appendix S, section II.A.4(i)(c).

¹⁰⁷ CAA section 165(c) (42 U.S.C. 7465(c)).

reviewing authority of the FIP, it could consolidate its review under the FIP with its review under the SIP.

Finally, it is not clear how applicants for minor source permits—either new or modified sources—would be affected by the timing issue because the proposed FIP does not affect minor NSR.¹⁰⁸

Comment A.5.5: Commenter 01 states that the proposed FIP includes “de minimis” provisions that allow emissions increases of less than 25 tons per year aggregated with all other net increases from the facility over five consecutive calendar years to not require BACT or offsets. Commenter 01 states further that this provision is contrary to California law, which requires any emission unit that emits or has the potential to emit over 25 lbs per day to be equipped with BACT. The commenter also states that the Protect California Air Act of 2003 prohibits California air districts, including the MDAQMD, from “backing off” their NNSR programs to allow the implementation of requirements less stringent than those in place as of December 30, 2002. The commenter states that because the MDAQMD’s current SIP rules have been in place since before 1996, they cannot now be avoided, and that the FIP creates the potential for massive confusion and misunderstanding among regulated facilities that are located in the MDAQMD.

Response to Comment A.5.5: If the MDAQMD believes that the provisions in its current SIP, which EPA acted upon in the 2023 LA/LD,¹⁰⁹ will result in greater emissions reductions than the application of the de minimis provisions proposed in the FIP, there should be no conflict between the FIP and the MDAQMD’s SIP. The EPA is not required to apply state-level requirements even if, in some cases, the application of the state-level requirements would result in a scenario where emissions reductions would be greater than under federal requirements. Likewise, in the situation described in the comment, a permit applicant’s compliance with a more stringent MDAQMD requirement would enable the applicant to satisfy the federal requirement. The de minimis requirement that the commenter references, which is in CAA section 182(c)(6), states that a source cannot be considered “de minimis” for NNSR applicability purposes unless its net emissions increases over the past five consecutive calendar years are less than

25 tons per year.¹¹⁰ It is not clear how the federal requirement is “directly contrary” to the California law that, according to the commenter, “requir[es] any emissions unit which emits or has the potential to emit over 25 LBS per day to be equipped with BACT;” the California requirement sets a threshold for BACT, based on potential emissions of 25 pounds per day, whereas the federal requirement says that the source must undergo NNSR (e.g., satisfy BACT and offsets requirements) if net emissions increases over the last five consecutive calendar years exceed 25 tons per year. It would appear that in most, if not all, cases a source’s compliance with the California requirement would also comply with the federal requirement.

Finally, the EPA finds this comment from the MDAQMD confusing given that the MDAQMD stated elsewhere in its comments that its August 7 SIP submittal addresses all but one of the deficiencies EPA identified in the 2023 LA/LD, which the EPA understands to be a reference to Rule 1304(C)(2)(d).¹¹¹ The EPA’s 2023 LA/LD rulemaking also found the MDAQMD’s rules as adopted in 2021 to be deficient because they did not ensure compliance with CAA 182(c)(6). Based on discussions with the MDAQMD after we finalized the 2023 LA/LD, we had understood that the MDAQMD intended that its revised rules as adopted on March 25, 2024, and submitted to the EPA on August 7, 2024, would address the concerns identified in our LA/LD, including adding the missing de minimis provision. While our full review of those rules will be attentive to this issue, it is not clear why the MDAQMD would object to the inclusion of the de minimis provision in the FIP.

Comment A.5.6: Commenters 05, 06, 07, 08 and 09 state that permit holders may also face increased permit fees, increased permit processing times, and possible inconsistencies between the duplicate EPA permits and district permits. The commenters state that dual permits and their separate requirements will increase the complexity and potential for conflicting or unclear requirements and that this may lead to unintended compliance issues and

conflicts, which could compromise a source’s ability to comply as well as result in significant penalties.

Commenters 05, 07, and 08 request that the EPA work with the MDAQMD to develop a solution that would remove the requirement that sources obtain two permits.

Commenter 05 requests that the EPA confirm which agency (the MDAQMD or the EPA) will be the permitting authority under the proposed FIP rule or if the intention is for both the MDAQMD and the EPA to issue and enforce separate permits independently, including facility inspections and processing fees.

Response to Comment A.5.6: Unless the MDAQMD requests, and the EPA approves, delegation to implement the FIP or the MDAQMD addresses the deficiency in MDAQMD Rule 1304(C)(2)(d), major stationary sources and sources undergoing major modifications in areas within the jurisdiction of MDAQMD will need to obtain two permits—one under the EPA’s FIP, and one under the MDAQMD’s SIP. The MDAQMD, if delegated to implement the FIP, could consolidate its review under the FIP and its review under its SIP-approved NNSR program. The EPA considered options to avoid permit applicants having to obtain two permits, such as delegating the FIP to MDAQMD. However, the MDAQMD is not interested in implementing the FIP at this time. We also considered regulatory approaches that would reduce or eliminate the MDAQMD’s role in issuing permits to major stationary sources, but those options seemed likely to have unnecessarily disruptive outcomes and uncertain impacts on permitting for minor sources. We anticipate that applications for projects subject to the FIP will require essentially the same information as applications to be submitted to the MDAQMD, which should reduce the permitting burden on permit applicants. We also anticipate that the most significant difference between the two permit programs will be evaluation of offset obligations and requirements. We also hope that the MDAQMD’s newly submitted NNSR rules will narrow the scope of the FIP once we have approved these rules into the SIP, reducing EPA’s role in permitting major stationary sources within MDAQMD’s jurisdiction.

In response to Commenter 05’s inquiry regarding which agency will be the permitting authority, both the EPA and MDAQMD will be permitting authorities for major stationary sources. As explained previously, major sources subject to the FIP will need to obtain

¹⁰⁸ See 40 CFR 52.285(c)(1)(i)–(ii); 89 FR 56237, 56247.

¹⁰⁹ 88 FR 42258 (June 30, 2023).

¹¹⁰ The de minimis requirement at CAA section 182(c)(6) was a part of the 1990 CAA Amendments.

¹¹¹ MDAQMD August 8, 2024 comment letter: “USEPA and MDAQMD reached resolution of all but one of the purported deficiencies and the MDAQMD thereafter modified its NNSR rules on 3/25/2024.” In the comments Brad Poiriez, on behalf of the MDAQMD, provided during the July 24, 2024 public hearing, Mr. Poiriez mentioned the “pending SIP submission containing revisions to the NNSR rules that were agreed upon by the District and US EPA.” (Transcript page 16).

two permits—one under the EPA's FIP and one under the MDAQMD's SIP.

Comment A.5.7: Commenters 07 and 09 state that the proposed FIP will likely cause increased demand and prices for ERCs of nonattainment area pollutants. The commenters state that the proposed FIP may have significant impacts on local ERC demand and prices for emission offsets at a time where there are a few private holders of ERCs with relatively low quantities of available credits within the MDAQMD.

Commenter 09 provides examples of the prices of credits for PM₁₀ and Nitrogen Oxides (NO_x) in the South Coast Air Quality Management District to support its assertion that it is unclear how the FIP will address such potentially restrictive and unsustainable ERC market conditions within the MDAQMD. Commenter 09 states that there has been insufficient study of these potential ERC market conditions, additional emission offset costs, and related concerns on regulated facilities.

Commenter 04 recommends that the EPA work with the MDAQMD to ensure that the proposed FIP complements existing state and local efforts and states that coordination will help avoid any errors in the process. This commenter states that the NNSR rules should provide flexibility to accommodate the needs of businesses and economic development in the region.

Response to Comment A.5.7: The EPA is promulgating this FIP as required by a consent decree because the MDAQMD does not have a fully approved NNSR SIP, as required by the 2008 ozone NAAQS implementation rule.¹¹² The requirements that entities would be subject to under the FIP, which implements Appendix S, are the same requirements that regulated entities in other jurisdictions across the country are currently subject to and have been subject to for decades under SIP-approved programs that meet the minimum requirements of the CAA. The EPA recognizes the scarcity of offsets in the nonattainment area that would be covered by this FIP. The EPA will continue to work with the MDAQMD to assist in identifying offsets from sources in the nonattainment area that will be covered by this FIP.

Comment A.5.8: Commenter 08 states that the proposed FIP puts the time, monetary, and compliance burdens on facilities. Similarly, Commenter 09 states that the burdensome conditions that the FIP will cause will make it difficult for it and other regulated

facilities to make capital investments, equipment purchases, facility expansions, new employee hires, and other business decisions.

Response to Comment A.5.8: The EPA disagrees with the commenters' characterizations of the impacts of the FIP. Facilities in the MDAQMD are required to comply with federal NNSR requirements, including the requirements for offset quantification and generation, in the same manner as any other facilities in other jurisdictions that are located in areas not attaining the NAAQS. The FIP applies only when new or existing major stationary sources undertake facility modifications that will increase emissions above the applicable thresholds. The FIP is necessary to ensure that air quality in the MDAQMD, which is currently classified as Severe nonattainment for the 2008 and 2015 ozone NAAQS, as well as Moderate nonattainment for the PM₁₀ NAAQS, improves toward attainment of the NAAQS over time. At present, the MDAQMD's current rules allow for applicants to be excused from certain NNSR requirements, as described in the proposed FIP rulemaking and in the 2023 LA/LD.¹¹³

B. Summaries of Oral Comments Received During the Public Hearing and EPA's Responses

1. Comments on the Timing and Implementation of the FIP

Comment B.1.1: Commenter AA states that while he understands that the EPA is under a consent decree to act on the MDAQMD's NNSR provisions, the EPA's promulgation of a FIP seems to be rushed given the pending SIP submission that contains revisions to the NNSR rules that the MDAQMD, and the EPA agreed to during mediation following the MDAQMD's petition for review of the EPA's 2023 LA/LD action.¹¹⁴ The commenter states that EPA was copied on the submission of the MDAQMD's rules to CARB and thus has constructive notice of the MDAQMD's submission.

Commenter AA states that, to the extent that the EPA's rush to promulgate the FIP is spurred by the dispute between the MDAQMD the EPA over the use of fully offset allowable emissions as SERs at an existing major facility, the EPA should reconsider its disapproval of the MDAQMD's SER provision. The commenter states that the EPA has previously approved the MDAQMD's offset provision and that there is a reasonable reliance by

industry and the MDAQMD on this approval.

Response to Comment B.1.1: The EPA disagrees with the commenter's characterization that "the EPA's promulgation of a FIP seems to be rushed." In fact, the EPA's obligation to promulgate a FIP is more than five years overdue. As explained in our proposed rulemaking, on February 3, 2017, the EPA found that the State of California failed to submit a SIP revision for NNSR rules that apply to a Severe classification for the 2008 ozone NAAQS, as required under subpart 2 of part D of title 1 of the CAA and the 2008 Ozone SIP Requirements Rule.¹¹⁵ In addition to establishing deadlines for the imposition of sanctions, the EPA's finding of failure to submit triggered an obligation under CAA section 110(c) for the EPA to promulgate a FIP no later than two years from the finding, *i.e.*, by March 6, 2019.¹¹⁶ The EPA did not meet this deadline and was subsequently sued over its failure to do so.¹¹⁷ The lawsuit was resolved by a consent decree that underwent a 30-day public comment period before it was entered by the court on June 15, 2023. Under the terms of the consent decree, no later than November 29, 2024, the EPA must sign a notice of final rulemaking to approve a revised SIP submission, promulgate a FIP, or approve in part a revised SIP submission and promulgate a partial FIP for the Severe NNSR SIP element. On November 8, 2024, the EPA and CBD agreed to extend the deadline to January 10, 2025.¹¹⁸

As the commenter notes, MDAQMD adopted revised rules on March 25, 2024, and submitted them to CARB for transmittal to the EPA. On August 7, 2024, CARB submitted the revised rules to the EPA. The EPA is currently reviewing the submission as required under section 110(k) of the CAA. The EPA has confirmed that the submission still contains the deficiency associated with MDAQMD Rule 1304(C)(2)(d) that EPA has previously identified. For the EPA to discharge its obligation to promulgate a FIP, it would need to fully approve the MDAQMD's NNSR

¹¹⁵ 82 FR 9158 (February 3, 2017).

¹¹⁶ *Id.*

¹¹⁷ *Center for Biological Diversity et al., v. Regan*, No. 3:22-cv-03309-RS (N.D. Cal.). The consent decree, as entered by the court on June 15, 2023, is available in the docket for this action.

¹¹⁸ *Id.* Prior to court's entry of the 2023 CBD Consent Decree, the EPA published a notice in the **Federal Register** announcing the proposed settlement and providing an opportunity for interested persons to submit comments. 88 FR 20166 (April 5, 2023). The EPA received no comments on the proposed settlement. The parties' joint stipulation to extend the consent decree deadline is available in the docket for this action.

¹¹² *Center for Biological Diversity et al., v. Regan*, No. 3:22-cv-03309-RS (N.D. Cal.). This consent decree is also available in the docket for this action.

¹¹³ 88 FR 42258, 42260; 89 FR 56237, 56240.

¹¹⁴ 88 FR 42258.

submission, which is not possible due to the deficiency associated with MDAQMD Rule 1304(C)(2)(d). The EPA provides additional information that is relevant to this comment both specifically in our response to Comment A.1.1 in this Response to Comments and generally in our responses to the comments summarized in section A.1 of this Response to Comments, where we address the written comments we received that pertain to the EPA's obligation under the applicable consent decree.

As stated in Section III.H of the proposed rulemaking action, if the EPA approves CARB's recent SIP submittal, the approved MDAQMD rules would apply rather than the FIP, except for the portion of the FIP that had not been replaced by the approved SIP.¹¹⁹

Lastly, for the reasons we explain in our responses to comments A.4.1 through A.4.3 in this Response to Comments, we disagree with Commenter AA's assertion that the EPA should reconsider the FIP because of industry's reliance upon MDAQMD's Rule 1304(C)(2)(d).

Comment B.1.2: Commenter BB states that the EPA should postpone promulgating the FIP until after the EPA and the MDAQMD resolve their differences. Commenter BB states that there is only one pending issue that the two agencies need to resolve. Having to apply to two jurisdictions for permits will cause an undue burden to facilities like the one at which Commenter BB works.

Response to Comment B.1.2: It is not possible for the EPA to postpone finalizing the FIP while we attempt to resolve our differences with the MDAQMD. Section 110(c) of the CAA requires the EPA to promulgate a FIP for a deficient NNSR program. As the EPA wrote in the proposed action, the purpose of this NNSR FIP, which will regulate sources within the MDAQMD's jurisdiction, is to fulfill the EPA's statutory duty by the deadline established under a consent decree in a lawsuit brought against the EPA.¹²⁰ The consent decree compels the EPA to promulgate a FIP by November 29, 2024, unless the EPA can fully approve the MDAQMD's NNSR SIP program before that date.¹²¹ On November 8, 2024, the EPA and CBD agreed to extend the deadline to January 10, 2025.¹²² We

provide additional information on this issue in our responses to comments A.1.2 and A.1.3 in this Notice.

Regarding the burdens associated with compliance with the FIP and the MDAQMD's NNSR program, we direct the reader to our response to written comment A.5.6, where we respond to similar assertions from other commenters. Unless the EPA delegates authority to implement the FIP to the MDAQMD, permit applicants will need to apply to the EPA for an NNSR permit under the FIP and to the MDAQMD for a permit under the SIP. If, however, the MDAQMD requests delegation authority to implement the FIP, the EPA is willing to work with the MDAQMD for MDAQMD to obtain this delegation authority.

2. Comments on the 2023 LA/LD of the MDAQMD's NNSR SIP Submission

Comment B.2.1: Commenter AA states that the EPA previously approved the use of SERs, as offsets, which it subsequently disapproved in the 2023 LA/LD action. The commenter states that neither the 2023 LA/LD action nor the proposed FIP fully explain the EPA's policy reversal of MDAQMD Rule 1304(C)(2)(d), which regulates the use of SERs. The commenter states that allowable emissions reflected in a permit were backed by real reductions when the permit was issued and that the EPA has not explained why these reductions are no longer real, especially when the SERs are surplus adjusted and adjusted for Reasonably Available Control Technology (RACT) upon use. The commenter states that any leftover SERs created in the permitting action would never again be available for use, since SERs cannot be put into the ERC bank. Finally, the commenter states that CAA section 173(c)(2) expressly mandates that these SERs are creditable emission reductions (*i.e.*, offsets), that EPA recognized this in 1996, and that there has been no relevant change in the CAA or the implementing regulations since then.

Response to Comment B.2.1: Rule 1304(C)(2)(d) is not approvable under the CAA or the requirements for NNSR SIPs at 40 CFR 51.160–51.165. As we explain in our responses to comments A.2.1 and A.2.2, MDAQMD Rule 1304(C)(2)(d) is not consistent with section 173(c)(1) of the CAA, and it is not consistent with the requirements at 40 CFR 51.165(a)(3)(i), 40 CFR

51.165(a)(3)(ii)(G), or 40 CFR 51.165(a)(3)(ii)(J) because it allows facilities in the MDAQMD's jurisdiction to use reductions in past potential emissions, even if actual emissions associated with a modification would not be reduced at all, to offset emissions increases from construction of modified emissions units. This arrangement creates a loophole in the actual emissions accounting system established by the CAA and in place in the MDAQMD, which uses an attainment plan that is based on actual emissions.¹²³ The currency of the CAA is *actual emissions*, and that is true at *each* major modification undertaken at a facility.

As we explained in our response to comment A.2.1 in this rulemaking, Rule 1304(C)(2)(d) is inconsistent with CAA section 173(c)(1), 40 CFR 51.165(a)(3)(i), 40 CFR 51.165(a)(3)(ii)(G), and 40 CFR 51.165(a)(3)(ii)(J) because it allows a facility to offset emissions from a major modification with previously-relied upon offsets associated with a prior, distinct, project. Because Rule 1304(C)(2)(d) is at odds with these requirements, it is not approvable.

3. Comments on the Impact of the FIP on Reliance Interests

Comment B.3.1: Commenter AA is concerned that the EPA, in proposing the FIP, failed to recognize and assess the impact of the FIP on the MDAQMD and regulated industry. The commenter states that the MDAQMD and sources subject to the FIP have a reliance interest in the MDAQMD's Rule 1304(C)(2)(d) because, for over 25 years, the MDAQMD and its constituents have operated under the EPA's previously approved Rule 1304(C)(2)(d) procedures. The commenter states that SERs allowed under Rule 1304(C)(2)(d) may not be allowed under the FIP, and that this will impede the permitting process and the timeline for projects that have proceeded based on the understanding that MDAQMD's Rule 1304(C)(2)(d) was acceptable. Now, the commenter states, the EPA is reversing its position to eliminate these SERs without explanation or consideration of readily apparent alternative measures that could reduce the severity of its impact. The commenter states that the EPA's action does not reflect the

¹¹⁹ 89 FR 56237, 56243.

¹²⁰ *Id.* at 56240–56241.

¹²¹ *Center for Biological Diversity et al., v. Regan*, No. 3:22-cv-03309-RS (N.D. Cal.). This consent decree is also available in the docket for this action.

¹²² *Id.* Prior to court's entry of the 2023 CBD Consent Decree, the EPA published a notice in the **Federal Register** announcing the proposed

settlement and providing an opportunity for interested persons to submit comments. 88 FR 20166 (April 5, 2023). The EPA received no comments on the proposed settlement. The parties' joint stipulation to extend the consent decree deadline is available in the docket for this action.

¹²³ MDAQMD's 2008 and 2015 ozone NAAQS attainment plans are based on actual emissions. The 2008 ozone NAAQS plan is available at: https://ww2.arb.ca.gov/sites/default/files/classic/planning/sip/planarea/wmdaqmp/2016sip_mdplan.pdf, pp. 7, 34 (EPA approved this plan, see 86 FR 53223 (September 27, 2021).) The 2015 ozone NAAQS is available at: <https://www.mdaqmd.ca.gov/home/showpublisheddocument/9589/638084392297570000>, pp. 4–5, 24, 80.

cooperation between agencies that should be strived for, nor is it in compliance with the EPA's obligations under the APA.

Response to Comment B.3.1: As explained in our response to comment A.4.1, the EPA disagrees with the commenter's assertion regarding reliance interests. The EPA must promulgate a FIP because the MDAQMD has not adopted NSR rules that the EPA can fully approve.

Furthermore, it is not clear what the commenter means by the statement that EPA's proposed FIP fails to comply with EPA's obligations under the Administrative Procedure Act. To the extent that this comment is the same as comment A.3.1, the EPA's response is already stated in our response to that comment.

4. Comments on Other Potential Impacts of the FIP

Comment B.4.1: Commenter AA states that the proposed FIP is primarily silent about practical implementation issues, elaborating that the only discussion on that topic seems to be that two permits will be necessary and that the new permit for modified major facilities will need to use the EPA Region IX's electronic format.

Response to Comment B.4.1: Section 40 CFR 52.285(d)(3) of the FIP identifies the information that an applicant must provide to the EPA (or other reviewing authority, if delegated by the EPA) when submitting an application under the FIP.

Comment B.4.2: Commenter AA states that the EPA has expressed orally to the MDAQMD on a number of different occasions that it is concerned about various minor sources that will somehow escape NNSR. The commenter states that the EPA has especially expressed this concern for synthetic minor sources, where a permit limitation is the only thing rendering the facility "minor." The commenter states that, given the EPA's concern, it seems to be a bit of an oversight that specific provisions regarding review of minor sources are not addressed either directly or by reference.

Response to Comment B.4.2: The FIP and 40 CFR 51.165 generally apply to major stationary sources of air pollution, though synthetic minor sources must comply with definitions of "potential to emit" and provisions relating to the relaxation of these limits. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation that was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a

pollutant, such as a restriction on hours of operation, then the requirements of the FIP shall apply to the source or modification as though construction had not yet commenced on the source or modification.¹²⁴ The FIP also requires sources to identify any emission limitations taken by the source.¹²⁵ The FIP incorporates the definitions used in Appendix S to Part 51, including the definition of "Potential to Emit."¹²⁶ Synthetic minor sources that take a limit on their PTE are required to comply with this definition and the provisions relating to the relaxation of limits.

Comment B.4.3: Commenter BB states that, in contrast to the MDAQMD's requirement for a response or issuance of permits within 90 days of application, the EPA's permitting process lacks a specific timeline. The commenter states that this potential delay could significantly impact manufacturing facilities applying for permits, which could impact facility operation and planning. The commenter states that facilities want to comply, but adding layers to the already-approved SIP that is implemented by the MDAQMD will cause an added layer of undue burden on the facility.

Response to Comment B.4.3: We refer the reader to our response to comment A.5.4 for this comment.

Comment B.4.4: Commenter CC states that five out of the six issues the EPA identified in the 2023 LA/LD of the MDAQMD's NNSR program have apparently been resolved and that after CARB takes its action only one issue remains. The commenter states that it appears that issue is more based on interpretation, which does not seem resolvable by a FIP as far as the implications and impacts it will have on industry for submitting dual permits, having different permitting timelines, additional costs, and impacts on projects moving forward that maybe benefit clean air. The commenter suggests not implementing the FIP and instead encourages that it would be more beneficial for the EPA and the MDAQMD to work through their issues.

Response to Comment B.4.4: The EPA directs the reader to our responses to comments A.1.3, A.5.6, and A.5.8. The EPA received CARB's submission of the MDAQMD's most recent NNSR SIP on August 7, 2024. The EPA is currently reviewing the submittal. Because the MDAQMD did not address one of the deficiencies that the EPA identified in

the 2023 LA/LD, even if it did address all of the other deficiencies, the EPA would still need to promulgate a FIP by January 10, 2025, as required under the consent decree, because the EPA would still not be able to fully approve the MDAQMD's NNSR program into the SIP.¹²⁷

To the extent that the disagreement between the EPA and the MDAQMD is based upon interpretation of legal requirements, the FIP is a gap-filling tool that the EPA is required to promulgate when states or air districts do not implement CAA requirements into their permitting requirements. Because the MDAQMD refuses to implement CAA requirements regarding offsets, the EPA must implement a FIP that effectuates those requirements.

IV. Final Action

In this rulemaking, the EPA is taking final action in response to the court remand of EPA's June 30, 2023 LA/LD action.¹²⁸ The EPA is disapproving MDAQMD's Rule 1304(C)(2)(d) because this rule continues to be insufficient to meet requirements for determining the quantity of offsets needed to issue a permit for a major modification.¹²⁹ In this rulemaking, the EPA has provided additional explanation to support this disapproval of Rule 1304(C)(2)(d). This includes an analysis of the EPA's prior action in 1996, which shows that the EPA did not fully consider applicable requirements at that time and that there have also since been intervening changes to EPA regulations. These responses supplement the EPA's rationale provided for the 2023 LA/LD action.¹³⁰ EPA affirms its disapproval of Rule 1304(C)(2)(d) in the 2023 LA/LD action.¹³¹ In this new final action based on the additional reasoning provided in this rulemaking and the record the EPA compiled to support the 2023 LA/LD action.

In addition, in accordance with CAA section 110(c), the EPA is finalizing a FIP for the NNSR program for the MDAQMD portion of the West Mojave Desert ozone nonattainment area and the San Bernardino County and Trona

¹²⁷ On November 8, 2024, CBD and the EPA filed a joint stipulation to extend the original November 29, 2024 deadline to January 10, 2025. *Center for Biological Diversity et al., v. Regan*, No. 3:22-cv-03309-RS (N.D. Cal.). This consent decree and the parties' joint stipulation to extend the consent decree deadline is also available in the docket for this action.

¹²⁸ 88 FR 42258.

¹²⁹ The EPA's disapproval of Rule 1304(C)(2)(d) in this action, as in the 2023 LA/LD, is limited; the provision remains a part of the SIP, as justified under CAA sections 110(k)(3) and 301(a).

¹³⁰ *Id.*

¹³¹ *Id.*

¹²⁴ 40 CFR 52.285(c)(2) (incorporating Appendix S, section IV.F.).

¹²⁵ 40 CFR 52.285(b) (referencing the definitions in Appendix S including the definition of PTE in 40 CFR 52.285(e)(2)(ii)(C)).

¹²⁶ Appendix S section II.A.3.

Planning Area PM₁₀ nonattainment areas. The EPA is finalizing the FIP as proposed except for one change to address an oversight error that is in the proposed rule text: in 40 CFR 52.285(b)(1)(i), the definition of “actual emissions,” the EPA is inserting the text “, or for establishing a PAL under paragraph IV.K of 40 CFR part 51, appendix S” to the first sentence of the definition. The added text clarifies the terms that are to be used in establishing a Plantwide Applicability Limit (PAL), as described in Appendix S, which the FIP incorporates by reference.¹³² The EPA is not requesting public comment on the fix to this minor typographical error since it merely applies the text that is in Appendix S.¹³³

The FIP applies only to construction of new major stationary sources and major modifications at existing major stationary source in these nonattainment areas. The FIP implements statutory requirements in CAA sections 110(c)(1), 172(c)(5), 173, 179(b), 182(c) and (d), 189(a)(1)(A) and (e), 301(a), and 302.

The FIP will be directly implemented and enforced by the EPA. The FIP authorizes the EPA to delegate implementation of the FIP to the MDAQMD if the District requests such delegation. The FIP will apply until the MDAQMD revises its SIP to address deficiencies identified by the EPA and the EPA fully approves the MDAQMD's NNSR SIP.

As we explained in the proposal for this action, should the MDAQMD submit a SIP revision that corrects some, but not all, of the deficiencies identified in our June 30, 2023 rulemaking, the permit approval criteria for this FIP could be limited to the remaining deficiencies that the EPA identified.¹³⁴ As described in the proposal for this action, permit applicants would still need to comply with any portions of the FIP that remain after the EPA approves the MDAQMD's revised rules in the SIP. Likewise, if a court invalidates any one of these elements of the FIP, the EPA intends the remainder of this action to remain effective, as the EPA finds each portion of it to be appropriate even if one or more parts of it have been set aside.

¹³² See 40 CFR 52.285(d), “Permit approval criteria.”

¹³³ Furthermore, the EPA notes that the PAL provisions in the FIP are not likely to be utilized by any permit applicants because the MDAQMD no longer has a PAL program in its NSR rules.

¹³⁴ 88 FR 42264–42266; See also 87 FR 72434, 72438 (November 25, 2022).

V. Supporting Information

A. Policy on Children's Health

In 2021, the EPA updated its *Policy on Children's Health* to reflect that “children's environmental health refers to the effect of environmental exposure during early life: from conception, infancy, early childhood and through adolescence until 21 years of age.” In addition, the policy applies to “effects of early life exposures [that] may also arise in adulthood or in later generations.” In this action, the EPA is finalizing a program that would implement our federal regulations in the nonattainment areas under the MDAQMD. In so far as there is an impact from this action, it will be positive since the deficiencies in the District's program it is meant to rectify would likely result in increased emissions as compared to this FIP and our federal NNSR regulations.

B. Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 28, 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 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)).

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is not a significant regulatory action as defined in Executive Order 12866 (58 FR 51735, October 1993), as amended by Executive Order 14094 (88 FR 21879, April 11, 2023), and was, therefore, not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) because this

final rule implements existing requirements under the CAA and 40 CFR 51.160–165. The Office of Management and Budget (OMB) has previously approved the information collection activities in the existing PSD and NNSR regulations under OMB control number 2060–0003. The burden associated with obtaining an NNSR permit for a major stationary source undergoing a major modification is already accounted for under the approved information collection requests. Thus, the EPA is not conducting an information collection request for this action.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action is unlikely to impact small entities because the permitting requirements implemented through this action are applicable only to construction or modification of major stationary sources of air pollution. In the MDAQMD, major sources are those that emit, or have the potential to emit 25 tons per year or more of NO_x, Sulfur Oxides, or volatile organic compounds (VOCs); or 15 tons per year or more of PM₁₀. To the extent that any small entities would own or operate sources capable of emitting this much air pollution, the requirements of this action apply only to construction of new major sources, or major modifications to existing major sources, located in the portions of the MDAQMD that are subject to the requirements of this action. The EPA does not have information to suggest that there currently are a substantial number of major stationary sources located in the MDAQMD that are owned or operated by small entities. The Agency also does not have any information on future modifications that any such existing major sources may engage in after the effective date of this FIP. Further, the Agency does not have information that suggests one or more small entities will seek to construct a new major stationary source in the MDAQMD.

Even if the federal permitting requirements established in this FIP could be applicable to one or more small entities, these requirements would not have significant economic impact on such a small entity. Furthermore, any impact would not affect a substantial number of small entities. This FIP ensures that such small entities and other sources subject to the FIP requirements meet CAA requirements to which these sources should have already been subject. Upon finalization of this action, sources applying for a

permit will be required to submit application materials to the EPA in compliance with the FIP. These sources are already subject to NNSR requirements under the District's SIP, including the requirements to submit applications, to obtain offsets, and to install pollution control technology that satisfies Federal standards.

Consequently, the incremental impact associated with application of the specific requirements of the NNSR regulations for certain sources emitting nonattainment criteria pollutants or its precursors is expected to be de minimis, primarily pertaining to the amount of offsets needed.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more, as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because this proposed rule would not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that the tribe has jurisdiction, and it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 directs federal agencies to include an evaluation of the health and safety effects of the planned regulation on children in Federal health and safety standards and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. This action is not subject to Executive Order 13045 because it is not a significant regulatory action under section 3(f)(1) of Executive

Order 12866. The EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children because it implements specific standards established by Congress in statutes.

However, EPA's *Policy on Children's Health* applies to this action. Information on how the Policy was applied is available under "Children's Environmental Health" in the Supporting Information section of this preamble.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

The EPA believes that it is not practicable to assess whether the human health or environmental conditions that exist prior to this action result in disproportionate and adverse effects on communities with environmental justice concerns. The EPA performed an EJ analysis, as is described in the proposed action, 89 FR 56237, July 9, 2024, in the section titled, "Environmental Justice Considerations." The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis for the action. While the EPA can identify the existing major sources in the nonattainment areas that would be impacted by this action, the EPA cannot quantify the number or types of sources that will undertake major modifications in the future. Additionally, the EPA cannot know whether new major sources will locate in the nonattainment area and what emissions these sources may have. The impacts of the action are likely to vary greatly depending on the source category, number and location of facilities, and the pollutants and potential controls addressed. Therefore, while the EPA cannot quantify the precise baseline conditions and impacts, to the extent that this action will have

impacts, it will not result in disproportionate and adverse effects on communities with EJ concerns as compared with baseline human health and environmental conditions.

In finalizing this action, the EPA will replace the MDAQMD in implementation of the District's NNSR program through the FIP. Therefore, the EPA does not anticipate that this action will result in any negative impacts to human health and the environment negative impacts. If this action has any impact on human health or the environment it will be beneficial in so far as the FIP action will address deficiencies associated with the calculation of emission offsets in the NNSR program. As explained in section II of the preamble of the proposal of this action, this FIP is being promulgated to address several deficiencies with the MDAQMD's NNSR program. See 89 FR 56237, 56239. While the EPA has not analyzed the health impacts nor the emissions impacts from these deficiencies, the deficient provisions are less stringent than the Federal NNSR requirements that the EPA will be applying if this proposed FIP is finalized. Therefore, in so far as the EPA can qualitatively identify impacts to human health and the environment, the EPA expects this action will ensure the protections provided by the CAA and that the EPA's implementing regulations will be fully realized.

K. Congressional Review Act (CRA)

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

List of Subjects in 40 CFR Part 52

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

Michael Regan,
Administrator.

For the reasons stated in the preamble, part 52 of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.285 is added to read as follows:

§ 52.285 Review of new sources and modifications—Mojave Desert Air Quality Management District.

(a) *Plan overview*—(1) *What is the purpose of the Federal Implementation Plan (FIP or “plan”)?*

(i) The FIP has the following purposes: It establishes the Federal preconstruction permitting requirements for new major sources and major modifications located in nonattainment areas within the Mojave Desert Air Quality Management District (MDAQMD or “District”) that are major for a nonattainment pollutant.

(ii) The plan serves as the Federal nonattainment new source review (NNSR or “nonattainment major NSR”) plan for the area described in paragraph (a)(1)(i) of this section, which the EPA has determined does not meet all of the Clean Air Act (CAA or “Act”) title I part D requirements for NNSR programs. Sources subject to the plan must comply with the provisions and requirements of 40 CFR part 51, appendix S. The FIP also sets forth the criteria and procedures that the reviewing authority (as defined in paragraph (b)(1)(v) of this section) must use to issue permits under the plan. For the purposes of the plan, the term *SIP* means any EPA-approved implementation plan for the area administered by the MDAQMD.

(iii) Paragraph (f)(3) of this section sets forth procedures for appealing a permit decision issued under the plan.

(iv) The plan does not apply in Indian country, as defined in 18 U.S.C. 1151 and 40 CFR 49.167, located within the MDAQMD.

(2) *Where does the plan apply?* (i) The provisions of the plan apply to the proposed construction of any new major stationary source or major modification in the MDAQMD that is major for a nonattainment pollutant, if the stationary source or modification is located anywhere in the designated nonattainment area.

(3) *What general provisions apply under the plan?* The following general provisions apply to you as an owner or operator of a source:

(i) If you propose to construct a new major source or a major modification in a nonattainment area in the MDAQMD, you must obtain a Federal NNSR permit (“permit”) under the plan before beginning actual construction. You may not begin actual construction after the effective date of the plan without applying for and receiving a Federal

NNSR permit that authorizes construction pursuant to the plan.

(ii) You must construct and operate your source or modification in accordance with the terms of your permit issued under the plan.

(iii) Issuance of a permit under the plan does not relieve you of the responsibility to fully comply with applicable provisions of any EPA-approved implementation plan or FIP, and any other requirements under applicable law. This includes obligations to comply with any EPA-approved SIP provisions that satisfy Federal new source review (NSR) requirements.

(b) *Definitions.* For the purposes of the plan, the definitions in 40 CFR part 51, appendix S, paragraph II.A, and 40 CFR 51.100 apply, except for paragraphs (b)(1) through (6) of this section, which replace the corresponding definitions found in part 51, appendix S:

(1) *Actual emissions* means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs (b)(1)(i) and (ii) of this section, except that this paragraph (b)(1) shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under paragraph IV.K of 40 CFR part 51, appendix S. Instead, 40 CFR part 51, appendix S, paragraphs II.A.24 and 30, shall apply for those purposes.

(i) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period that precedes the particular date and that is representative of normal source operation. The reviewing authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit’s actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(ii) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(2) *Enforceable as a practical matter* means that an emission limitation or other standard is both legally and practicably enforceable as follows:

(i) An emission limitation or other standard is legally enforceable if the reviewing authority has the legal power to enforce it.

(ii) Practical enforceability for an emission limitation or for other

standards (design standards, equipment standards, work practices, operational standards, pollution prevention techniques) in a permit for a source is achieved if the permit’s provisions specify:

(A) A limitation or standard and the emissions units or activities at the source subject to the limitation or standard;

(B) The time period for the limitation or standard (e.g., hourly, daily, monthly and/or annual limits such as rolling annual limits); and

(C) The method to determine compliance, including appropriate monitoring, recordkeeping, reporting, and testing.

(3) *Environmental Appeals Board* means the Board within the EPA described in 40 CFR 1.25(e).

(4) *Nonattainment pollutant* means any regulated NSR pollutant for which the MDAQMD, or portion of the MDAQMD, has been designated as nonattainment, as codified in 40 CFR 81.305, as well as any precursor of such regulated NSR pollutant specified in 40 CFR part 51, appendix S, paragraph II.A.31.(ii)(b).

(5) *Reviewing authority* means the Administrator of EPA Region IX, but it may include the MDAQMD if the Administrator delegates the power to administer the FIP under paragraph (g) of this section.

(6) *Significant* means, in reference to an emissions increase or a net emissions increase, and notwithstanding the definition of “significant” in 40 CFR part 51, appendix S, paragraph II.A.10, any increase in actual emissions of volatile organic compounds or oxides of nitrogen that would result from any physical change in, or change in the method of operation of, a major stationary source locating in a serious or severe ozone nonattainment area if such emissions increase of volatile organic compounds or oxides of nitrogen exceeds 25 tons per year when aggregated with all other net emissions increases from the source over any period of 5 consecutive calendar years that includes the calendar year in which such increase occurred.

(c) *Does the plan apply to me?* (1) In any MDAQMD nonattainment area, the requirements of the plan apply to you under the following circumstances:

(i) If you propose to construct a new major stationary source and your source is a major source of nonattainment pollutant(s).

(ii) If you own or operate a major stationary source and propose to construct a major modification, where your source is a major source of nonattainment pollutant(s) and the

proposed modification is a major modification for the nonattainment pollutant.

(2) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation that was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of the plan shall apply to the source or modification as though construction had not yet commenced on the source or modification.

(d) *Permit approval criteria*—(1) *What are the general criteria for permit approval?* The criteria for approval of applications for permits submitted pursuant to the plan are provided in part D of title I of the Act and in 40 CFR 51.160 through 51.165 and 40 CFR part 51, appendix S.

(2) *What are the plan-specific criteria for permit approval?* Consistent with the requirements in 40 CFR part 51, appendix S, the reviewing authority shall not approve a permit application unless it meets the following criteria:

(i) The lowest achievable emission rate (LAER) requirement for any NSR pollutant subject to the plan and monitoring, recordkeeping, reporting, and testing as necessary to assure compliance with LAER.

(ii) Certification that all existing major sources owned or operated by the applicant in California are in compliance or, on a schedule for compliance, with all applicable emission limitations and standards under the Act.

(iii) Any source or modification subject to the plan must obtain emission reductions (offsets) from existing sources in the area of the proposed source (whether or not under the same ownership) such that there will be reasonable progress toward attainment of the applicable NAAQS. Notwithstanding 40 CFR part 51, appendix S, paragraph IV.G.5, interprecursor offsetting is not permitted between precursors of ozone. A demonstration of reasonable progress toward attainment shall include:

(A) A demonstration that the emission offsets will provide a net air quality benefit in the affected area, as required under 40 CFR part 51, appendix S, paragraph IV.A, Condition 4.

(B) A demonstration that emissions reductions otherwise required by the Act are not credited for purposes of satisfying the offset requirements in this paragraph (d)(2)(iii) and part D of title I of the Act.

(iv) An analysis of alternative sites, sizes, production processes and environmental control techniques for such proposed major source or major modification that demonstrates that the benefits of the proposed major source or major modification significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(3) *What are the application requirements?* The owner or operator of any proposed new major stationary source or major modification shall submit a complete application using EPA Region IX's electronic system, which is described in paragraph (d)(3)(ii) of this section. The application must include the information listed in this paragraph (d)(3) as well as the demonstrations to show compliance with paragraphs (d)(2)(i) through (iv) of this section. The reviewing authority's designation that an application is complete for purposes of permit processing does not preclude the reviewing authority from requesting or accepting any additional information.

(i) *Application content requirements.*

(A) Identification of the permit applicant, including contact information.

(B) Address and location of the new or modified source.

(C) Identification and description of all emission points, including information regarding all nonattainment pollutants emitted by all emissions units included in the new source or modification.

(D) A process description of all activities, including design capacity, that may generate emissions of nonattainment pollutants, in sufficient detail to establish the basis for the applicability of standards.

(E) A projected schedule for commencing construction and operation for all emissions units included in the new source or modification.

(F) A projected operating schedule for each emissions unit included in the new source or modification.

(G) A determination as to whether the new source or modification will result in any secondary emissions.

(H) The emission rates of all regulated NSR pollutants, including fugitive and secondary emission rates, if applicable. The emission rates must be described in tons per year (tpy). If necessary, shorter-term rates must be described to allow for compliance using the applicable standard reference test method or other methodology specified (*i.e.*, grams/liter, parts per million volume (ppmv) or parts per million weight (ppmw), lbs/MMBtu).

(I) The calculations on which the emission rate information is based, including fuel specifications, if applicable, and any other assumptions used to determine the emission rates (*e.g.*, higher heating value (HHV), sulfur content of natural gas, VOC content).

(J) The calculations, pursuant to 40 CFR part 51, appendix S, paragraph IV.I and IV.J, that are used to determine applicability of the plan, including the emission calculations (increases or decreases) for each project that occurred during the contemporaneous period, as applicable.

(K) The calculations, pursuant to 40 CFR part 51, appendix S, paragraph IV.A, used to determine the quantity of offsets required for the new source or modification.

(L) Identification of actual emission reductions that meet the offset integrity criteria of being real, surplus, quantifiable, permanent and federally enforceable.

(M) If applicable, a description of how performance testing will be conducted, including test methods and a general description of testing protocols.

(N) Information necessary to determine whether issuance of such permit:

(1) May adversely affect federally-listed threatened or endangered species or the designated critical habitat of such species; or

(2) Has the potential to cause adverse effects on historic properties.

(ii) *Application process requirements.* To submit an application required under the plan, applicants may submit electronically through the Central Data Exchange (CDX)/Compliance and Emissions Data Reporting Interface (CEDRI) or submit by mail.

(A) CDX/CEDRI is accessed through <https://cdx.epa.gov>. First-time users will need to register with CDX. The CDX platform will also be used for any permit reporting requirements.

(B) Applicants that do not apply using CDX/CEDRI shall mail a signed application using certified mail (do not request signature) to: Air and Radiation Division, Permits Office (Air-3-1), U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

(C) Applicants that apply using certified mail must email a copy of the application and the certified mail tracking number to provide notification of delivery receipt to R9AirPermits@epa.gov.

(4) *What are the requirements for monitoring, recordkeeping, and reporting?* The reviewing authority shall require in the conditions of a permit such monitoring, recordkeeping, and reporting as necessary to facilitate

compliance with the terms of a permit and to make them enforceable as a practical matter.

(e) *Public participation requirements*—(1) *What permit information will be publicly available?* With the exception of any confidential information as defined in 40 CFR part 2, subpart B, the reviewing authority must make available for public inspection the documents listed in paragraphs (e)(1)(i) through (iv) of this section. The reviewing authority must make such information available for public inspection at the appropriate EPA Regional Office and in at least one location in the area affected by the source, such as the MDAQMD headquarters location or a local library.

(i) All information submitted as part of your permit application as required under paragraph (d)(3) of this section.

(ii) Any additional information requested by the reviewing authority.

(iii) The reviewing authority's analysis of the application and any additional information submitted by you, including the LAER analysis and, where applicable, the analysis of your emissions reductions (offsets), your demonstration of a net air quality benefit in the affected area and your analysis of alternative sites, sizes, production processes and environmental control techniques.

(iv) A copy of the draft permit or the draft decision to deny the permit with the justification for denial.

(2) *How will the public be notified and participate?* (i) Before issuing a permit under the plan, the reviewing authority must prepare a draft permit and provide adequate public notice to ensure that the affected community and the general public have reasonable access to the application and draft permit information, as set out in this paragraph (e)(2)(i) and paragraph (e)(2)(ii) of this section. The public notice must provide an opportunity for public comment and notice of a public hearing, if any, on the draft permit.

(A) The reviewing authority must mail a copy of the notice to you (the permit applicant), the MDAQMD (or the EPA if there is a delegation under paragraph (g) of this section), and the California Air Resources Board (CARB).

(B) The reviewing authority must comply with the methods listed in paragraph (e)(2)(i)(B)(1) or (2) of this section:

(1) The reviewing authority must post the notice on its website.

(2) The reviewing authority must publish the notice in a newspaper of general circulation in the area affected by the source.

(3) The reviewing authority may also include other forms of notice as appropriate. This may include posting copies of the notice at one or more locations in the area affected by the source, such as at post offices, libraries, community centers or other gathering places in the community.

(ii) The notices required pursuant to paragraph (c)(2)(i) of this section must include the following information at a minimum:

(A) Identifying information, including the name and address of the permit applicant (and the plant name and address if different);

(B) The name and address of the reviewing authority processing the permit application;

(C) The regulated NSR pollutants to be emitted, and identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project, including any emission limitations for these emissions unit(s);

(D) The emissions change involved in the permit action;

(E) Instructions for requesting a public hearing;

(F) The name, address and telephone number of a contact person in the reviewing authority's office from whom additional information may be obtained;

(G) Locations and times of availability of the information, listed in paragraph (e)(1) of this section, for public inspection; and

(H) A statement that any person may submit written comments, a written request for a public hearing or both, on the draft permit action. The reviewing authority must provide a period of at least 30 days from the date of the public notice for comments and for requests for a public hearing.

(3) *How will the public comment and will there be a public hearing?* (i) Any person may submit written comments on the draft permit and may request a public hearing. The comments must raise any reasonably ascertainable issue with supporting arguments by the close of the public comment period (including any public hearing). The reviewing authority must consider all comments in making the final decision. The reviewing authority must keep a record of the commenters and of the issues raised during the public participation process, and such records must be available to the public.

(ii) The reviewing authority must extend the public comment period under paragraph (e)(2) of this section to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(iii) A request for a public hearing must be in writing and must state the nature of the issues proposed to be raised at the hearing.

(iv) If requested, the reviewing authority may hold a public hearing at its discretion to give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written statements. The reviewing authority may also hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision. The reviewing authority must provide notice of any public hearing at least 30 days prior to the date of the hearing. Public notice of the hearing may be concurrent with that of the draft permit, and the two notices may be combined. Reasonable limits may be set upon the time allowed for oral statements at the hearing.

(v) The reviewing authority must make the written transcript of any hearing available to the public.

(f) *Final permit issuance and administrative and judicial review*—(1) *How will final action occur and when will my Federal NNSR permit become effective?* After making a decision on a permit application, the reviewing authority must notify you, the permit applicant, of the decision in writing, and, if the permit is denied, provide the reasons for such denial and the procedures for appeal. If the reviewing authority issues a final permit to you, it must make a copy of the permit available at any location where the draft permit was made available. In addition, the reviewing authority must provide adequate public notice of the final permit decision to ensure that the affected community, the general public and any individuals who commented on the draft permit have reasonable access to the decision and supporting materials. A final permit becomes effective 30 days after service of the final permit decision, unless:

(i) A later effective date is specified in the permit;

(ii) Review of the final permit is requested under paragraph (f)(3) of this section; or

(iii) No comments requested a change in the draft permit or a denial of the permit, in which case the reviewing authority may make the permit effective immediately upon issuance.

(2) *What is the administrative record for each final permit?* (i) The reviewing authority must base final permit decisions on an administrative record consisting of:

(A) All comments received during any public comment period, including any extension or reopening;

(B) The tape or transcript of any hearing(s) held;

(C) Any written material submitted at such a hearing;

(D) Any new materials placed in the record as a result of the reviewing authority's evaluation of public comments;

(E) Other documents in the supporting files for the permit that were relied upon in the decision-making;

(F) The final Federal NNSR permit;

(G) The application and any supporting data furnished by you, the permit applicant;

(H) The draft permit or notice of intent to deny the application or to terminate the permit; and

(I) Other documents in the supporting files for the draft permit that were relied upon in the decision-making.

(ii) The additional documents required under paragraph (f)(2)(i) of this section should be added to the record as soon as possible after their receipt or publication by the reviewing authority. The record must be complete on the date the final permit is issued.

(iii) Material readily available or published materials that are generally available and that are included in the administrative record under the standards of paragraph (f)(2)(i) of this section need not be physically included in the same file as the rest of the record as long as it is specifically referred to in that file.

(3) *Can permit decisions be appealed?*

(i) Permit decisions may be appealed under the permit appeal procedures of 40 CFR 124.19, and the provisions of that section applicable to prevention of significant deterioration (PSD) permits shall apply to permit decisions under the FIP. A petition for review must be filed with the Clerk of the Environmental Appeals Board within 30 days after the reviewing authority serves notice of the issuance of a final permit decision under the plan, in accordance with 40 CFR 124.19.

(ii) An appeal under paragraph (f)(3)(i) of this section is, under section 307(b) of the Act, a prerequisite to seeking judicial review of the final agency action.

(4) *Can my permit be reopened?* The reviewing authority may reopen an existing, currently-in-effect permit for cause on its own initiative, such as if it contains a material mistake or fails to assure compliance with requirements in this section. However, except for those permit reopenings that do not increase the emission limitations in the permit, such as permit reopenings that correct

typographical, calculation and other errors, all other permit reopenings shall be carried out after the opportunity for public notice and comment and in accordance with one or more of the public participation requirements under paragraph (e)(2) of this section.

(5) *Can my permit be rescinded?* (i) Any permit issued under this section, or a prior version of this section, shall remain in effect until it is rescinded under this paragraph (f)(5).

(ii) An owner or operator of a stationary source or modification who holds a permit issued under this section for the construction of a new source or modification that meets the requirement in paragraph (f)(5)(iii) of this section may request that the reviewing authority rescind the permit or a particular portion of the permit.

(iii) The reviewing authority may grant an application for rescission if the application shows that the provisions of the plan would not apply to the source or modification.

(iv) If the reviewing authority rescinds a permit under this paragraph (f), the public shall be given adequate notice of the rescission determination in accordance with paragraph (e)(2)(i)(B) of this section.

(g) *Administration and delegation of the Federal nonattainment major NSR plan in the MDAQMD—(1) Who administers the FIP in the MDAQMD?* (i) The Administrator is the reviewing authority and will directly administer all aspects of the FIP in the MDAQMD under Federal authority.

(ii) The Administrator may delegate Federal authority to administer specific portions of the FIP to the MDAQMD upon request, in accordance with the provisions of paragraph (g)(2) of this section. If the MDAQMD has been granted such delegation, it will be the reviewing authority for purposes of the provisions for which it has been granted delegation.

(2) *Delegation of administration of the FIP to the MDAQMD.* This paragraph (g)(2) establishes the process by which the Administrator may delegate authority to the MDAQMD in accordance with the provisions in paragraphs (g)(2)(i) through (iv) of this section. Any Federal requirements under the plan that are administered by the delegate MDAQMD are enforceable by the EPA under Federal law.

(i) *Information to be included in the Administrative Delegation Request.* To be delegated authority to administer the FIP or specific portions of it, the MDAQMD must submit a request to the Administrator.

(ii) *Delegation Agreement.* A Delegation Agreement will set forth the

terms and conditions of the delegation, will specify the provisions that the delegate MDAQMD will be authorized to implement on behalf of the EPA and will be entered into by the Administrator and the MDAQMD. The Agreement will become effective upon the date that both the Administrator and the MDAQMD have signed the Agreement or as otherwise stated in the Agreement. Once the delegation becomes effective, the MDAQMD will be responsible, to the extent specified in the Agreement, for administration of the provisions of the FIP that are subject to the Agreement.

(iii) *Publication of notice of the Agreement.* The Administrator will publish a notice in the **Federal Register** informing the public of any Delegation Agreement. The Administrator also will publish the notice in a newspaper of general circulation in the MDAQMD. In addition, the Administrator will mail a copy of the notice to persons on a mailing list developed by the Administrator consisting of those persons who have requested to be placed on such a mailing list.

(iv) *Revision or revocation of an Agreement.* A Delegation Agreement may be modified, amended or revoked, in part or in whole, by the Administrator after consultation with the MDAQMD.

[FR Doc. 2024–30513 Filed 12–27–24; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2023–0498; FRL–12265–02–R5]

Air Plan Approval; Illinois; Alton Township 2010 Sulfur Dioxide Redesignation and Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving Illinois' request to redesignate the Alton Township nonattainment area in Madison County, Illinois to attainment for the 2010 sulfur dioxide (SO₂) National Ambient Air Quality Standard (NAAQS). EPA is also approving Illinois' maintenance plan for the area. Illinois submitted the request for approval on October 2, 2023. Additionally, EPA is taking final action to determine that the Alton Township area attained the 2010 SO₂ NAAQS by the September 12, 2021, attainment

date, fulfilling EPA's obligation under the Clean Air Act (CAA) section 179(c) to determine whether the area attained the relevant NAAQS standard. EPA proposed to approve this action on October 8, 2024, and received no comments. December 30, 2024

DATES: This final rule is effective on January 29, 2025.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2023-0498. 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, *i.e.*, Confidential Business Information (CBI), Proprietary Business Information (PBI), 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 either through <https://www.regulations.gov> or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Cecilia Magos, at (312) 886-7336, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Cecilia Magos, Air and Radiation Division (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-7336, magos.cecilia@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

I. Background Information

On June 22, 2010 (75 FR 35520), EPA revised the primary SO₂ NAAQS, establishing a new health-based 1-hour standard of 75 parts per billion (ppb). EPA promulgated designations for this standard in four rounds. On September 18, 2015, Illinois submitted its recommendations to EPA to designate certain areas of the state as part of the Round 2 designations. Illinois recommended a portion of southern Alton Township in Madison County be designated as nonattainment for the 2010 SO₂ NAAQS. EPA concurred with Illinois' analysis and published a final action designating the area as nonattainment for the 2010 SO₂ NAAQS effective September 12, 2016 (81 FR 45039).

Illinois submitted an attainment plan for the Alton Township nonattainment area on December 3, 2018. The plan included computer modeling that included emissions from the Alton Steel Inc. (Alton Steel) facility in Alton, Illinois, and emissions from the Ameren-Missouri-Sioux Energy Center (Ameren-Sioux) power plant in Missouri, located about 13 kilometers west-northwest of the nonattainment area. On March 14, 2019, the Illinois Environmental Protection Agency issued Construction Permit #18020009 for the Alton Steel facility to operate a new ladle metallurgy facility (LMF) stack and to remove the downfacing vents that were contributing to modeled nonattainment at the facility. EPA included additional dispersion modeling to supplement Illinois' attainment demonstration to demonstrate that the emission limits required by the Illinois SIP and submitted for EPA approval provide for modeled concentrations meeting the 2010 SO₂ NAAQS. EPA approved Illinois' attainment plan revision on February 21, 2023 (88 FR 10464).

On October 2, 2023, Illinois submitted a redesignation request and maintenance plan for the Alton Township nonattainment area for the 2010 SO₂ NAAQS. The submitted redesignation request and maintenance plan includes the Construction Permit issued to Alton Steel and the Consent Agreement for Ameren-Sioux that has been approved into the Missouri SIP (87 FR 68634, November 16, 2022) with accepted SO₂ emissions limits. On October 8, 2024 (89 FR 81409), EPA proposed to approve the redesignation of the Alton Township area in Madison County, Illinois from nonattainment to attainment for the 2010 SO₂ NAAQS in accordance with Illinois' request submitted on October 2, 2023. EPA has determined the area is attaining the 2010 SO₂ NAAQS and that the improvement in air quality is due to permanent and enforceable SO₂ emission reductions in the area. EPA is also approving Illinois' maintenance plan, which is designed to ensure that the area will continue to maintain attainment of the 2010 SO₂ NAAQS. Additionally, under section 179(c) of the CAA, EPA is required to determine whether a nonattainment area attained a standard by the applicable attainment date based on the area's air quality as of the attainment date. In this action, EPA is determining that the Alton Township area did attain the 2010 SO₂ NAAQS by the attainment date of September 12, 2021. An explanation of the CAA requirements, a detailed analysis of the revisions, and EPA's reasons for

proposing approval were provided in the notice of proposed rulemaking (NPRM) and will not be restated here. The public comment period for this proposed rule ended on November 7, 2024. EPA received no comments on the proposal. Therefore, we are finalizing our action as proposed.

II. Final Action

EPA is approving the redesignation of the Alton Township area from nonattainment to attainment, meeting the criteria under CAA section 107(d)(3)(E) for the 2010 SO₂ NAAQS in accordance with Illinois' October 2, 2023, request. EPA is determining that the area is attaining the 2010 SO₂ NAAQS and that the improvement in air quality is due to permanent and enforceable SO₂ emission reductions in the area. On this basis, EPA is approving the redesignation request from Illinois for the area and changing the legal designation of the Alton Township area in Madison County at 40 CFR part 81 to attainment for the 2010 SO₂ NAAQS.

EPA is also approving Illinois' maintenance plan under CAA section 175A. The maintenance plan demonstrates that the area will continue to maintain the 2010 SO₂ NAAQS and includes a process to develop contingency measures to remedy any future violations of the 2010 SO₂ NAAQS and procedures for evaluation of potential violations. This includes Illinois' commitment to provide EPA with an annual emissions report of the newly constructed Alton Steel LMF stack as part of Illinois' annual network plan submittal to provide ongoing verification of attainment.

Finally, EPA is determining that the Alton Township area attained the 2010 SO₂ NAAQS by the September 12, 2021, attainment date addressing EPA's obligation under CAA section 179(c).

III. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735,

October 4, 1993), and 14094 (88 FR 21879, April 11, 2023);

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

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

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

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

- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;

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

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where 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. Executive Order 14096 (Revitalizing Our Nation’s Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements E.O. 12898 and defines EJ as, among other things, the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, or Tribal affiliation, or disability in agency decision-making and other Federal activities that affect human health and the environment.

The Illinois Environmental Protection Agency did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA performed an EJ analysis, as is described in the proposed action (October 8, 2024, 89 FR 81409) in the section titled, “EJ Considerations.” The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898/14096 of achieving EJ for communities with EJ concerns.

This action is subject to the Congressional Review Act, and 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 28, 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 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, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 16, 2024.

Debra Shore,

Regional Administrator, Region 5.

For the reasons stated in the preamble, title 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.720, amend the table in paragraph (e), under the heading “Attainment and Maintenance Plans” by adding a second entry for “Sulfur dioxide (2010) maintenance plan” after the entry for “Sulfur dioxide maintenance plan” to read as follows:

§ 52.720 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED ILLINOIS NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
* * *	* * *	* * *	* * *	* * *
Attainment and Maintenance Plans				
* * *	* * *	* * *	* * *	* * *
Sulfur dioxide (2010) maintenance plan	Alton Township	10/2/2023	12/30/24, [INSERT FIRST PAGE OF FEDERAL REGISTER CITATION].	
* * *	* * *	* * *	* * *	* * *

* * * * *

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 3. The authority citation for part 81 continues to read as follows:

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

§ 81.314 Illinois.

* * * * *

■ 4. In § 81.314, amend the table entitled “Illinois—2010 Sulfur Dioxide NAAQS [Primary], by revising the entry for “Alton Township, IL”” to read as follows:

ILLINOIS—2010 SULFUR DIOXIDE NAAQS
[Primary]

Designated area ¹	Designation	
	Date ²	Type
Alton Township, IL Madison County (part) Within Alton Township: Area east of Corporal Belchik Memorial Expressway, south of East Broadway, south of Route 3, and north of Route 143.	12/30/24	Attainment.
* * * * *	* * * * *	* * * * *

¹ Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.
² This date is April 9, 2018, unless otherwise noted.

* * * * *

[FR Doc. 2024–30506 Filed 12–27–24; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[EPA–R05–OAR–2024–0282; FRL–12468–02–R5]

Air Plan Approval; Ohio; Title V Operating Permit Rules Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to Ohio EPA’s title V rules. These revisions include revisions to the definition of hazardous air pollutants and requirements for a permit statement of basis that are consistent with recent Federal rulemaking actions. Other changes are insignificant and part of the state’s five-year review of adopted regulations.

DATES: This direct final rule will be effective February 28, 2025, unless EPA receives adverse comments by January 29, 2025. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2024–0282 at <https://www.regulations.gov> or via email to damico.genevieve@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov),

follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI, PBI, or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Sam Portanova, Air Permits Section, Air and Radiation Division (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3189, portanova.sam@epa.gov. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION: Throughout this document whenever

“we,” “us,” or “our” is used, we mean EPA.

I. Background

On June 11, 2024, Ohio EPA submitted revisions to Ohio Administrative Code (OAC) chapters 3745–77–01, 3745–77–08, and 3745–77–09 to EPA for approval as a title V program revision. These revisions were made as part of Ohio’s statutory five-year regulatory review process and include a change to the definition of hazardous air pollutant, additional requirements pertaining to a permit statement of basis and response to comments, a reordering of the definitions in OAC 3745–77–01, minor grammatical changes, and updates to test method, publication, and reference materials.

II. What action is EPA taking?

EPA is approving this submittal as part of Ohio’s title V permit program. The revisions to Ohio’s rules are consistent with 40 CFR part 70 and the Clean Air Act (CAA) as discussed below.

The definitions in OAC 3745–77–01 are reorganized such that the terms are listed and group in paragraphs alphabetically. These revisions do not substantively change the provisions of this chapter but provide for easier search of and subsequent updates to the listed definitions.

The definition of “hazardous air pollutant” in OAC 3745–77–01(H) has been revised to include “. . . as revised under 40 CFR part 63, subpart C.” This change to the definition allows for the inclusion of 1-bromopropane, which EPA added to the CAA’s list of

hazardous air pollutants on January 5, 2022, and any future additions to the CAA's hazardous air pollutants list. Consistent with this revision, this rulemaking action also adds a new item under "referenced materials" in OAC 3745-77-01(AA)(2)(k) for 40 CFR part 63, subpart C.

This rulemaking action includes revisions to several items under "referenced materials" in OAC 3745-77-01(AA)(2). These revisions update the rule language to include the most recent edition or publication date of the referenced material. This does not constitute a substantive change to the regulations.

On February 5, 2020 (85 FR 6431), EPA issued a final rule amending 40 CFR part 70 requiring permitting authorities to prepare a written response to comments document if significant comments are received during the public comment period of a draft permit. The final rule also specifies that a statement of basis must be included with a permit during the public comment period and EPA's 45-day review period. In addition, the final rule requires that the response to comments document be included in the proposed permit that is sent to EPA for 45-day review. In this submittal, Ohio EPA has revised OAC 3745-77-08(G)(2), (5), and (6) and OAC 3745-77-09(A) to be consistent with these changes to the Federal rule.

Included in this rulemaking action are grammatical changes throughout OAC 3745-77. These revisions are intended to apply consistent wording throughout state regulations and do not represent a substantive change to the meaning of the rule.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective February 28, 2025 without further notice unless we receive relevant adverse written comments by January 29, 2025. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse

comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective February 28, 2025.

III. Statutory and Executive Order Reviews

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

A. Executive Order 12866: Regulatory Planning and Review, and Executive Order 14094: Modernizing Regulatory Review

This action is not a significant regulatory action as defined in Executive Order 12866, as amended by Executive Order 14094, and was therefore not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

C. Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to

the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This rule does not have Tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on Tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to Executive Order 13045 because it is not 3(f)(1) significant as defined in Executive Order 12866, and because EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children because it approves a state program.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on communities with

environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. Executive Order 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements E.O. 12898 and defines EJ as, among other things, the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability in agency decision-making and other Federal activities that affect human health and the environment."

Ohio EPA did not evaluate EJ considerations as part of its program submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898/14096 of achieving EJ for communities with EJ concerns.

K. Congressional Review Act

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

L. 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 February 28, 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 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 70

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

Dated: December 19, 2024.

Debra Shore,
Regional Administrator, Region 5.

For the reasons stated in the preamble, title 40 CFR part 70 is amended as follows:

PART 70—[AMENDED]

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

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

■ 2. Appendix A to part 70 is amended under "Ohio" by adding paragraph (f) to read as follows:

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

* * * * *

Ohio

* * * * *

(f) The Ohio Environmental Protection Agency submitted an operating permits program amendment on June 11, 2024. This submittal included revisions to the definition of hazardous air pollutants and requirements for a permit statement of basis. The state is hereby granted approval effective February 28, 2025.

* * * * *

[FR Doc. 2024–30739 Filed 12–27–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 405

[CMS–4204–F2 & CMS–4174–F2]

RINs 0938–AV16 and 0938–AT27

Medicare Program: Appeal Rights for Certain Changes in Patient Status and Changes to the Medicare Claims and Medicare Prescription Drug Coverage Determination Appeals Procedures; Correcting Amendment

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Final rules; correcting amendment.

SUMMARY: This document corrects technical errors in the final rule that appeared in the October 15, 2024, **Federal Register** titled "Medicare Program: Appeal Rights for Certain Changes in Patient Status." It also corrects technical errors in the final rule that appeared in the May 7, 2019, **Federal Register** titled "Medicare Program; Changes to the Medicare Claims and Medicare Prescription Drug Coverage Determination Appeals Procedures."

DATES: This correcting amendment is effective December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Kristy Nishimoto, (206) 615–2367.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2024–23195 of October 15, 2024 (89 FR 83240), the final rule titled "Medicare Program: Appeal Rights for Certain Changes in Patient Status," there were technical errors associated with the regulations text that are identified and corrected in this correcting amendment.

In FR Doc. 2019–09114 of May 7, 2019 (84 FR 19855), the final rule titled "Medicare Program; Changes to the Medicare Claims and Medicare Prescription Drug Coverage Determination Appeals Procedures," there was a technical error associated with the regulation text that is identified and corrected in this correcting amendment.

II. Summary of Errors

For the October 15, 2024, final rule, we are making the following corrections:

- In §§ 405.932(i)(1), 405.936(d)(1), and 405.1210(b)(3), we are correcting errors in paragraph numbering.
- In § 405.934(c)(4)(viii), we are correcting a grammatical error in the use of the word "party."

For the May 7, 2019, final rule, in § 405.1014(a)(1)(i), we are removing the term "health" in the phrase "Medicare health number" because the word "health" is not necessary to describe an individual's Medicare number. "Health" was inadvertently included in the regulation text and we are deleting the unnecessary term to avoid confusion.

III. Waiver of Proposed Rulemaking and Delay in Effective Date

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is usually required to publish a notice of the proposed rule in the **Federal Register** before the provisions of a rule take effect. Specifically, 5 U.S.C. 553 requires the agency to publish a notice of the proposed rule in the **Federal Register** that includes a reference to the legal authority under which the rule is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. Further, 5 U.S.C. 553 generally requires the agency to give interested parties the opportunity to participate in the rulemaking through public comment before a final rule is issued. Section 1871(b)(1) of the Social Security Act (the Act) also generally requires the Secretary to provide for notice of the proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment for rules to

carry out the administration of the Medicare program under title XVIII of the Act. In addition, section 553(d) of the APA and section 1871(e)(1)(B)(i) of the Act usually require a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA, however, provide for exceptions from the notice and comment and delay in effective date APA requirements in some limited situations. In cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act also provide exceptions from the advanced public notice and 60-day comment period and delay in effective date requirements of the Act. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with certain rulemaking requirements for good cause if the agency makes a finding that the notice and comment process is impracticable, unnecessary, or contrary to the public interest. In addition, both section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to waive the normal 30-day delay in effective date where there is good cause or the delay in the effective date would be contrary to the public interest and the agency includes an appropriate finding to support the rule becoming effective sooner.

We find there is good cause to issue this technical correction final rule without seeking advanced public comments based on the “unnecessary” prong of the good cause exception allowed under section 553(b)(B) of the APA and which is also expressly incorporated by cross-reference in section 1871(b)(2)(C) of the Act. The corrections in this document are insignificant or technical in nature and impact and will largely be inconsequential to the public. CMS periodically issues correction notices to implement non-substantive edits to previously finalized rules. The non-substantive corrections described herein do not require regulated parties to adjust their behavior, and therefore are of little impact or consequence for the public. This correcting amendment simply corrects paragraph numbering and technical errors in the regulatory text of the aforementioned final rules but does not make substantive changes to the policies that were adopted in those final rules. As a result, this correcting amendment is intended to ensure that the regulations at §§ 405.932, 405.934, 405.936, 405.1014, and 405.1210 accurately reflect the policies adopted in the final rules.

Undertaking further notice and comment procedures to incorporate the

regulatory text corrections in this document into the final rules or delaying the effective date would be unnecessary, as we are not altering our policies or regulatory changes, but rather, we are simply correcting paragraph numbering and technical errors that do not affect the requirements that we previously proposed, requested comment on, and subsequently finalized. This final rule correcting amendment is intended solely to ensure that the final rules and the Code of Federal Regulations (CFR) accurately reflect policies and regulatory changes that have been adopted through rulemaking.

Additionally, we find there is good cause to waive the normal 30-day delay in effective date for this technical correction final rule under section 553(d)(3) of the APA. The purpose of the 30-day delay in effective date under section 553(d) of the APA is to “give affected parties a reasonable time to adjust their behavior before the final rule takes effect.” *Omnipoint Corp. v. FCC*, 78 F.3d 620, 630 (D.C. Cir. 1996). These non-substantive, technical corrections do not make changes that would require the public to adjust their behavior in any manner, rendering a delayed effective date unnecessary. We also note that the requirement for a 30-day delay in effective date under section 1871(e)(1)(B)(i) of the Act applies only to substantive changes; because the corrections described herein are non-substantive, the requirements of section 1871(e)(1)(B)(i) of the Act are inapplicable. Even if the changes could be construed as substantive, we find that additional delay would be contrary to the public interest under section 1871(e)(1)(B)(ii) of the Act. We believe there is no need for the public to prepare for the nonsubstantive, technical corrections in this rule as they are merely correcting errors in form and designation in the regulation text specified in the previous final rules. Moreover, since we have announced that we are targeting January 1, 2025 for implementation of the retrospective appeals procedures in §§ 405.931 through 405.938, a 30-day delay in the effective date for these non-substantive, technical corrections could cause undue hardship for eligible parties who are preparing to exercise their right immediately once the appeal process is implemented and who may be entitled to financial relief following a favorable appeal.

Therefore, for the reasons state previously, we find good cause to waive the notice and comment and effective date requirements.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Diseases, Health facilities, Health professions, Medical devices, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services corrects 42 CFR part 405 by making the following correcting amendments:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

- 1. The authority citation for part 405 continues to read as follows:

Authority: 42 U.S.C. 263a, 405(a), 1302, 1320b-12, 1395x, 1395y(a), 1395ff, 1395hh, 1395kk, 1395rr, and 1395ww(k).

§ 405.932 [Amended]

- 2. Section 405.932 is amended by redesignating paragraphs (i)(1)(A) and (B) as paragraphs (i)(1)(i) and (ii).

§ 405.934 [Amended]

- 3. Section 405.934 is amended in paragraph (c)(4)(viii) by removing the phrase “an eligible parties’ right” and adding in its place the phrase “an eligible party’s right”.

- 4. Section 405.936 is amended by revising paragraph (d)(1) to read as follows:

§ 405.936 Hearings before an ALJ and decisions by an ALJ or Attorney Adjudicator.

* * * * *

(d) * * *

(1)(i) If the ALJ or attorney adjudicator determines that the inpatient admission, and as applicable, eligible SNF services, satisfied the relevant criteria for Part A coverage at the time the services were furnished, then the ALJ or attorney adjudicator issues notice of the favorable decision to the eligible party (or the party’s representative).

(ii) The ALJ or attorney adjudicator also notifies the hospital and SNF, as applicable, in the case of a favorable determination for Part A coverage.

* * * * *

- 5. Section 405.1014 is amended by revising paragraph (a)(1)(i) to read as follows:

§ 405.1014 Request for an ALJ hearing or a review of a QIC dismissal.

(a) * * *

(1) * * *

(i) The name, address, and Medicare number of the beneficiary whose claim is being appealed, and the beneficiary’s

telephone number if the beneficiary is the appealing party and not represented.
* * * * *

■ 6. Section 405.1210 is amended by adding paragraph (b)(3) to read as follows:

§ 405.1210 Notifying eligible beneficiaries of appeal rights when a beneficiary is reclassified from an inpatient to an outpatient receiving observation services.
* * * * *

(b) * * *
(3) *When delivery of the notice is valid.* Delivery of the written notice of appeal rights described in this section is valid if—

(i) The eligible beneficiary (or the eligible beneficiary's representative) has signed and dated the notice to indicate that he or she has received the notice and can comprehend its contents, except as provided in paragraph (b)(4) of this section; and

(ii) The notice is delivered in accordance with paragraph (b)(1) of this section and contains all the elements described in paragraph (b)(2) of this section.
* * * * *

Elizabeth J. Gramling,
Executive Secretary to the Department, Department of Health and Human Services.
[FR Doc. 2024–31146 Filed 12–27–24; 8:45 am]
BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1355
[Docket #2024–28072]

RIN 0970–AC98

Adoption and Foster Care Analysis and Reporting System; Correction

AGENCY: Children's Bureau (CB), Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS).

ACTION: Final rule; correction.

SUMMARY: ACF is correcting a final rule (FR) that was published in the **Federal Register** on December 5, 2024, with an effective date of February 3, 2025. This rule finalizes revisions to the Adoption and Foster Care Analysis and Reporting System (AFCARS) regulations proposed on February 23, 2024. This final rule requires state title IV–E agencies to

collect and report to ACF additional data related to the Indian Child Welfare Act of 1978 (ICWA) for children in the AFCARS Out-of-Home Care Reporting Population. This correction provides that this final rule will be effective 30 days after its publication in accordance with the Administrative Procedure Act. **DATES:** Effective January 4, 2025.

FOR FURTHER INFORMATION CONTACT: Joe Bock, Children's Bureau, (202) 205–8618. Telecommunications Relay users may dial 711 first. Email inquiries to cbcomments@acf.hhs.gov.

SUPPLEMENTARY INFORMATION: In the final rule published December 5, 2024, there was one technical error that is now identified and corrected in this document. The provisions in this correction document are effective as if they had been included in the document published December 5, 2024. Accordingly, the following corrections are effective January 4, 2025.

Corrections to Regulations

In FR Doc. 2024–28072, appearing on page 96569 in the **Federal Register** of Thursday, December 5, 2024, the following correction is made:

1. On page 96569, in the second column, correct the **DATES** section to read as follows:.

DATES: This rule is effective on January 4, 2025, except for the amendments to § 1355.44 (amendatory instruction 3), which are effective October 1, 2028.

Elizabeth J. Gramling,
Executive Secretary, Department of Health and Human Services.
[FR Doc. 2024–31238 Filed 12–26–24; 8:45 am]
BILLING CODE P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 12, 22, 47, and 52

[FAC 2025–02; FAR Case 2019–017, Item I; Docket No. FAR–2019–0017; Sequence No. 1]

RIN 9000–AO00

Federal Acquisition Regulation: Training To Prevent Human Trafficking for Certain Air Carriers; Correction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a section of the Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018, which requires that domestic carriers who contract with the Federal Government to provide air transportation must submit an annual report with certain information related to prevention of human trafficking.

DATES: Effective January 3, 2025.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Malissa Jones, Procurement Analyst, at 571–882–4687 or by email at malissa.jones@gsa.gov. For information pertaining to status or publication schedules contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov. Please cite FAC 2025–02, FAR Case 2019–017.

SUPPLEMENTARY INFORMATION: DoD, GSA, and NASA are correcting an effective date in the preamble under the Discussion and Analysis section of the rule.

In the FR Doc. 2024–29373, published in the **Federal Register** at 89 FR 101821 in the issue of December 16, 2024, make the following correction:

4. Retroactive Applicability [Corrected]

On page 101822, in the second column, in paragraph 4., Response, correct the date “November 1, 2024”, to read “January 3, 2025”.

William F. Clark,
Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.
[FR Doc. 2024–30935 Filed 12–27–24; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 13, 39, 40, and 52

[FAR Case 2024–002; Docket No. 2024–0002, Sequence No. 1]

RIN 9000–AO70

Federal Acquisition Regulation: Prohibition on Unmanned Aircraft Systems From Covered Foreign Entities

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule; extension of comment period.

SUMMARY: DoD, GSA, and NASA issued an interim rule on November 12, 2024, amending the Federal Acquisition Regulation (FAR) to implement a prohibition on the procurement and operation of unmanned aircraft systems manufactured or assembled by an American Security Drone Act-covered foreign entity. The deadline for submitting comments is being extended from January 13, 2025, to January 27, 2025, to provide additional time for interested parties to provide comments on the proposed rule. The effective date of this rule is not being changed and remains November 12, 2024.

DATES: For the interim rule published on November 12, 2024, (89 FR 89464), the deadline to submit comments is extended. Submit comments by January 27, 2025.

ADDRESSES: Submit comments in response to FAC 2025–01, FAR Case 2024–002 to the Federal eRulemaking portal at <https://www.regulations.gov> by searching for “FAR Case 2024–002”. Select the link “Comment Now” that corresponds with “FAR Case 2024–002”. Follow the instructions provided on the “Comment Now” screen. Please include your name, company name (if any), and “FAR Case 2024–002” on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite “FAR Case 2024–002” in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. Public comments may be submitted as an individual, as an organization, or anonymously (see frequently asked questions at <https://www.regulations.gov/faq>). To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Benjamin Collins, Procurement Analyst, at 850–826–0058 or by email at benjamin.collins@gsa.gov. For information pertaining to status, publication schedules, or alternate instructions for submitting comments if <https://www.regulations.gov> cannot be used, contact the Regulatory Secretariat Division at 202–501–4755 or

GSARegSec@gsa.gov. Please cite FAC 2025–01, FAR Case 2024–002.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 89 FR 89464 on November 12, 2024. The comment period is extended to January 27, 2025, to allow additional time for interested parties to develop comments on this rule. The effective date of this rule is not being changed and remains November 12, 2024.

List of Subjects in 48 CFR Parts 4, 13, 39, 40, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2024–30937 Filed 12–27–24; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[[Docket No. NHTSA–2022–0013]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment, Adaptive Driving Beam Headlamps

AGENCY: National Highway Traffic Safety Administration (NHTSA or the Agency), Department of Transportation (DOT).

ACTION: Denial of petitions for reconsideration.

SUMMARY: This document responds to the petitions for reconsideration of the February 22, 2022, final rule that amended Federal Motor Vehicle Safety Standard (FMVSS) No. 108, “Lamps, reflective devices, and associated equipment,” to enable certification of adaptive driving beam (ADB) headlighting systems on vehicles sold in the United States. This document denies all petitions for reconsideration received in response to the final rule.

DATES: December 30, 2024.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Adam Lowery, Office of Crash Avoidance Standards, Telephone: (202) 366–1810, Email: Adam.Lowery@dot.gov; For legal issues, you may contact Evita St. Andre, Office of Chief Counsel, Telephone: (202) 366–2992, Email: Evita.St.Andre@dot.gov.

dot.gov. The mailing address for these officials is: The National Highway Traffic Safety Administration, 1200 New Jersey Ave. SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Background

Beam switching technology was first introduced into vehicles sold in the United States in the 1950s and was limited simply to switching between upper and lower beams. An adaptive driving beam (ADB) is an advanced type of semiautomatic headlamp beam switching technology. It uses advanced sensing and computing technology to identify oncoming and preceding traffic and actively adapt the beam pattern to limit at lower beam levels any light shining toward those vehicles while continuing to direct high intensity light to other areas of the roadway. This dynamic beam pattern was not previously permitted by NHTSA’s lighting standard. As such, in 2013, Toyota petitioned NHTSA to modify the standard to permit ADB headlighting systems.

A. Notice of Proposed Rulemaking

NHTSA published a Notice of Proposed Rulemaking (NPRM) on October 12, 2018, proposing to amend NHTSA’s lighting standard, FMVSS No. 108, “Lamps, reflective devices, and associated equipment,” in response to a petition that raised concerns that the standard’s beam pattern (photometry) requirements would not permit the enhanced beam that ADB headlighting systems provide.¹ ADB headlamp technology dynamically modifies headlamp photometry to provide more illumination in certain areas in and around the roadway while reducing glare towards oncoming and preceding motorists. This dynamism is facilitated by the headlamps changing the lower beam pattern and increasing the usage of the upper beam, the effect of which

¹ 83 FR 51766, (Oct. 12, 2018).

increases visibility, thereby improving safety. NHTSA assessed comments received in response to the NPRM and published a final rule on February 22, 2022.

B. Final Rule

On February 22, 2022, NHTSA published a final rule amending FMVSS No. 108, “Lamps, reflective devices, and associated equipment, adaptive driving beam headlamps,” to enable the certification of ADB headlighting systems on vehicles sold in the United States.² Several industry comments to the NPRM advocated for stronger harmonization with regulatory alternatives when specifying performance requirements for ADB systems on vehicles. These alternatives included the regulation issued by the Economic Commission for Europe (UNECE R123), the Society of Automotive Engineers (SAE) J3069 JUN2016, Surface Vehicle Recommended Practice; Adaptive Driving Beam standard, as well as the updated version of the SAE Practice published in March 2021. In addition, NHTSA conducted laboratory testing to establish appropriate performance allowances for ADB systems, driving scenarios, and any associated equipment. All information and feedback was reflected in the development of the final rule.

FMVSS No. 108 has two main components that ensure ADB systems operate safely: (1) vehicle-level track-test requirements specifically tailored to the performance of the ADB system in meeting the specified glare limits, and (2) component-level photometric requirements related to glare and visibility. This standard provides practicable, performance-based requirements and test procedures that appropriately balance visibility and glare. If vehicle manufacturers choose to equip their vehicles with ADB systems, manufacturers must certify that their ADB systems meet these requirements.

II. Petitions for Reconsideration

In response to the February 22, 2022, Final Rule, NHTSA received twelve timely petitions from automotive manufacturers, lighting suppliers, trade organizations, and the Insurance Institute for Highway Safety (IIHS). American Honda Motor Co., Inc. (Honda),³ Volkswagen Group of America (Volkswagen),⁴ Toyota Motor

North America, Inc. (Toyota),⁵ Ford Motor Company (Ford),⁶ Koito Manufacturing Co. LTD (Koito),⁷ Stanley Electric Co. LTD (Stanley),⁸ North American Lighting (NAL),⁹ Valeo Lighting Systems (Valeo),¹⁰ Alliance for Automotive Innovation (Alliance),¹¹ the Transportation Safety Equipment Institute (TSEI),¹² SAE International—Lighting Systems Group (SAE),¹³ and IIHS¹⁴ submitted petitions for reconsideration of the final rule. Several petitioners requested alignment with alternative ADB regulatory practices (*i.e.*, SAE J3069) currently in place for systems on vehicles in foreign markets. Many of the petitions requested that NHTSA amend the standard to further advance the goal of the final rule.

The topics raised in the petitions can be generally classified into one of the following categories: (1) requests to address perceived complexities in technical scenarios; (2) claims that NHTSA imposed conflicting substantive requirements for testing; (3) requests to add alternative ADB headlamp testing procedures; and (4) requests to amend technical areas of the final rule to clarify requirements. This document addresses the petitioners’ concerns.

A. Stimulus Headlamps Aiming

FMVSS No. 108 specifies three specific headlamps and rear combination lamps mounted on test fixtures as part of the track testing for ADB systems. Additionally, FMVSS No. 108 requires that all headlamps must be aimable. As such, the stimulus lamps specified in the ADB track test procedure, used to elicit ADB performance, are capable of being aimed. However, while the Final Rule stated that the stimulus headlamps will have the lower beam activated and aimed per the SAE Recommended Practice J599 Lighting Inspection Code (SAE J599) procedures, these SAE J599 aiming instructions were not included

and incorporated by reference in the regulatory text.¹⁵ Toyota stated that, to ensure repeatability of testing, NHTSA should specify how the stimulus headlamps on the ADB test fixture will be aimed, as the regulatory text from the final rule does not include stimulus headlamp aiming instructions. Toyota suggested the headlamps be aimed in accordance with manufacturer instructions, or alternatively, in accordance with SAE J599. However, regarding SAE J599, Toyota stated that this procedure could introduce more variation and potentially stray away from real-world representation of the stimulus devices. The Alliance also petitioned that NHTSA provide in the docket the manufacturer’s headlamp aiming instructions and information sufficient to mount the stimulus lamps specified in the FMVSS No. 108.

Agency Response

NHTSA is denying the request to incorporate into the regulatory text aiming instructions for the stimulus headlamps installed on the ADB test fixtures. As clarified in the final rule, NHTSA will aim the stimulus headlamps as a matter of good testing practice; however, it is not necessary to include such a condition as part of the regulation because headlamp aim on the stimulus test fixtures does not have enough variability to change the outcome of the ADB test. As detailed in the discussions of the SAE J3069 synthetic light source in the NPRM and final rule, the minimum taillamp intensities for which an ADB system is required to react are considerably lower than a headlamp’s intensity. Even at the extremes of headlamp aim, a headlamp will always emit more light than a taillamp and the ADB recognition system must be capable of detecting intensities as low as those of taillamps. Therefore, stimulus headlamp aim will not be a deterministic factor in the outcome of an ADB test.¹⁶

⁵ Toyota Motor North American, Inc., Docket No.2022–0013–0015.

⁶ Ford Motor Company, Docket No.2022–0013–0016.

⁷ Koito Manufacturing Co. LTD, Docket No.2022–0013–0007.

⁸ Stanley Electric Co. LTD, Docket No.2022–0013–0008.

⁹ North American Lighting, Docket No.2022–0013–0009.

¹⁰ Valeo Lighting Systems, Docket No.2022–0013–0010.

¹¹ Alliance for Automotive Innovation, Docket No.2022–0013–0013.

¹² Transportation Safety Equipment Institute, Docket No.2022–0013–0014.

¹³ SAE International—Lighting Systems Group, Docket No.2022–0013–0005.

¹⁴ Insurance Institute of Highway Safety—Highway Loss Data Institute, Docket No.2022–0013–0017.

¹⁵ See 87 FR 9947 (Feb. 22, 2022) (“The final rule also clarifies various aspects of the test procedures related to the fixture lamps. It clarifies that the stimulus headlamps will have the lower beam activated and aimed per the SAE Recommended Practice J599 Lighting Inspection Code (J599) procedures, as applicable.”).

¹⁶ 87 FR 9947 (Feb. 22, 2022) (“As NHTSA explained in the NPRM, the minimum taillamp intensities allowed by FMVSS No. 108 (2.0 cd at H–V and as low as 0.3 cd at 20 degrees) are considerably lower than the 7.0 cd lamp specified in SAE J3069 NHTSA also does not agree with SAE that specifying actual vehicle headlamps would result in excessive variability, but continues to believe, as stated in the NPRM, that gradients in typical headlamp beam patterns would likely only affect the repeatability of the test if the reaction by the ADB system changes based on this difference. If this is the case, the ADB system will have this issue in actual use (especially since the specified

² 87 FR 9916, (Feb. 22, 2022).

³ American Honda Motor Co., Inc., Docket No.2022–0013–0011.

⁴ Volkswagen Group of America, Docket No.2022–0013–0012.

Further, including specific headlamp aiming instructions for the stimulus test fixtures would overly prescribe the test conditions, encouraging manufacturers to design narrowly to the test instead of real-world safety needs. The required testing is meant to be representative of on-the-road situations where ADB systems should react regardless of the precise aim of the stimulus headlamps. On the road, the headlamps installed on surrounding traffic are not likely to be perfectly level due to variations such as the slope of the roadway and may even be misaimed, presenting ADB systems with headlamp gradient locations that are not predictable. While an ADB system might use headlamp gradients as an optional method to assist in distinguishing vehicles from other light sources such as streetlights, misaim of stimulus headlamps should not preclude the ADB system from recognizing the need to reduce intensity. Thus, ADB systems should not be particularly sensitive to the aim of the stimuli headlamps.

NHTSA is not docketing specific aiming information from the manufacturers of the stimulus headlamps. While custom aiming strategies may be appropriate for these lamps when mounted on the vehicles on which they were originally designed to be installed, any such instructions would be inapposite for these lamps when mounted in the locations specified for the stimulus test fixtures, as here. For instance, the Ford F-150 headlamps are likely mounted higher when installed on a pickup truck as compared to the mounting height specified for the ADB test fixture. As such, any offset used for these lamps while installed on a pickup truck, would be inappropriate for the mounting location specified for the test fixture. The manufacturer aiming instructions are therefore not fitting in a testing context.

The Agency disagrees that it is necessary to specify in the regulatory text specific aiming instructions for the stimuli headlamps (whether those in SAE J599, or otherwise) and denies these petitions.

B. Allow Representative Vehicles as Stimulus for Compliance Testing

FMVSS No. 108 specifies ADB test fixtures equipped with stimulus lamps for use in performing the dynamic ADB

performance tests. This approach minimizes complexity and harmonizes with SAE J3069 (March 2021) while ensuring that ADB systems operate safely. While the test fixtures' specifications follow SAE J3069 with respect to the locations of the photometers¹⁷ and stimulus lamps, FMVSS No. 108 departs from SAE J3069 in that it requires the use of more real-world representative lighting in the test procedure by specifying original equipment vehicle headlamps and taillamps mounted on test fixtures.¹⁸

In their petitions for reconsideration, Toyota and the Alliance stated that NHTSA should allow, as a manufacturer's option, actual vehicles in place of ADB test fixtures for use in compliance testing. The petitioners suggested that NHTSA modify the final rule by specifying the three vehicles identified in the Final Rule to accommodate more advanced ADB systems.¹⁹

Toyota and the Alliance stated that representative vehicles would permit ADB sensor arrays (e.g., camera- or radar-based systems) to properly account for the characteristics of real-world oncoming and preceding vehicle scenarios, complementing vehicle lighting detection methodologies that current ADB systems use. The Alliance stated that more realistic real-world conditions would differentiate between other light sources in the environment that might impact detection. Toyota stated that the ADB-equipped Lexus NX used by NHTSA for internal research was an older generation system and that other, more advanced ADB systems, with additional advanced sensing, can rely on (other) vehicle characteristics to enhance object recognition to more accurately determine how to adjust the headlamp beam pattern. The petitioners stated that allowing representative vehicles as stimulus for compliance testing would be safety-beneficial and enhance system performance.

Agency Response

NHTSA is denying the request for the option to use representative vehicles in place of stimulus test fixtures to demonstrate compliance for ADB systems during track testing.

The NPRM initially proposed using representative vehicles during track testing. However, following review of comments expressing significant

opposition, NHTSA specified stimulus test fixtures in place of vehicles and explained its reasoning for doing so at length in the final rule.²⁰ FMVSS No. 108 does not preclude the use of potential stimulus vehicles to improve ADB systems; thus, NHTSA sees no issue with vehicle manufacturers using vehicles to further evaluate the performance of their ADB systems. However, performance above and beyond what is required by FMVSS No. 108 does not supersede what is required in the standard.

By requiring the use of original equipment headlamps and taillamps on the ADB test fixtures, FMVSS No. 108 establishes a minimum performance standard that all motor vehicles with ADB headlighting systems are required to meet. Other vehicle characteristics may not be universal components or present in all vehicles. For example, grilles are a characteristic on certain vehicles, but are not a required component like headlamps and thus not present on some electric vehicles. Rather, FMVSS No. 108 as finalized reflects that lighting is the central object of detection for ADB sensors.

Because the regulatory text specifies how NHTSA will evaluate FMVSS No. 108 compliance for ADB systems and the requirements for ADB do not inhibit manufacturers' use of representative vehicles for ADB development, NHTSA denies the petitions from Toyota and the Alliance to allow representative vehicles as a stimulus in compliance testing.

C. ADB System Component-Level Photometric Requirements

In FMVSS No. 108, the component-level photometric requirements, among other things, ensure that the ADB system provides a minimum level of visibility while limiting the maximum level of glare it may direct toward other drivers. The vehicle-level ADB test procedure evaluates the degree of glare that an ADB system casts on the ADB stimulus test fixture in specific scenarios; it does not evaluate visibility. Accordingly, FMVSS No. 108 applies the existing component-level photometric intensity requirements to portions of the adaptive driving beam. The adaptive driving beams must

headlamps are from high-selling vehicles and therefore common on the road), and this should not be considered variability attributable to the test, but a failing of the ADB system. In any case, NHTSA's testing showed that the tested ADB system was generally able to recognize the fixtures fitted with these lamps.'').

¹⁷ A photometer, or illuminance meter, is an instrument that measures light.

¹⁸ See 87 FR 9996 (Feb. 22, 2022) Table 15 (Summary of Major Differences Between the Final Rule and SAE J3069).

¹⁹ MY2018 Toyota Camry, Ford F-150, Harley Davidson Sportster.

²⁰ Among other reasons, NHTSA concluded that using real vehicles would generally not challenge ADB systems any more robustly than the test fixtures fitted with original manufacturer replacement equipment vehicle headlamps and taillamps, as specified in the final rule. Testing showed that the ADB system detected and responded to the finalized test fixtures in generally the same way it did to an actual vehicle. See 87 FR 9934 (Feb. 22, 2022). This obviated the need to include vehicle testing as an option.

consist only of area(s) of reduced intensity, area(s) of un-reduced intensity, and transition zone(s). ADB systems are subject to several requirements that are measured in a laboratory, including that it must be designed to conform to the Table XIX (lower beam photometry) requirements in an area of reduced intensity, and that it must be designed to conform to the Table XVIII (upper beam photometry) requirements in an area of un-reduced intensity.

Stanley stated that replicating the conditions of an actual vehicle test within a laboratory setting, to conduct a photometric test with headlamps, is “almost impossible.” Stanley stated that future ADB (micro) LED headlamps could necessitate testing an infinite combination of areas of reduced intensity. Stanley petitioned NHTSA to only use vehicle-level testing for ADB systems verification and use component-level testing to confirm the lower beam limits with the reduced intensity area turned off, and upper beam limits with the area of un-reduced intensity turned on for vehicle headlamps as they would without the ADB. NAL and Koito’s petitions suggested similar approaches, with Koito suggesting that ADB component-level photometry requirements be changed to the minimum and maximum lower-beam values in the area of reduced intensity, and the minimum lower-beam values and maximum upper-beam values in the area of un-reduced intensity.

Valeo and TSEI petitioned for NHTSA to create a series of specific standardized laboratory compliance tests for ADB systems. According to the petitioners, the lack of a defined test method could lead to an unreasonable, if not an impracticable, amount of time employing various possible implementations of ADB systems spanning a vast range of changing scenarios. TSEI suggested adopting a specific set of test points/lines/zones corresponding to the test scenarios of Table XXII and glare levels of Table XXI.

Valeo’s petition acknowledged that the preamble of the final rule states that all possible ADB headlamp configurations would not necessarily need to be tested but suggested that the suppliers need data from actual testing or simulations that show all possible ADB configurations satisfy the lighting standard. Valeo requested that NHTSA devise a specific test plan with eleven set-ups that would cover most, if not all, of the possible set-ups to ensure manufacturers can certify compliance

for the FMVSS No. 108 requirements.²¹ Both TSEI and Valeo requested that NHTSA adopt vehicle track test scenarios comparable to UNECE regulations.

Agency Response

NHTSA is denying the petitioners’ request to modify the component-level photometric intensity requirements. The purpose of component-level photometric requirements is to complement the dynamic vehicle track testing and ensure that the ADB system always provides the driver with a minimum level of visibility. The track tested requirements encompass many common scenarios (e.g., a single oncoming vehicle in the adjacent lane) while evaluating ADB system glare, but they do not test glare in every conceivable driving scenario, nor do they evaluate visibility. For example, an area of un-reduced intensity that is exceedingly bright (e.g., exceeds the 75,000 cd upper beam maximum) could create glare beyond the maximum track tested distance of 220 m. Component-level photometric requirements therefore must help serve as a backstop to the track test by ensuring that areas of un-reduced intensity are not exceedingly bright out to this distance and glare to other vehicles is minimized.

The component-level photometric requirements generally ensure adequate visibility by specifying minimum levels of light at certain locations (test points) that correspond to different locations on the road. Manufacturers are provided broad flexibility in determining which areas of the roadway receive an area of reduced intensity or an area of un-reduced intensity. The component-level requirements ensure that any areas of reduced intensity (up to and including a pattern equivalent to a full lower beam) do not exceed the Table XIX (lower beam) maxima, and any areas of un-reduced intensity (up to and including a pattern equivalent to a full upper beam), do not exceed the Table XVIII (upper beam) maxima. Conversely, these component-level requirements ensure adequate illumination by ensuring that the minima in Tables XVIII and XIX are also met.

While NHTSA will verify compliance to Table XIX (lower beam photometry requirements) and to Table XVIII (upper beam photometry requirements) through

headlamp testing, manufacturers have the flexibility to certify compliance to the component-level photometric requirements based on other means. As an initial matter, the complexity of certification is based on the complexity of a manufacturer’s adaptive beam. If a manufacturer chooses to create a simple adaptive beam, that beam will be less complex to certify than a beam that has multiple areas of reduced intensity or a beam that moves the areas of intensities. In this way, manufacturers may, in their discretion, limit the number of combinations as needed to create a system that they can properly certify. Certification to the component-level requirements may also be accomplished by actual testing, simulation or any valid means that demonstrate that the requirements are met and that ensure that if NHTSA tests the lamps they will meet the requirements.

Additionally, the component level requirements are consistent with longstanding categorization methods used for headlamp beam patterns because they use intensity values at various horizontal and vertical angles. This longstanding method is already used by manufacturers throughout the design and validation process when developing headlamps. As such, manufacturers are likely already aware of the ADB patterns which they have designed for particular purposes.

In considering the petitions to create a series of specific standardized laboratory compliance tests for ADB systems, NHTSA does not wish to limit the flexibilities currently provided to manufacturers to create dynamic beam patterns. If a manufacturer wishes to limit the number of patterns produced by its ADB system to decrease the measurements required to certify their system, it may do so. Likewise, if a manufacturer wishes to create a dynamic beam pattern that includes many combinations of reduced and un-reduced areas, the requirements also offer that flexibility. Regardless of the component-level evaluation through actual testing or simulation, the manufacturer must certify that whatever beam pattern its ADB headlamp produces has only areas of reduced, un-reduced, and transition zones. In taking this approach, NHTSA has maximized the manufacturers’ flexibility to create beam patterns that satisfy their customers, while also protecting other road users from glare. NHTSA therefore denies these petitions.

D. ADB Photometry Requirements

Areas of reduced intensity must meet the component-level photometric

²¹ Valeo’s petition shows several laboratory testing set-ups for the different ADB road test scenarios and different photometers distances. See Docket No. 2022–0013–0010, Figures 8 to 12 (Figure 8 shows testing at 15 m and testing distance is increased in each figure up to 220 m in Figure 12).

requirements for a lower beam.²² In addition to the component-level photometric requirements, vehicles using ADB headlighting systems are required to maintain these standards while performing dynamic testing on a track. As a part of the track testing, FMVSS No. 108 specifies the use of ADB test fixtures, which each contain stimulus lamps and photometry sensors.²³ For an ADB headlamp, FMVSS No. 108 states the headlighting system must meet the photometry requirements of Table XXI (Adaptive Driving Beam Photometry Requirements) which sets the maximum illuminance within marked measurement distance intervals within a 220 m range.²⁴

Several petitioners²⁵ asserted that ADB headlighting systems cannot concurrently meet the requirements set forth in the component-level tests and the vehicle-level tests. The petitions stated that the maximum permitted illuminance values associated with specific driving scenarios (such as right curves, straight-path, etc.) were particularly difficult to meet while also maintaining the component-level photometric requirements. They suggested, among other actions, that vehicles with ADB systems may need to have their headlamps permanently aimed downward and/or mounted at specific heights to meet the ADB photometry requirements. IIHS asserted that NHTSA's decision to apply left side beam pattern glare limits to the ADB headlighting system imposed an asymmetry during vehicle-level testing of right curves. IIHS stated that the more demanding requirements could only be satisfied with more advanced ADB systems.

SAE, Stanley, and Koito each identified photometric test point 0.5U, 1R–3R as an instance where the ADB maximum allowed illuminance values (glare limit) will fall below the headlamp lower beam photometric intensity minimum. SAE presented multiple right curve calculations to

support its claim. The first area in which SAE claimed conflicting requirements exist is at the lower beam photometric test line of 0.5U, 1R–3R. This particular lower beam photometric scan (laboratory) requires a minimum intensity of 500 cd throughout the line, while allowing a maximum of 2,700 cd anywhere along the line. During right curve ADB test scenarios, the photometer on the test fixture will have a relative travel path that will cross this same test line at some test distance (the distance varies with factors such as curve radius, headlamp mounting height, etc.). SAE stated that the dynamic vehicle test also imposes a glare limit on the same region of the beam pattern which it claimed does not match the corresponding component-level photometry requirement.

In its petition, SAE presented an example showing a 400 m right curve and an ADB headlamp mounting height of 600 mm. In the example, the lower beam maximum of 2,700 cd (laboratory) along that line for a single headlamp would now be limited to 2,160 cd (track) from the pair of ADB headlamps. SAE further stated that dividing this value for each of the two headlamps results in approximately 1,080 cd from a single ADB headlamp imposed by the vehicle driving test requirements. SAE stated that the component-level minimum of 500 cd is also required for lower beams along that same photometric scan line. SAE described this smaller window of compliance as a conflict, claiming that an intensity not much greater than the minimum intensity required along the 0.5U, 1R–3R line would fail the ADB vehicle testing requirements. SAE also presented an example for a 210 m right curve and an ADB lamp mounting height of 800 mm where the upper limit would be approximately 1103 cd per ADB headlamp (track) along the same 0.5U, 1R–3R line that again has a 500 cd minimum.

SAE also presented an example for an area close to the lower beam test point of 2U–4L (Laboratory). SAE stated that this test point requires a minimum of 135 cd. SAE further calculated that, for the 210 m right curve at an ADB mounting height of 600 mm, the lux meter position for the vehicle test would be very close to the 2U–4L point at 15 m distance. The track test maxima require no greater than 700 cd from a pair of ADB headlamps, or 350 cd per ADB headlamp, which SAE stated allows only a small design window.

TSEI stated its concurrence with SAE's petition. It further stated that the glare and lower beam photometry requirements, along with the

requirement for a 1-degree transition zone, deviate from the definition of ADB systems as an evolution of headlamp beam switching devices where specific zones of the upper beam are dimmed, leaving intensity of the dimmed zone at a level equal to the lower beam. TSEI stated that unless the ADB system is deactivated while performing on right curves, under the standard as currently written, the lower beam portion of the ADB system would need to be re-aimed downward or dimmed to comply. TSEI stated that either of those choices would reduce the performance and increase the cost of the system.

Ford presented a comparison of the performance of compliant 2021 F–150 headlamps while undertaking right curves, aimed nominally versus oriented 3 inches downward, to meet the glare limits of the final rule.²⁶ Ford's comparison highlighted that the headlamps largely exceeded the maximum illuminance requirements defined in Table XXI at nominal, while the downwardly aimed headlamps met the requirements. For example, for distances less than 60 m and greater than or equal to 30 m the maximum illuminance requirement is 1.8 lux, yet the illuminance at nominal aim was 4.4 lux and the illuminance when aimed 3 inches down was 1.1 lux. In addition, when translated into forward visibility on a straight road, Ford determined that the downward aiming decreased the forward lower beam seeing distance by 40.3%. For those reasons, Ford petitioned for the creation of a separate glare limit for right curves, in order to maintain a high level of road visibility for drivers. Ford also petitioned based on the IIHS's Headlight Test & Rating Protocol²⁷ for updates of the illuminance values in Table XXI.²⁸

Valeo asserted that currently compliant headlamps that meet photometric requirements would not meet the requirements in the standard on vehicles with higher mounting heights during same direction driving scenarios. Valeo performed an internal investigation with three headlamp mounting heights (750 mm, 900 mm,

²² For instance, in accordance with Table XIX, headlamps observed at test point 0.5U, 1R–3R (deg) must abide by a minimum photometric intensity of 500 cd and maximum photometric intensity of 2700 cd.

²³ 49 CFR 571.108 S14.9.3.12.3.1.

²⁴ See 49 CFR 571.108 S14.9.3.12.2. and 49 CFR 571.108, Table XVIII (Headlamp Upper Beam Photometry Requirements), Table XXI (Adaptive Driving Beam Photometry Requirements). As an example: at distances less than 30 m and greater than or equal to 15 m, the maximum illuminance for an oncoming vehicle is 3.1 lux and the maximum illuminance for a same direction vehicle is 18.9 lux.

²⁵ Specifically SAE, Stanley, Toyota, Ford, TSEI, NAL, IIHS, Valeo, Volkswagen, Koito and the Alliance.

²⁶ See Docket No. NHTSA–2022–0013–0016; Appendix A.

²⁷ See Insurance Institute for Highway Safety, Headlight Test & Rating Protocol, Ver. III (July 2018), <https://www.iihs.org/media/0e823704-32d1-4500-b095-15d064d824a7/ZJciYw/>; (last accessed Dec. 18, 2024)

²⁸ Ford suggests using the following values in Table XXI: for distances less than 30 m and greater than or equal to 15 m, a maximum illuminance for right curves of 7.1; for distances less than 60 m and greater than or equal to 30 m, a maximum illuminance for right curves of 4.8; and for distances less than 120 m and greater than or equal to 60 m, a maximum illuminance for right curves of 2.1.

and 1160 mm) to evaluate glare compliance for the vehicle rearview mirrors and driver's eyes photometers at distances of 15 m, 30 m, 60 m, and 120 m. Valeo composed photometric figures (Figures 5–7) on a coordinate system that showed the intensity (cd) from the left side headlamps of the outside rearview mirrors and driver's eyes photometers during the same direction (straight-path) road test.²⁹ Figure 5 showed a 750 mm headlamp mounting height, Figure 6 showed a 900 mm mounting height, and Figure 7 showed a 1160 mm mounting height. Each figure identified several points of interest, corresponding mirror and photometer locations, where Valeo calculated that the photometric intensity would exceed the bounds of the lower and upper beam photometric requirements, at a given distances, for the specified mounting height. As such, Valeo stated that it does not believe that redesigning the lower beam photometric output would resolve the issue, as recommended in the rule that permitted the installation of ADB systems. Instead, Valeo recommended that NHTSA change the glare requirements, so that they are calibrated to the headlamp being tested instead of it being a fixed value.

Toyota presented a similar analysis, characterizing the pitch of a high-mounted lower beam versus normal aiming.³⁰ Toyota determined that headlamps positioned at a height of 1.1 m would need to lower their vertical aiming angle by 1.41 degrees to meet the photometry requirements in the final rule. However, the adjusted vertical aiming angle would result in a roughly 120 m reduction in forward visibility at 3 lux of lower beam visibility, creating “sub-optimal visibility” for the driver in the area of reduced intensity.

The petitioners suggested that due to perceived conflict enabled by the narrow acceptable intensity margin presented in Table XIX (Headlamp Lower Beam Photometry Requirements) and XXI (Adaptive Driving Beam Photometry Requirements), NHTSA should allow industry stakeholders to dim or re-aim the lower beam during right curves. Several petitioners requested NHTSA consider aligning with SAE J3069, essentially providing the option to evaluate the ADB glare requirement by stipulating the illuminance of the ADB either not exceed the values listed in Table XXI or not exceed by more than 25% the illuminance produced by the same

vehicle's lower beam. Ford alternatively petitioned NHTSA to amend FMVSS No. 108 to reflect its own petitioned values for Table XXI, though Ford stated that it would request that NHTSA provide a phase-in period to allow vehicle manufacturers the time to validate the more stringent requirements.

Agency Response

NHTSA is denying the petitioners' requests to modify the track limits in Table XXI of FMVSS No. 108 by permitting ADB illuminance to exceed the vehicle's lower beam illuminance by up to 25%. NHTSA is also denying Ford's petitioned changes to Table XXI (Adaptive Driving Beam Photometry Requirements), to create separate standards for right and left opposite direction curves. Further modifications to FMVSS No. 108, such as those raised by the petitioners, are not necessary because options already exist for ADB systems to mitigate glare while adhering to the component-level photometric requirements. These flexibilities are available to the manufacturer and discussed below.

NHTSA established photometry requirements for headlamp upper and lower beams in Table XVIII and Table XIX of the lighting standard (FMVSS No. 108), respectively. NHTSA standardizes vehicle headlamps to satisfy two safety needs: visibility and glare prevention. Headlamp lower beams are designed to provide relatively high levels of light in the close-in forward visibility region, and to provide reduced light intensity in longer-distance regions, where oncoming or preceding vehicles would be glared. The upper beams are designed to provide relatively high levels of illumination in both close-in and longer distance regions. For adaptive driving beams, NHTSA designated the photometry requirements, specified as a directional maximum illuminance per measurement distance interval, on the left or driver side of the vehicle. For example, over a measurement distance interval greater than or equal to 15.0 m and less than 30.0 m, the maximum illuminance for a vehicle in the opposite direction is 3.1 lux; for a vehicle driving in the same direction, the maximum illuminance is 18.9 lux.

NHTSA reiterates that it currently allows vehicle manufacturers the option to dynamically re-aim headlamps during driving. Potential issues of glare due to headlamp mounting height can be addressed with the on-vehicle (dynamic) aim of the headlamps. NHTSA has previously explained that for headlamp systems capable of

dynamically re-aiming the headlamps (e.g., based on the steering angle), the laboratory photometry requirements “must be met in the nominal position of the lower beam headlamp (*i.e.*, considering the location of the axis of reference to coincide with the longitudinal axis of the vehicle).”³¹

With respect to the comments about vehicles equipped with high-mounted headlamps, the issue of glare is also present with respect to the lower beams on those vehicles. As such, those vehicles already tend to have their headlamps aimed downward to avoid glaring oncoming or preceding vehicles. Toyota contended that aiming beams downward would reduce seeing distance. However, this concern presumes that a manufacturer aims an entire system's beams downward instead of aiming the adaptive driving beam only. If a manufacturer aims only the adaptive driving beam somewhat lower, that will likely have the greatest impact on areas of reduced intensity, not areas of unreduced intensity (due to the characteristics of lower beam and upper beam patterns). This would not likely have an outsized impact on seeing distance as Toyota suggests.

Additionally, manufacturers have the flexibility to alter the vertical arrangement of the headlamps and/or light sources to mitigate glare. Vertical arrangement refers to the positioning of each headlamp when multiple headlamps are used. FMVSS No. 108 S9.4.1.6.5 expressly permits the adaptive driving beam to be provided by any combination of headlamps, allowing ADB systems to produce the adaptive driving beam out of a headlamp that is mounted lower on the vehicle. This regulatory language directly addresses the concerns raised by commenters that cited high-mounted headlamps as causing a glare issue. Ford and the Alliance acknowledged this option in their comments to the NPRM.³²

SAE, in its petition, calculated that during certain curve scenarios the maximum glare limits are less than the maximum allowed photometry values. Considering the example that results in the highest discrepancy based on the provided calculations (the 400 m right curve example), the maximum value at that test point is still more than twice

²⁹ See Docket No. NHTSA–2022–0013–0010, Figures 5–7.

³⁰ See Docket No. NHTSA–2022–0013–0015, Figure 1.

³¹ See Letter to Kiminori Hyodo, Koito Manufacturing Co., Ltd. (Feb. 10, 2006), <https://www.nhtsa.gov/interpretations/hyodob-3> (last accessed Dec. 18, 2024); see also 68 FR 7101 (Feb. 12, 2003) (discussing application of laboratory photometry requirements to adaptive frontal-lighting systems).

³² NHTSA–2018–0090–0162; NHTSA–2018–0090–0138.

the minimum at the same point (1,080 cd from SAE calculations vs the 500 cd minimum in FMVSS No. 108). A 580 cd (1,080 cd–500 cd) range of intensity values is sufficient for the design of a compliant ADB lamp, especially considering that the ADB system could dynamically re-aim in order to avoid glare during the ADB track tests. As mentioned previously, a lamp with an output which may exceed the dynamic track test limits for glare could re-aim downward (or use other means) to alleviate glare. The Agency retains this requirement, as detailed in the final rule, because ADB systems can detect oncoming vehicles and adapt accordingly, thus outperforming traditional lower and upper beams in reducing glare.³³ It is therefore appropriate to hold ADB systems to a higher standard.

In its petition, through an internal analysis, Valeo asserts that fully compliant lower beams would fail the glare requirements for same direction driving scenarios. However, upon inspection of their analysis, NHTSA recognized that Valeo had instead applied the adaptive driving beam photometry requirements (Table XXI) for oncoming/opposite direction scenarios when grouping the intensity measures for the locations of the side-view mirrors and driver photometers, shown in figures 5–7. NHTSA also observed that Valeo analyzed test setups using headlamp mounting heights that were nearly level with the 1.2 m driver photometer, in particular the 1.16 m height. Headlamp setups of that stature are unlikely and would glare drivers without proper re-aiming. Because Valeo used improper parameters in its testing, NHTSA does not find the results

of this testing compelling and they do not warrant revisiting FMVSS No. 108. NHTSA therefore denies the petitions.

E. Transition Zone

FMVSS No. 108 allows for a 1-degree transition zone between an area of reduced intensity and an area of unreduced intensity.³⁴ The lower and upper beam photometric test points will not be applied within the transition zone (except for the upper beam maximum at H–V, which still applies throughout the entirety of the beam). Manufacturers are free to decide which portions of the roadway will receive an area of reduced or unreduced intensity, subject to several requirements or constraints (such as the track test that evaluates glare). This flexibility enables ADB systems to provide an area of reduced intensity not only to prevent glare to oncoming or preceding vehicles, but also in other situations in which reduced intensity would be beneficial (*e.g.*, towards retroreflective signs, or on a wet roadway).

SAE, Stanley, Koito, Valeo, NAL, the Alliance, Toyota, TSEI, IIHS, Volkswagen, and Honda all petitioned NHTSA to adjust the designation of a 1-degree transition zone between the headlamp's areas of reduced and unreduced intensity. Of those identified, SAE, Stanley, Valeo, the Alliance, Toyota, Volkswagen and TSEI explicitly petitioned that NHTSA increase the transition zone to 4 degrees. Valeo supported its petition by presenting an ADB pattern and its accompanying intensity scan of the H–H line, to demonstrate how transitioning from the area of reduced intensity to an area of full intensity in the upper beam portion of the ADB beam takes at least 4 degrees.³⁵ Further, Valeo presented a comparative diagram of the UNECE and FMVSS No. 108 ADB implementation requirements to illustrate that the 1-degree transition zones will result in much larger areas of reduced intensity to meet the minimum requirements of the upper beam test points in the areas of unreduced intensity; Valeo stated this result effectively minimized the added safety benefits of ADB. Koito showed in its petition an iso-lux curve showing its ADB systems use approximately a 4-degree transition zone.³⁶ NAL stated that not restricting ADB systems to a 1-degree transition zone could provide more light than the basic lower beam and potentially improve safety. Further,

NAL and Koito also commented that NHTSA did not thoroughly explain the safety benefit of a 1-degree transition zone.

Several petitioners³⁷ shared that an overwhelming majority of current ADB systems in other foreign markets would fail to meet the 1-degree transition zone requirement given the limits of the technology. Koito stated that the most popular and cost-effective ADB systems employ an optical system with shifting and overlapping segments of light, to ensure better visibility by enabling smooth transitions between the areas of reduced and unreduced intensity. Koito, among others, stated that these systems would fail to meet the standard. Toyota also commented that the photometry requirements would likely make systems more costly and slow development. Further, Toyota stated that only expensive, high-resolution pixelated ADB systems within premium vehicles can meet the current compliance standards for the transition zone. Additionally, NAL stated that SAE J3069 intentionally did not specify a width of the transition zone to permit different, less complicated, ADB systems and beam patterns as more than 80 percent of systems currently implemented by manufacturers are less complex. IIHS stated that NHTSA would contravene its stated technology-neutral approach by having a requirement that would strongly favor pixelated systems.

Petitioners SAE and Koito suggested eliminating the transition zone entirely. TSEI requested NHTSA specify the size of the transition zone be greater than the minimum values specified for relevant lower beam test points (Table XIX, Headlamp Lower Beam Photometry Requirements) and less than the maximum specified at the HV for the upper beam (Table XVIII, Headlamp Upper Beam Photometry Requirements). TSEI stated this solution would more closely align, not only with SAE J3069, but also with the definition of a semi-automatic headlamp beam switching device, granting manufacturers more freedom to optimize ADB systems. Volkswagen stated in its petition that there are no known safety recalls, reported concerns or customer complaints with ADB in the rest of the world, which indicates an absence of safety issues with current ADB systems. According to Volkswagen, the exceptionally rigorous requirements for ADB in the United States through FMVSS No. 108 are not necessary.

³³ 87 FR 9957, (February 22, 2022). The agency notes that even with this modification, the glare limits in this final rule are still (as Stanley suggested) more stringent than currently allowed by the Table XIX right-side maxima from 1R to 3R. However, this level of stringency is reasonable and provides a manageable design range. The lower beam photometry was designed to provide a generic beam to prevent glare regardless of the actual road and traffic conditions; it was not customized to provide glare protection to oncoming vehicles on a right curve. Because most situations in which an oncoming vehicle can be glared will occur with the oncoming vehicle to the *left*, the existing Table XIX lower beam photometry requirements require shading the left side and permit more light on the right side. However, the adaptive driving beam is not, and need not be, an all-purpose beam like a conventional lower beam. It is clear in the photometry tables that the appropriate glare limits for oncoming situations are the left-side maxima in Table XIX, on which the oncoming glare limits are based. These limits should, to the extent possible, apply to oncoming glare, including from the right-side. In any case, the agency believes that current lower beams would generally comply with the glare limits as applied in this scenario with the revised measurement distance range.

³⁴ 49 CFR 571.108 S9.4.1.6.4.5.

³⁵ See Docket No. NHTSA–2022–0013–0010, Figures 2–3.

³⁶ See Docket No. NHTSA–2022–0013–0007, Figure 1.

³⁷ SAE, Stanley, Valeo, the Alliance, NAL, Toyota, IIHS, Volkswagen and TSEI.

Agency Response

NHTSA is denying all the petitions that request a change to the 1-degree transition zone allowance between the vehicle's headlamp areas of reduced and unreduced intensity. The transition zone plays a vital role in making the requirements practicable. In some cases, transitioning from lower beam intensities to upper beam intensities can represent a large change in photometric intensity. Achieving this transition is important to ensure that the adaptive beam pattern continues to serve the function of providing seeing distance, while also limiting glare. The angular size of this transition is critical to the beam's ability to meet these competing goals. A transition zone that is too large can create a problem in the beam pattern where either glare control or seeing distance is less than what is provided by the appropriate lower or upper beam, compromising safety.

NHTSA determined that increasing the transition zone from 1-degree to 4-degree, as suggested by most of the petitioners, would reduce visibility below that provided by an upper beam even in common driving situations. Specifically, NHTSA found that over a 50 m range, the area of a 4-degree transition zone would extend 3.5 m wide and potentially cover the entirety of an adjacent lane. This limits the ability of the driver of an ADB equipped vehicle to navigate the roadway. NHTSA considered a simple interaction with a single oncoming vehicle that is positioned 50 m ahead in a lane to the left of the ADB equipped vehicle. In such a scenario, the adaptive beam will create an area of reduced intensity around the oncoming vehicle and will also create a transition zone to the left and right of that area of reduced intensity. If that transition zone extends 4 degrees beyond the end of the area of reduced intensity, it will not provide the upper beam photometric intensity until 3.5 m to the right of the oncoming vehicle (the area representing the ADB vehicle's travel lane). For a roadway with 3.0 m wide lane widths, the entirety of the ADB vehicle's travel lane (at a distance of 50 m) will be illuminated by the minimally regulated transition zone, which does not ensure proper object detection and undermines safety.

With regard to the commenters' claims that FMVSS No. 108's transition zone requirement is overly stringent, costly, and only high-resolution, pixelated ADB systems within premium vehicles can comply, NHTSA highlights that ADB headlight systems are optional. Because of the added costs

associated with the technology, NHTSA does not anticipate that manufacturers would make these systems standard equipment in all vehicle models at this time. However, the practicability requirement in the National Traffic and Motor Vehicle Safety Act considers the technological ability of an industry to meet the goals of a particular standard. While ADB technology sufficient to meet the 1-degree transition zone may not yet be prevalent, compliance is feasible and demonstrated by specific premium models. NHTSA may also issue safety standards that are technology-forcing, requiring improvements in existing technology.³⁸ While the transition zone requirements of FMVSS No. 108 are appropriately more rigorous than existing global requirements, revising FMVSS No. 108 to allow certification of ADB systems moves toward harmonization. By making ADB an optional technology, NHTSA incentivizes manufacturers to strive toward the increased safety and visibility advanced by the standard's rigor, while balancing reasonableness of cost and lead time.

F. Other

Momentary Exceedance Limit

FMVSS No. 108 allows for a 0.1 second momentary glare exceedance allowance to account for vehicle pitch and other potentially uncontrolled noise in the measurement system.³⁹ The momentary glare exceedance duration begins when the permitted maximum lux is exceeded and concludes in at least two ways: the illuminance value drops below the applicable glare limit; or the glare limit itself changes (*i.e.*, increase). These outcomes could happen if the exceedance is experienced just before the glare limit changes. In either case, if the glare limit is not exceeded for more than 0.1 seconds, the exceedance will not be considered a noncompliance.

Volkswagen petitioned NHTSA to increase the ADB systems exceedance limit. Volkswagen stated that the detection angle of the forward-facing cameras in NHTSA's testing of medium curve track scenarios, which resulted in glare exceedances, surpassed the capabilities of their existing ADB system cameras. Volkswagen stated that increasing the angle of detection of existing ADB system cameras, to keep the lux values within the illuminance limits and time exceedance at the far horizontal edges of the camera's detection zone, will detract from the

system's performance and stability in the head-on area of the vehicle. According to Volkswagen, the compromised sensitivity will limit the ADB system from utilizing increased use of unreduced intensity light and limit safety benefits of enhanced visibility in all road scenarios. According to Volkswagen, consistently controlling glare to the far extreme horizontal edges of the angular visibility of the camera could be optimized by increasing the glare exceedance limit to a higher value.

Volkswagen stated that a human driver's physical reaction time is approximately 1.0 second. Volkswagen referenced comments in the final rule preamble by the American Automobile Association (AAA), where it reported oncoming glare research showed exceedance of 1 second was rated as distracting to drivers.⁴⁰ Volkswagen petitioned NHTSA to increase the minimum exceedance limit time from 0.1 seconds to 0.7 seconds, which it states will allow the systems to have a more consistent and reliable detection performance.

Momentary Exceedance Limit Agency Response

NHTSA is denying the petitioner's request to increase the 0.1-second momentary exceedance limit for ADB systems to 0.7 seconds. NHTSA established the 0.1-second glare exceedance allowance to account for testing-related variability caused by noise and uncontrolled test factors. For example, minor imperfections in the road surface can cause glare exceedances by affecting vehicle pitch. The testing conducted by NHTSA in support of the final rule does not show that glare from such sources lasts longer than 0.1 second.

NHTSA does not agree with Volkswagen's comparison to a human driver's reaction time. The field of view (FOV) of the ADB system's camera is considerably narrower than that of a human observer, which is estimated at approximately 180°. The narrower FOV will impact, and indeed improve, the ADB system's ability to quickly recognize and respond to oncoming stimuli. NHTSA considers any comparison with a human observer to be a false equivalency.

Large Radius of Curvature Track Testing

FMVSS No. 108 specifies testing for oncoming glare over eight track test scenarios. The test scenarios involve the subject vehicle traveling towards the

³⁸ See *Chrysler v. Department of Transportation*, 472 F.2d 659 (6th Cir. 1972).

³⁹ 49 CFR 571.108 S14.9.3.12.2.1.

⁴⁰ 87 FR 9940 (Feb. 22, 2022) § VIII.C.4 (Maximum Illuminance Criteria (Glare Limits)).

fixture at various ranges of test speeds and road geometries of varying direction and curve radii, including large radii from 335m to 440m.⁴¹

Volkswagen requested NHTSA remove the large radius curve test scenario from the standard. Volkswagen stated the vast majority of vehicle proving grounds do not offer such a large radius of curvatures. Volkswagen stated that there are currently only five facilities that are sufficiently large enough to conduct the final rule track testing. Volkswagen suggested NHTSA did not evaluate the ability of manufacturers or companies to conduct the testing at their own facilities and/or make accommodation for large radius curve test scenarios, which impose significant financial and time burdens. In addition, given NHTSA's preamble comments on IIHS using extrapolation for medium radius of curvature testing,⁴² Volkswagen inferred that similar extrapolation would be allowed for large radius test scenarios, making it redundant to include a specific track test as part of the regulation.

Large Radius of Curvature Track Testing Agency Response

NHTSA is denying the petitioner's request to remove large radius curve testing scenarios from FMVSS No. 108. NHTSA was able to test on the curves specified in the final rule at the Transportation Research Center Vehicle Dynamics Area. This test facility is publicly available to manufacturers.

A manufacturer must certify that its ADB system will meet the requirements specified in the standard if NHTSA tests it. As such, a manufacturer may use any valid means, including extrapolation, to certify if such a method proves valid through physical testing conducted by the NHTSA. Therefore, it is not necessary to remove the large radius curve test scenarios. Accordingly, manufacturers must exercise reasonable care in certifying that their vehicles will perform throughout the range of radii of curvature specified in the Table XXII. NHTSA will perform compliance testing using NHTSA facilities and it is the manufacturer's responsibility to ensure that it meets the performance requirements.

Headlamp Lens Cleaning

The Alliance petitioned for the test vehicle preparation of the headlamps lenses to match the preparation for the ADB sensors and windshield.

Headlamp Lens Cleaning Agency Response

The regulatory text states that to the extent practicable, the windshield and sensors will be clean and free from dirt and debris. The phrase "to the extent practicable" does not appear in the vehicle preparation condition for a clean and debris free headlamp lens. This distinction acknowledges that it may not be practicable in some cases to clean the ADB sensors depending on the design of the vehicle. While Option 1 for headlamp beam switching devices in FMVSS No. 108 (classic semiautomatic beam switching device) is required to have an accessible lens for cleaning, no such requirement is applied to the ADB option. As such, a condition may exist in which NHTSA is unable to clean the ADB sensor. Considering this possibility, the "to the extent practicable" phrase is included in the cleaning condition for that sensor. A comparable situation does not exist for headlamp lenses as FMVSS No. 108 restricts the installation of headlamp obstructions. As such, NHTSA anticipates that it can clean the headlamp lenses before testing the ADB system as specified in the test procedure without issue.

Motorcycle ADB Requirements

FMVSS No. 108 identifies the upper and lower beam photometry requirements for motorcycle headlamps and specifies that a motorcycle headlighting system must meet one of two options.⁴³ One option is that it must satisfy one half of any passenger vehicle headlighting system of Table II, which provides both a full upper beam and full lower beam and is designed to conform to the requirements for that headlamp type. Alternatively, under the second option, the headlighting system may be designed to conform to requirements that are specific to motorcycles.

Honda and Stanley requested NHTSA verify the application of ADB systems to motorcycles. They stated that the ADB requirements only mention photometry requirements in Tables XVIII and Table XIX, but not Table XX which includes photometry requirements for headlamps of motorcycles.

Honda suggested that NHTSA modify the requirement to add Table XX to the relevant ADB sections of the standard (S9.4.1.6.4.[3–5]), while Stanley simply

requested clarification on how to apply ADB to motorcycles.

Motorcycle ADB Requirements Agency Response

NHTSA is denying the petitioners' requests to include motorcycle specific language in the final rule to validate motorcycle headlamp photometry compliance for ADB systems. NHTSA's lighting standard grants motorcycle headlighting systems two options to meet compliance. One of the options requires that the motorcycle headlighting system consist of one half of a headlighting system specified in Table II and conforms to the requirements for that headlamp type. This option can be used to ensure motorcycle headlamps meet the ADB requirements and not require change to the current regulatory text. NHTSA recognizes the requirements in Tables XVIII and XIX differ from those of Table XX; this difference is intentional and motorcycle lamps that incorporate ADB technology will need to comply with the requirements in Tables XVIII and XIX as they relate to motorcycles.

III. Petition for Reconsideration That Is Out of Scope

Each semiautomatic headlamp switching device must include operating instructions to permit a driver to operate the device correctly. This requirement includes how to turn the automatic control on and off; how to adjust the sensitivity control (for Option 1 and, if provided, for Option 2); and any other specific instructions applicable to the device. Option 1 ("the classic system") automatically switches between the upper and lower beam. Option 2 is the adaptive driving beam newly allowed by the revision of FMVSS No. 108. The recent revision to FMVSS No. 108 added the parenthetical "(for Option 1 and, if provided, for Option 2)" to the regulatory text to reflect that the requirement for sensitivity control instructions continue to apply to the classic system without change, but now also applies to adaptive driving beams if the adaptive driving beam is equipped with sensitivity control.

The Alliance petitioned for a modification of the operating instructions to the semiautomatic beam switching devices. The Alliance petitioned to remove the sensitivity control instructions for the Option 1 semiautomatic beam switching device by modifying the regulatory text to say "if provided" for both Option 1 and Option 2. FMVSS No. 108 uses the language "if provided" only for Option 2, reflecting the intent to make no

⁴¹ 87 FR 9928 (Feb. 22, 2022) Table 4 (Summary to the Proposed Track Test Scenarios). Testing is done with the vehicle traveling on a straight-path or on curves. The Radii of the curves vary as follows: Small = 85 m–115 m; Medium = 210 m–250 m; Large = 335 m–440 m. The testing speed ranges vary based on scenario from 25 mph to 70 mph.

⁴² 87 FR 9955 (Feb. 22, 2022) § VIII.C.8.d (Scenario 4: Oncoming Large Left Curve).

⁴³ 49 CFR 571.108 S10.17.

changes to the classic semiautomatic beam switching devices requirements (Option 1), as compared to the previous versions of FMVSS No. 108. The scope of the recent FMVSS No. 108 revision pertained only to adaptive driving beams. As the request from the Alliance pertains to modification of the classic semiautomatic beam switching devices and those devices are not part of this ADB systems rulemaking action, NHTSA deems this request out of scope. NHTSA will not modify the requirements.

IV. Clarifications

Several clarification questions were presented as part of the various petitions for reconsideration. NHTSA is taking this opportunity to answer some of these clarifying questions.

First, NHTSA will zero-calibrate the photometers for the ADB track testing with the photometers installed on the test fixture and in the testing orientation. Doing so will allow NHTSA to more accurately measure the light provided by the test vehicle and filter out light from the environment.

Second, NHTSA's zero-calibration process will subtract out light provided by the test fixture lighting itself. The lamps installed on the test fixture will illuminate the surroundings and, as such, some of that light will be reflected back onto the photometers. This light will not be counted as part of the measured light that is required to be less than the prescribed maxima. NHTSA's testing method also accounts for ambient conditions by measuring ambient illuminance either immediately before or after each test trial and subtracting that value from the recorded test data.

Finally, NHTSA is clarifying that if a lower beam is part of the adaptive beam and horizontal aim is included in that lower beam, then it is excluded from the horizontal VHAD requirements in the same way as the adaptive beam is excluded. That is to say, a lower beam that is part of an adaptive beam and includes a horizontal aim need only meet the horizontal VHAD requirement to include references and scales relative to the longitudinal axis of the vehicle

necessary to ensure correct horizontal aim for photometry and aiming purposes. It must include a "0" mark to indicate the alignment of the headlamps relative to the longitudinal axis of the vehicle and include an equal number of graduations from the "0" position representing equal angular changes in the axis relative to the vehicle axis. The remaining horizontal VHAD requirements that would apply to a lower beam that is not part of an adaptive beam do not apply in such a scenario (S10.18.8.1.2.1 through S10.18.8.1.2.4).

V. Conclusion

For the reasons discussed above, the agency denies the Petitioners' petitions for reconsideration of the February 22, 2022, final rule (87 FR 9916).

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.

Adam Raviv,
Chief Counsel.

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Proposed Rules

Federal Register

Vol. 89, No. 249

Monday, December 30, 2024

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–2738/Airspace
Docket No. 24–AAL–99]

RIN 2120–AA66

Amendment of Alaskan Very High Frequency Omnidirectional Range Federal Airways V–444 and V–504 in Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Alaskan Very High Frequency Omnidirectional Range (VOR) Federal Airways V–444 and V–504. The FAA is proposing this action due to the pending decommissioning of the Evansville, AK, Nondirectional Radio Beacon (NDB).

DATES: Comments must be received on or before February 13, 2025.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2024–2738 and Airspace Docket No. 24–AAL–99 using any of the following methods:

* *Federal eRulemaking Portal:* Go to www.regulations.gov and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at www.regulations.gov at any time.

Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11J, 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, Policy Directorate, Federal Aviation Administration, 600 Independence Avenue SW, Washington DC 20597; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Steven Roff, Rules and Regulations Group, Policy Directorate, Federal Aviation Administration, 600 Independence Avenue SW, Washington, DC 20597; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments,

commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at www.dot.gov/privacy.

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at www.regulations.gov. Recently published rulemaking documents can also be accessed through the FAA's web page at www.faa.gov/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Western Service Center, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

Incorporation by Reference

Alaskan VOR Federal Airways are published in paragraph 6010 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11J, dated July 31, 2024, and

effective September 15, 2024. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

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

Background

In 2003, Congress enacted the Vision 100-Century of Aviation Reauthorization Act (Pub L., 108–176), which established a joint planning and development office in the FAA to manage the work related to the Next Generation Air Transportation System (NextGen). Today, NextGen is an ongoing FAA-led modernization of the nation's air transportation system to make flying safer, more efficient, and more predictable.

In support of NextGen, this proposal is part of an ongoing, large, and comprehensive airway modernization project in the state of Alaska. Part of this project is to transition the Alaskan en route navigation structure away from dependency on NDBs and move to develop and improve the Area Navigation (RNAV) route structure. The FAA is planning to decommission the Evansville, AK, NDB. As a result, the segment of Alaskan Federal Airway V–444 between the Evansville NDB and the Browerville, AK, VOR will become unusable. The mitigation to the loss of this segment of V–444 is RNAV route T–232. T–232 directly overlays the segment of V–444 proposed for removal. Additionally, the segment of Alaskan Federal Airway V–504 between the Evansville NDB and the Deadhorse, AK, VOR/Distance Measuring Equipment (DME) will become unusable. The mitigation to the loss of this segment of V–504 is RNAV route T–240. T–240 directly overlays the segment of V–504 proposed for removal.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend Alaskan VOR Federal Airways V–444 and V–504 in Alaska. The FAA is proposing these actions due to the pending decommissioning of the Evansville, AK, NDB.

V–444: V–444 in Alaska currently extends between the Barrow, AK, VOR/DME and the intersection of the Northway, AK, VOR/Tactical Air Navigation (VORTAC) 120° (M), 138° (T), and the Gulkana, AK, VOR/DME 062° (M), 079° (T) radials. As amended, V–444 would extend between the Bettles, AK, VOR/DME and the intersection of the Northway, AK, VORTAC 120° (M), 138° (T), and the

Gulkana, AK, VOR/DME 062° (M), 079° (T) radials.

V–504: V–504 currently extends between the Nenana, AK, VORTAC and the Deadhorse, AK, VOR/DME. As amended, V–504 would extend between the Neana VORTAC and the Bettles, AK, VOR/DME.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures” prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

Authority: 49 U.S.C. 106(f); 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 7400.11J, Airspace Designations and Reporting Points, dated July 31, 2024, and effective September 15, 2024, is amended as follows:

Paragraph 6010(b) Alaskan VOR Federal Airways.

* * * * *

V–444 [Amended]

From Bettles, AK; Fairbanks, AK; Big Delta, AK; Northway, AK; intersection of the Northway 120° (M), 138° (T), and Gulkana 062° (M), 079° (T) radials.

* * * * *

V–504 [Amended]

From Nenana, AK; to Bettles, AK.

Issued in Washington, DC, on December 20, 2024.

Richard Lee Parks,

Manager (A), Airspace Rules and Regulations.

[FR Doc. 2024–31104 Filed 12–27–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–1246]

Schedules of Controlled Substances: Placement of 4-Chloromethcathinone in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.
ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration proposes placing the substance 4-chloromethcathinone (4-CMC, 1-(4-chlorophenyl)-2-(methylamino)propan-1-one), including its salts, isomers, and salts of isomers, in schedule I of the Controlled Substances Act. This action is being taken, in part, to enable the United States to meet its obligations under the 1971 Convention on Psychotropic Substances. If finalized, this action would impose the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis with, or possess) or propose to handle 4-chloromethcathinone.

DATES: Comments must be submitted electronically, and written comments must be postmarked or shipped on or before January 29, 2025.

Interested persons may file a request for a hearing or waiver of hearing pursuant to 21 CFR 1308.44 and in accordance with 21 CFR 1316.47 and/or 1316.49, as applicable. Requests for a hearing and waivers of an opportunity for a hearing or to participate in a

hearing, together with a written statement of position on the matters of fact and law asserted in the hearing, must be received on or before January 29, 2025.

ADDRESSES: Interested persons may file written comments on this proposal in accordance with 21 CFR 1308.43(g). The electronic Federal Docket Management System will not accept comments after 11:59 p.m. eastern time on the last day of the comment period. To ensure proper handling of comments, please reference “Docket No. DEA-1246” on all electronic and written correspondence, including any attachments.

- **Electronic comments:** The Drug Enforcement Administration (DEA) encourages commenters to submit comments electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon completion of your comment submission, you will receive a Comment Tracking Number. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. eastern time on the last day of the comment period.

- **Paper comments:** Paper comments that duplicate the electronic submissions are not necessary and are discouraged. Should you wish to mail a paper comment, *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

- **Hearing requests:** All requests for a hearing and waivers of participation, together with a written statement of position on the matters of fact and law asserted in the hearing, must be filed with the DEA Administrator, who will make the determination of whether a hearing will be needed to address such matters of fact and law in the rulemaking. Such requests must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152. For informational purposes, a courtesy copy of requests for hearing and waivers of participation should also be sent to: (1) Drug Enforcement Administration, Attn:

Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

- **Paperwork Reduction Act**

Comments: All comments concerning collections of information under the Paperwork Reduction Act must be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for DOJ, Washington, DC 20503. Please state that your comment refers to Docket No. DEA-1246.

FOR FURTHER INFORMATION CONTACT: Dr. Terrence L. Boos, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; telephone: (571) 362-3249.

SUPPLEMENTARY INFORMATION: In this proposed rule, the Drug Enforcement Administration (DEA) proposes to place 4-chloromethcathinone (also known as 4-CMC or 1-(4-chlorophenyl)-2-(methylamino)propan-1-one) including its salts, isomers, and salts of isomers in schedule I of the Controlled Substances Act (CSA).

Posting of Public Comments

Please note that all comments received in response to this docket are considered part of the public record. DEA will make comments available for public inspection online at <https://www.regulations.gov>. Such information includes personal or business identifiers (such as name, address, state or Federal identifiers, etc.) voluntarily submitted by the commenter. In general, information voluntarily submitted by the commenter, unless clearly marked as Confidential Information in the method described below, will be publicly posted. Comments may be submitted anonymously.

Commenters submitting comments which include personal identifying information (PII), confidential, or proprietary business information that the commenter does not want made publicly available should submit two copies of the comment. One copy must be marked “CONTAINS CONFIDENTIAL INFORMATION” and should clearly identify all PII or business information the commenter does not want to be made publicly available, including any supplemental materials. DEA will review this copy, including the claimed PII and confidential business information, in its consideration of comments. The second copy should be marked “TO BE PUBLICLY POSTED” and must have all claimed confidential PII and business

information already redacted. DEA will post only the redacted comment on <https://www.regulations.gov> for public inspection. The Freedom of Information Act applies to all comments received.

For easy reference, an electronic copy of this document and supplemental information to this proposed scheduling action are available at <https://www.regulations.gov>.

Request for Hearing or Appearance; Waiver

Pursuant to 21 U.S.C. 811(a), this action is a formal rulemaking “on the record after opportunity for a hearing.” Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (APA), 5 U.S.C. 551–559.¹ Interested persons, as defined in 21 CFR 1300.01(b), may file requests for a hearing in conformity with the requirements of 21 CFR 1308.44(a) and 1316.47(a), and such requests must:

- (1) state with particularity the interest of the person in the proceeding;
- (2) state with particularity the objections or issues concerning which the person desires to be heard; and
- (3) state briefly the position of the person with regarding to the objections or issues.

Any interested person may file a waiver of an opportunity for a hearing or to participate in a hearing in conformity with the requirements of 21 CFR 1308.44(c), together with a written statement of position on the matters of fact and law involved in any hearing.²

All requests for a hearing and waivers of participation, together with a written statement of position on the matters of fact and law involved in such hearing, must be sent to DEA using the address information provided above. The decision whether a hearing will be needed to address such matters of fact and law in the rulemaking will be made by the Administrator. If a hearing is needed, DEA will publish a notice of hearing on the proposed rulemaking in the **Federal Register**.³ Once the Administrator designates an Administrative Law Judge (ALJ) to preside over the hearing, the ALJ’s functions shall commence, as provided in 21 CFR 1316.52.

In accordance with 21 U.S.C. 811 and 812, the purpose of a hearing would be to determine whether 4-chloromethcathinone meets the statutory criteria for placement in schedule I, as proposed in this rule.

¹ 21 CFR 1308.41 through 1308.45; 21 CFR part 1316, subpart D.

² 21 CFR 1316.49.

³ 21 CFR 1308.44(b), 1316.53.

Legal Authority

The CSA provides that proceedings for the issuance, amendment, or repeal of the scheduling of any drug or other substance may be initiated by the Attorney General (delegated to the Administrator of DEA pursuant to 28 CFR 0.100) on his own motion, at the request of the Secretary of Health and Human Services (HHS), or on the petition of an interested party.⁴ This proposed action is initiated on the Administrator's own motion and supported by, *inter alia*, a recommendation from the Assistant Secretary for Health of HHS.

In addition, the United States is a party to the 1971 United Nations Convention on Psychotropic Substances (1971 Convention), Feb. 21, 1971, 32 U.S.T. 543, 1019 U.N.T.S. 175, as amended. Procedures respecting changes in drug schedules under the 1971 Convention are governed domestically by 21 U.S.C. 811(d)(2)–(4). When the United States receives notification of a scheduling decision pursuant to Article 2 of the 1971 Convention indicating that a drug or other substance has been added to a schedule specified in the notification, the Secretary of HHS (Secretary),⁵ after consultation with the Attorney General, shall first determine whether existing legal controls under subchapter I of the CSA and the Federal Food, Drug, and Cosmetic Act meet the requirements of the schedule specified in the notification with respect to the specific drug or substance.⁶ In the event that the Secretary did not consult with the Attorney General, and the Attorney General did not issue a temporary order, as provided under 21 U.S.C. 811(d)(4), the procedures for permanent scheduling set forth in 21 U.S.C. 811(a) and (b) control. Pursuant to 21 U.S.C. 811(a)(1) and (2), the Attorney General (as delegated to the Administrator of DEA) may, by rule, and upon the recommendation of the Secretary, add to such a schedule or transfer between such schedules any drug or other substance, if he finds that such drug or other substance has a potential for abuse, and makes with respect to such drug or other substance the findings

prescribed by 21 U.S.C. 812(b) for the schedule in which such drug or other substance is to be placed.

Background

4-Chloromethcathinone (4-CMC) is a central nervous system stimulant that shares structural and pharmacological similarities with schedule I synthetic cathinones such as 4-methylethcathinone (4-MEC), 4-fluoromethcathinone (4-FMC), and 3-fluoromethcathinone (3-FMC), and schedule II stimulants such as amphetamine and methamphetamine. On May 7, 2020, the Secretary-General of the United Nations advised the Secretary of State of the United States that the Commission on Narcotic Drugs (CND) voted to place 4-CMC in Schedule II of the 1971 Convention during its 63rd session held in March 2020 (CND Dec/63/9).

As a signatory to the 1971 Convention, the United States is required, by scheduling under the CSA, to place appropriate controls on 4-CMC to meet the minimum requirements of the treaty. Because the procedures in 21 U.S.C. 811(d)(3) and (4) for consultation and issuance of a temporary order for 4-CMC, discussed in the above legal authority section, were not followed, DEA is utilizing the procedures for permanent scheduling set forth in 21 U.S.C. 811(a) and (b) to control 4-CMC. Such scheduling would satisfy the United States' international obligations.

Article 2, paragraph 7(b), of the 1971 Convention sets forth the minimum requirements that the United States must meet when a substance has been added to Schedule II of the 1971 Convention. Pursuant to the 1971 Convention, the United States must require licenses for the manufacture, export and import, and distribution of 4-CMC. This license requirement is accomplished by the CSA's registration requirement as set forth in 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312.

In addition, the United States must adhere to specific export and import provisions set forth in the 1971 Convention. This requirement is accomplished by the CSA with the export and import provisions established in 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312. Likewise, under Article 13, paragraphs 1 and 2 of the 1971 Convention, a party to the 1971 Convention may notify through the UN Secretary-General another party that it prohibits the importation of a substance in Schedule II, III, or IV of the 1971 Convention. If such notice is presented

to the United States, the United States shall take measures to ensure that the named substance is not exported to the notifying country. This requirement is also accomplished by the CSA's export provisions mentioned above.

Under Article 16, paragraph 4, of the 1971 Convention, the United States is required to provide annual statistical reports to the International Narcotics Control Board (INCB). Using INCB Form P, the United States shall provide the following information: (1) In regard to each substance in Schedule I and II of the 1971 Convention, quantities manufactured, exported to, and imported from each country or region as well as stocks held by manufacturers; (2) in regard to each substance in Schedule III and IV of the 1971 Convention, quantities manufactured, as well as quantities exported and imported; (3) in regard to each substance in Schedule II and III of the 1971 Convention, quantities used in the manufacture of exempt preparations; and (4) in regard to each substance in Schedule II–IV of the 1971 Convention, quantities used for the manufacture of non-psychoactive substances or products.

Lastly, under Article 2 of the 1971 Convention, the United States must adopt measures in accordance with Article 22 to address violations of any statutes or regulations that are adopted pursuant to its obligations under the 1971 Convention. Persons acting outside the legal framework established by the CSA are subject to administrative, civil, and/or criminal action; therefore, the United States complies with this provision.

DEA notes that there are differences between the schedules of substances in the 1971 Convention and the CSA. The CSA has five schedules (schedules I–V) with specific criteria set forth for each schedule. Schedule I is the only possible schedule in which a drug or other substance may be placed if it has high potential for abuse and no currently accepted medical use in treatment in the United States.⁷ In contrast, the 1971 Convention has four schedules (Schedules I–IV) but does not have specific criteria for each schedule. The 1971 Convention simply defines its four schedules, in Article 1, to mean the correspondingly numbered lists of psychotropic substances annexed to the Convention, and altered in accordance with Article 2.

⁷ See 21 U.S.C. 812(b).

⁴ 21 U.S.C. 811(a).

⁵ As discussed in a memorandum of understanding entered into by the FDA and the National Institute on Drug Abuse (NIDA), FDA acts as the lead agency within HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518 (Mar. 8, 1985). The Secretary has delegated to the Assistant Secretary for Health of HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460 (July 1, 1993).

⁶ 21 U.S.C. 811(d)(3).

Proposed Determination to Schedule 4–CMC

Pursuant to 21 U.S.C. 811(b), DEA gathered the necessary data on 4–CMC and on May 12, 2021, submitted it to the Assistant Secretary for Health of HHS with a request for a scientific and medical evaluation of available information and a scheduling recommendation for 4–CMC.

On December 22, 2022, HHS provided DEA a scientific and medical evaluation entitled “Basis for the Recommendation to Control 4-Chloro-N-methylcathinone (4–CMC) and its Optical Isomers, Salts, and Salts of Optical Isomers, in Schedule I of the Controlled Substances Act” and a scheduling recommendation. Pursuant to 21 U.S.C. 811(b), following consideration of the eight-factors and findings related to the substance’s abuse potential, legitimate medical use, safety, and dependence liability, HHS recommended that 4–CMC be controlled in schedule I of the CSA under 21 U.S.C. 812(b). Upon receipt of the scientific and medical evaluation and scheduling recommendation from HHS, DEA reviewed the documents and all other relevant data and conducted its own eight-factor analysis in accordance with 21 U.S.C. 811(c). Included below is a brief summary of each factor as analyzed by HHS and DEA, and as considered by DEA in its proposed scheduling action. Readers should refer to the full eight-factor analyses prepared by HHS and by DEA in support of this proposal, which are available in their entirety under the tab “Supporting Documents” of the public docket of this rulemaking action at <https://www.regulations.gov>, under docket number “DEA–1246.”

1. The Drug’s Actual or Relative Potential for Abuse

In addition to considering the information HHS provided in its scientific and medical evaluation document for 4–CMC, DEA also considered all other relevant data regarding actual or relative potential for abuse of 4–CMC. The term “abuse” is not defined in the CSA; however, the legislative history of the CSA suggests the following four prongs in determining whether a particular drug or substance has a potential for abuse:⁸

a. There is evidence that individuals are taking the drug or drugs containing such a substance in amounts sufficient to create a hazard to their health or to

the safety of other individuals or of the community; or

b. There is a significant diversion of the drug or substance from legitimate drug channels; or

c. Individuals are taking the drug or drugs containing such a substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs in the course of his professional practice; or

d. The drug or drugs containing such a substance are new drugs so related in their action to a drug or drugs already listed as having a potential for abuse to make it likely that the drug will have the same potentiality for abuse as such drugs, thus making it reasonable to assume that there may be significant diversions from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to the health of the user or to the safety of the community.

Both DEA and HHS eight-factor analyses found that 4–CMC produces pharmacological effects that are similar to those of the ten schedule I cathinone stimulants,⁹ MDMA, and the schedule II drugs cocaine and methamphetamine. 4–CMC exhibits a typical stimulant-like pharmacological profile in preclinical studies and in human case reports. 4–CMC produces full generalization to the schedule II stimulants, methamphetamine, and cocaine, and to MDMA, and, in humans, 4–CMC caused stimulant-like adverse effects, like that of these schedule I and II stimulants.

4–CMC does not have an approved medical use in the United States, but evidence indicates that 4–CMC is being abused and trafficked in the United States. Because this substance is not an approved drug product, a practitioner may not legally prescribe it, and it cannot be dispensed to an individual. However, case reports, coroner/medical examiner reports, and law enforcement data¹⁰ demonstrate that 4–CMC is being abused because it is being used without medical advice. 4–CMC has been identified during the toxicological

screening of human urine or serum samples indicating that it is being abused by individuals. In humans, stimulant effects, like those of amphetamine, were observed following the oral administration of 4–CMC. Non-fatal intoxications and overdoses have also been associated with the abuse of 4–CMC.

Law enforcement data show that 4–CMC has been encountered in the United States’ illicit drug market. From January 2014 to August 2024, the National Forensic Laboratory Information System (NFLIS)-Drug registered 399 reports¹¹ pertaining to the trafficking, distribution, and abuse of 4–CMC. These encounters of 4–CMC by law enforcement indicate that this substance is being trafficked and abused by individuals in the United States as a recreational drug of abuse.

Overall, these data demonstrate that 4–CMC has a high potential for abuse. Thus, based on these data, it is reasonable to conclude that 4–CMC, having no medical use, and thus no therapeutic value, presents a hazard to the health and safety of individuals and the community.

2. Scientific Evidence of the Drug’s Pharmacological Effects, if Known

As discussed in the eight-factor analyses prepared by DEA and by HHS, the available pharmacology data indicate that 4–CMC produces pharmacological effects that are similar to those produced by schedule I and II substances, such as mephedrone, 4–FMC, methamphetamine, cocaine, methcathinone, and MDMA. Similar to these schedule I and II stimulants, 4–CMC affects monoamine neurotransmission via action at monoamine transporters. 4–CMC binds to monoamine transporters for dopamine, serotonin, or norepinephrine and promotes the release of these monoamines or blocks their uptake. Actions at these transporters, especially actions that alter dopaminergic neurotransmission, are believed to be involved in the production of the stimulant effects of this class of drugs. Data also demonstrate that 4–CMC produces locomotor behavior and discriminative stimulus effects that are similar to those of the schedule I and II substances methamphetamine and cocaine. Furthermore, in humans, adverse effects of 4–CMC are similar to those reported following the use of

⁹ Schedules of Controlled Substances: Placement of 10 Synthetic Cathinones Into Schedule I, 82 FR 12171–12177 (Mar. 1, 2017). The ten synthetic cathinones were 4-methcathinone (4–MEC), 4′-Methyl-α-pyrrolidinopropiophenone (4–MePPP), α-pyrrolidinovalerophenone (α–PVP), butylone, pentedrone, pentylone, 4-fluoromethcathinone (4–FMC), 3-fluoromethcathinone (3–FMC), naphyrone, and α-Pyrrolidinobutylphenone (α–PBP).

¹⁰ While law enforcement data is not direct evidence of abuse, it can lead to an inference that a drug has been diverted and abused. See Schedules of Controlled Substances: Placement of Carisoprodol Into Schedule IV, 76 FR 77330, 77332 (Dec. 12, 2011).

¹¹ NFLIS-Drug is a national forensic laboratory reporting system that systematically collects results from drug chemistry analyses conducted by State and local forensic laboratories in the United States. NFLIS-Drug data was queried on September 4, 2024.

⁸ Comprehensive Drug Abuse Prevention and Control Act of 1970, H.R. Rep. No. 91–1444, 91st Cong., Sess. 1 (1970); reprinted in 1970 U.S.C.A.N. 4566, 4601.

schedule I synthetic cathinones and schedule II stimulants. These pharmacological characteristics of 4-CMC are predictive of substances that have a high potential for abuse. Overall, these data indicate that 4-CMC produces pharmacology effects and stimulant-like behaviors that are similar to those of methamphetamine and MDMA.

3. The State of Current Scientific Knowledge Regarding the Drug or Other Substance

4-CMC is a synthetic cathinone that is structurally similar to schedule I substances such as 4-FMC, methcathinone, and mephedrone. Anecdotal information in the record indicates that the effects of 4-CMC can be felt more quickly after insufflation (2–3 minutes) than after oral ingestion (30–60 minutes), but its duration of effect is longer with oral ingestion. In addition, toxicology data show that 4-CMC is rapidly metabolized in the human body. DEA is not aware of any legitimate medical use for 4-CMC. Additionally, there are no therapeutic applications or recorded medical uses of 4-CMC. According to HHS, the Food and Drug Administration (FDA) concluded that 4-CMC has no currently accepted medical use in the United States. Similarly, DEA concludes 4-CMC has no currently accepted medical use according to established DEA procedure and case law.¹²

¹² To place a drug or other substance in schedule I under the CSA, DEA must consider whether the substance has a currently accepted medical use in treatment in the United States. 21 U.S.C. 812(b)(1)(B). There is no evidence suggesting that 4-CMC has a currently accepted medical use in treatment in the United States. To determine whether a drug or other substance has a currently accepted medical use, DEA has traditionally applied a five-part test to a drug that has not been approved by FDA: i. The drug's chemistry must be known and reproducible; ii. there must be adequate safety studies; iii. there must be adequate and well-controlled studies proving efficacy; iv. the drug must be accepted by qualified experts; and v. the scientific evidence must be widely available. *Marijuana Scheduling Petition; Denial of Petition; Remand*, 57 FR 10499 (Mar. 26, 1992), pet. for rev. denied, *Alliance for Cannabis Therapeutics v. Drug Enforcement Admin.*, 15 F.3d 1131, 1135 (D.C. Cir. 1994). DEA and HHS applied the traditional five-part test for currently accepted medical use in this matter. In a recent published letter in a different context, HHS applied an additional two-part test to determine currently accepted medical use for substances that do not satisfy the five-part test: (1) whether there exists widespread, current experience with medical use of the substance by licensed health care practitioners operating in accordance with implemented jurisdiction-authorized programs, where medical use is recognized by entities that regulate the practice of medicine, and, if so, (2) whether there exists some credible scientific support for at least one of the medical conditions for which part 1 is satisfied. On April 11, 2024, the Department of Justice's Office of Legal Counsel (OLC) issued an opinion, which,

4. History and Current Pattern of Abuse

4-CMC is a synthetic cathinone that has been identified in the United States' illicit drug market. Thus, it is highly likely that this substance is abused in the same manner as schedule I synthetic cathinones. That is, 4-CMC, similar to other stimulant substances, is most likely ingested by swallowing capsules or tablets or snorted by nasal insufflation of the powder tablets. Demographic data collected from toxicology analyses suggest that the main users of 4-CMC are young adults. In addition, there is evidence that 4-CMC is being ingested with other substances, including other synthetic cathinones, common cutting agents, or other substances of abuse.

5. Scope, Duration, and Significance of Abuse

Evidence in the record shows that 4-CMC is a recreational drug of abuse. According to HHS, based on the pharmacological properties of 4-CMC, the scope, duration, and significance of abuse of 4-CMC would be similar to stimulants that are scheduled under the CSA, including the schedule I substance MDMA as well as the schedule II stimulants cocaine and methamphetamine, if uncontrolled. Law enforcement data is also evidence of the abuse of 4-CMC.

According to HHS, evidence of 4-CMC abuse is confirmed by data from poison control centers (PCC). PCC data is derived from the National Poison Data System (NPDS), a database managed by the American Association of Poison Control Centers (AAPCC).¹³ Between 2010 and 2019, there were 13,238 PCC cases involving synthetic cathinones, of which 10,482 were abuse cases. Approximately 7,775 (74 percent) of the synthetic cathinone cases involved a synthetic cathinone as a single drug substance. HHS reported that it is likely that some portion of these cases involved 4-CMC exposure because 4-CMC is a synthetic cathinone. PCC data also showed that the most common category of medical outcome were cases

among other things, concluded that HHS's two-part test would be sufficient to establish that a drug has a currently accepted medical use. Office of Legal Counsel, Memorandum for Merrick B. Garland Attorney General Re: Questions Related to the Potential Rescheduling of Marijuana at 3 (April 11, 2024). For purposes of this proposed rule, there is no evidence that health care providers have widespread experience with medical use of 4-CMC, or that the use of 4-CMC is recognized by entities that regulate the practice of medicine under either the traditional five-part test or the two-part test.

¹³ AAPCC is a nationwide network of PCCs that receive reports from individuals, healthcare professionals, and other interested persons in the general U.S. population regarding exposures to prescription drugs and other substances.

with moderate effects (*i.e.*, symptoms that are prolonged and involved some treatments) (3,746 of 5,654, or 66.3 percent). Of the cases admitted to a health care facility, most (3,039 of 4,720, or 64.4 percent) were admitted to a critical care unit. From these data, HHS concluded that individuals likely seek aid through PCCs or emergency departments (ED) following ingestion of synthetic cathinones because of the known adverse effects of synthetic cathinones.

Evidence of 4-CMC abuse is also confirmed by law enforcement seizure data. According to analyses by forensic laboratories, drug exhibits received from State, local, or Federal law enforcement agencies were found to contain 4-CMC. Between January 2014 and August 2024, NFLIS-Drug registered 399 reports from Federal, State, and local forensic laboratories identifying this substance in drug-related exhibits from 33 states.¹⁴ There is additional evidence that 4-CMC is abused internationally. 4-CMC has been identified in items seized by law enforcement agencies in countries such as China, Czechia, Hungary, Indonesia, and Poland. These encounters of 4-CMC by law enforcement indicate that this substance is being trafficked in the United States and internationally. The abuse of 4-CMC in the United States and internationally indicates that the abuse of 4-CMC is widespread.

6. What, if Any, Risk There Is to the Public Health

Available evidence in the record on the overall public health risks associated with the use of 4-CMC suggests that it can cause acute health problems leading to ED admissions and death. Indeed, 4-CMC has been associated with overdoses and deaths of individuals. Acute effects of 4-CMC are those typical of sympathomimetic agents (*e.g.*, cocaine, methamphetamine, amphetamine) and among other effects include euphoria, increased energy, sociability and sexuality, visual and auditory hallucinations, strong empathogenic feelings, bruxism, light-headedness, dizziness, slurred speech, slowed behavior, mydriasis, increased drive, disorientation as to time, place, and surroundings, tachycardia, agitation, logorrhea, poor light reflex, and difficulty walking and holding items. In addition, products containing 4-CMC often do not bear labeling information regarding their ingredients and, if they do, such labels may not contain the expected active ingredient or identify the health risks and potential

¹⁴ NFLIS-Drug was queried on September 4, 2024.

hazards associated with these products. These factors demonstrate that 4-CMC is a serious public health threat.

7. Its Psychic or Physiological Dependence Liability

According to the HHS eight-factor analysis, the psychic or physiological dependence liability of 4-CMC is demonstrated by animal abuse-related studies. HHS found that the pharmacological data (*e.g.*, locomotor studies) strongly suggest that 4-CMC produces behavioral effects that are similar to those of schedule I and II stimulants. Because 4-CMC shares pharmacological properties with those of the schedule I and II substances that have dependence potential, such as methamphetamine, cocaine, and MDMA, it is probable that 4-CMC has a dependence profile similar to these substances which are known to cause substance dependence. It is also probable that 4-CMC will have rewarding properties similar to those of schedule I and II stimulants and, consequently, psychic dependence of 4-CMC can develop and may contribute to its continued use among individuals who abuse it despite its adverse consequences. Thus, as HHS notes, it is likely that 4-CMC will produce similar psychic dependence to schedule I and II stimulant drugs.

8. Whether the Substance Is an Immediate Precursor of a Substance Already Controlled Under the CSA

4-CMC is not an immediate precursor of any substance controlled under the CSA, as defined in 21 U.S.C. 802(23).

Conclusion

After considering the scientific and medical evaluation conducted by HHS, HHS's scheduling recommendation, and DEA's own eight-factor analysis, DEA finds that the facts and all relevant data constitute substantial evidence of the potential for abuse of 4-CMC. As such, DEA hereby proposes to permanently schedule 4-CMC as a schedule I controlled substance under the CSA. This action would enable the United States to meet its obligations under the 1971 Convention on Psychotropic Substances.

Proposed Determination of Appropriate Schedule

The CSA establishes five schedules of controlled substances known as schedules I, II, III, IV, and V. The CSA also outlines the findings required to place a drug or other substance in any particular schedule.¹⁵ After

consideration of the analysis and recommendation of the Assistant Secretary for Health of HHS and review of all other available data, the Administrator of DEA, pursuant to 21 U.S.C. 811(a) and 812(b)(1), finds that:

1. 4-CMC Has a High Potential for Abuse

According to HHS, 4-CMC is structurally and pharmacologically similar to schedule I and II stimulant substances, such as schedule I synthetic cathinones, methamphetamine, and MDMA. 4-CMC demonstrated activity as a monoamine reuptake inhibitor at dopamine, serotonin, and norepinephrine transporters. This mechanism of action is similar to the schedule I substances 4-FMC, mephedrone, MDMA, and methcathinone, as well as the schedule II stimulants, cocaine and methamphetamine. In locomotor studies, 4-CMC produced behavioral stimulation similar to that of the schedule II stimulants cocaine and methamphetamine and the schedule I stimulant MDMA. In drug discrimination studies, 4-CMC fully generalized to the discriminative stimulus effects of the schedule II stimulants cocaine and methamphetamine and the schedule I stimulant MDMA. Thus, 4-CMC elicits pharmacological effects similar to cocaine, methamphetamine, MDMA, and methcathinone, illustrating a high potential for abuse that is similar to substances in schedules I and II of the CSA. Overall, these data provide supportive evidence that 4-CMC has a high potential for abuse that is similar to substances in schedule I or II of the CSA.

2. 4-CMC has No Currently Accepted Medical Use in Treatment in the United States

HHS stated that FDA has not approved a marketing application for a drug product containing 4-CMC for any indication. Moreover, FDA is not aware of any adequate and well-controlled clinical studies that show 4-CMC is safe and effective for any intended use. DEA further notes that, according to established DEA procedure and case law, 4-CMC has no currently accepted medical use. Thus, evidence demonstrates that 4-CMC has no currently accepted medical use in treatment in the United States.

3. There is a Lack of Accepted Safety for Use of 4-CMC Under Medical Supervision

Currently, 4-CMC does not have an accepted medical use. And because it

has not been approved for use by FDA, its safety under medical supervision has not been determined. Thus, there is a lack of accepted safety for use of 4-CMC under medical supervision.

Based on these findings, the Administrator concludes that 4-chloromethcathinone (4-CMC, 1-(4-chlorophenyl)-2-(methylamino)propan-1-one), including its salts, isomers, and salts of isomers, warrants control in schedule I of the CSA.

Requirements for Handling 4-CMC

If this rule is finalized as proposed, 4-CMC would be subject to the CSA's schedule I regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, importation, exportation, engagement in research, and conduct of instructional activities or chemical analysis with, and possession of schedule I controlled substances including the following:

1. Registration. Any person who handles (manufactures, distributes, reverse distributes, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) 4-CMC, or who desires to handle 4-CMC, would be required to be registered with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312, as of the effective date of a final scheduling action. Any person who currently handles 4-CMC, and is not registered with DEA, would need to submit an application for registration and may not continue to handle 4-CMC as of the effective date of a final scheduling action, unless DEA has approved that application for registration pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312.

2. Disposal of stocks. Any person who does not desire or is not able to obtain a schedule I registration would be required to surrender all quantities of currently held 4-CMC or to transfer all quantities of currently held 4-CMC to a person registered with DEA before the effective date of a final scheduling action, in accordance with all applicable Federal, State, local, and Tribal laws. As of the effective date of a final scheduling action, 4-CMC would be required to be disposed of in accordance with 21 CFR part 1317, in addition to all other applicable Federal, State, local, and Tribal laws.

3. Security. 4-CMC would be subject to schedule I security requirements and would need to be handled and stored pursuant to 21 U.S.C. 821, 823, and 871(b) and in accordance with 21 CFR

¹⁵ 21 U.S.C. 812(b).

1301.71 through 1301.76 as of the effective date of a final scheduling action. Non-practitioners handling 4-CMC would also need to comply with the employee screening requirements of 21 CFR 1301.90 through 1301.93.

4. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of 4-CMC would need to comply with 21 U.S.C. 825 and 958(e) and be in accordance with 21 CFR part 1302, as of the effective date of a final scheduling action.

5. *Quota.* Only registered manufacturers would be permitted to manufacture 4-CMC in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303 as of the effective date of a final scheduling action.

6. *Inventory.* Every DEA registrant who possesses any quantity of 4-CMC on the effective date of a final scheduling action would be required to take an inventory of 4-CMC on hand at that time, pursuant to 21 U.S.C. 827 and 958 and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

Any person who becomes registered with DEA to handle 4-CMC on or after the effective date of a final scheduling action would be required to have an initial inventory of all stocks of controlled substances (including 4-CMC) on hand on the date the registrant first engages in the handling of controlled substances pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11(a) and (b).

After the initial inventory, every DEA registrant must take an inventory of all controlled substances (including 4-CMC) on hand every two years, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

7. *Records and Reports.* Every DEA registrant would be required to maintain records and submit reports with respect to 4-CMC pursuant to 21 U.S.C. 827 and 958(e) and in accordance with 21 CFR parts 1304 and 1312, as of the effective date of a final scheduling action. Manufacturers and distributors would be required to submit reports regarding 4-CMC to the Automation of Reports and Consolidated Order System (ARCOS) pursuant to 21 U.S.C. 827 and in accordance with 21 CFR parts 1304 and 1312, as of the effective date of a final scheduling action.

8. *Order Forms.* Every DEA registrant who distributes 4-CMC would be required to comply with the order form requirements, pursuant to 21 U.S.C. 828 and in accordance with 21 CFR part 1305, as of the effective date of a final scheduling action.

9. *Importation and Exportation.* All importation and exportation of 4-CMC would need to comply with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312, as of the effective date of a final scheduling action.

10. *Liability.* Any activity involving 4-CMC not authorized by, or in violation of, the CSA or its implementing regulations would be unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Executive Orders 12866, 13563, and 14094 (Regulatory Review)

In accordance with 21 U.S.C. 811(a), this proposed scheduling action is subject to formal rulemaking procedures performed “on the record after opportunity for a hearing,” which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order (E.O.) 12866 and the principles reaffirmed in E.O. 13563. E.O. 14094 modernizes the regulatory review process to advance policies that promote the public interest and address national priorities.

Executive Order 12988, Civil Justice Reform

This proposed regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This proposed rulemaking does not have federalism implications warranting the application of E.O. 13132. The proposed rule does not have substantial direct effects on the States, on the relationship between the National

Government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

This proposed rule does not have Tribal implications warranting the application of E.O. 13175. It does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Regulatory Flexibility Act

The Administrator, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–602, has reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities.

DEA proposes placing the substance 4-chloromethcathinone (4-CMC, 1-(4-chlorophenyl)-2-(methylamino)propan-1-one), including its salts, isomers, and salts of isomers, in schedule I of the CSA. This action is being taken to enable the United States to meet its obligations under the 1971 Convention on Psychotropic Substances. If finalized, this action would impose the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis with, or possess), or propose to handle, 4-CMC.

The entities affected by this proposed rule include the manufacturers, distributors, importers, exporters, and researchers of 4-CMC. DEA determines the North American Industry Classification System (NAICS) industries that best represent these business activities. Table 1 lists the business activities and corresponding NAICS industries.¹⁶

¹⁶ Executive Office of the President Office of Management and Budget, North American Industry Classification System, United States, 2022, https://www.census.gov/naics/reference_files_tools/2022_NAICS_Manual.pdf. (Accessed 4/2/2024)

TABLE 1—BUSINESS ACTIVITY AND CORRESPONDING NAICS INDUSTRIES

Business activity	NAICS code	NAICS industry description
Manufacturer	325412	Pharmaceutical Preparation Manufacturing.
Distributor, Importer, Exporter	424210	Drugs and Druggists' Sundries Merchant Wholesalers.
	424690	Other Chemical and Allied Products Merchant Wholesalers.
Researcher	541715	Research and Development in the Physical, Engineering, and Life Sciences (except
	611310	Nanotechnology and Biotechnology).
		Colleges, Universities and Professional Schools.

From Statistics of U.S. Businesses (SUSB) data, DEA determined the number of firms and small firms for each of the affected industries, and by

comparing the number of affected small entities to the number of small entities for each industry, DEA determine whether a substantial number of small

entities are affected in any of the industries. Table 2 lists the number of firms, small firms, and percent small firms in each affected industry.

TABLE 2—PERCENT AFFECTED SMALL ENTITIES BY INDUSTRY

NAICS industry	Firms ¹⁷	SBA size standard ¹⁸	Small firms ¹⁹	Percent small entities (%)
325412-Pharmaceutical Preparation Manufacturing	1,007	1,300	931	92.4
424210—Drugs and Druggists' Sundries Merchant Wholesalers	6,958	250	6,663	95.8
424690—Other Chemical and Allied Products Merchant Wholesalers	6,069	175	5,781	95.3
541715—Research and Development in the Physical, Engineering, and Life Sciences (except Nanotechnology and Biotechnology)	8,019	1,000	7,571	94.4
611310—Colleges, Universities and Professional Schools	2,433	\$34.5	1,515	62.3

Based on the American Chemical Society's SciFinder database, DEA identified 10 entities supplying 4-CMC across these industries. Suppliers include 325412, 424210, and 424690 industries. Even if all affected suppliers were small entities, they would account for only 0.15 percent of the small entities in those industries, not a substantial number.²⁰ Additionally, DEA expects the number of researchers working with 4-CMC is small because 4-CMC lacks current marketing approval under a new drug application or an abbreviated new drug application, and is not subject to an investigational new drug application as noted in the HHS review. Also, DEA believes the researchers working with 4-CMC may also work with other controlled substances; hence, they have probably already registered with DEA and are qualified to handle controlled substances. For these reasons, DEA believes the number of affected researchers that are small entities is not a substantial number of small entities in 541715 and 622310 industries.

The primary costs associated with this proposed rule would be the annual registration fee for Schedule I controlled substances (\$3,699 for manufacturers, \$1,850 for distributors, and \$296 for

researchers). As mentioned above, DEA has identified 13 domestic suppliers of 4-CMC from the SciFinder database and none of these suppliers has registered with DEA to handle Schedule I controlled substances. However, it is common for suppliers to have items in their catalog while not actually having any material level of sales because FDA has not approved a marketing application for a drug product containing 4-CMC. Therefore, some suppliers may simply remove 4-CMC from their catalog without any impact. Additionally, as discussed above, the researchers working with 4-CMC are likely to work with other controlled substances and hence, must already register with DEA.

In summary, the small entities impacted by this proposed rule are those in 325412-Pharmaceutical Preparation Manufacturing, 424210—Drugs and Druggists' Sundries Merchant Wholesalers, and 424690-Other Chemical and Allied Products Merchant Wholesalers. The affected small entities account for less than 0.15 percent of the small businesses and are not likely to manufacture or carry inventory of 4-CMC. As such, the proposed rule, if finalized, is not expected to result in a

significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1501 *et seq.*, DEA has determined and certifies that this action would not result in any Federal mandate that may result “in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year” Therefore, neither a Small Government Agency Plan nor any other action is required under the UMRA.

Paperwork Reduction Act of 1995

This proposed rule would not impose a new collection or modify an existing collection of information under the Paperwork Reduction Act of 1995.²¹ Also, this proposed rule would not impose new or modify existing recordkeeping or reporting requirements on state or local governments, individuals, businesses, or organizations. However, this proposed rule would require compliance with the following existing OMB collections: 1117–0003, 1117–0004, 1117–0006, 1117–0008, 1117–0009, 1117–0010,

¹⁷ Statistics of U.S. Businesses, 2021 SUSB Annual Data Tables by Establishment Industry, <https://www.census.gov/data/tables/2021/econ/susb/2021-susb-annual.html>. (Accessed 4/2/2024).

¹⁸ U.S. Small Business Administration, Table of size standards, Version March 2023, Effective: March 17, 2023, https://www.sba.gov/sites/sbagov/files/2023-06/Table%20of%20Size%20Standards_

Effective%20March%2017%2C%202023_.xlsx. (Accessed 4/2/2024).

¹⁹ See footnote 17.

²⁰ 20/(931 + 6,664 + 5,781) = 0.15%.

²¹ 44 U.S.C. 3501–3521.

1117–0012, 1117–0014, 1117–0021, 1117–0023, 1117–0029, and 1117–0056. 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.

Signing Authority

This document of the Drug Enforcement Administration was signed on December 13, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, DEA proposes to amend 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.11, add paragraph (d)(105) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *

* * * * *

(105) 4-Chloromethcathinone
(4-CMC, 1-(4-chlorophenyl)-
2-(methylamino)propan-1-
one) 1239

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[FR Doc. 2024–30359 Filed 12–27–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–1457]

Schedules of Controlled Substances: Placement of Seven Specific Fentanyl-Related Substances in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration proposes placing seven fentanyl-related substances, as identified in this proposed rule, in schedule I of the Controlled Substances Act. These seven substances fall within the definition of fentanyl-related substances set forth in the February 6, 2018 temporary scheduling order. Through the Temporary Reauthorization and Study of Emergency Scheduling of Fentanyl Analogues Act, which became law on February 6, 2020, Congress extended the temporary control of fentanyl-related substances until May 6, 2021. This temporary order was subsequently extended multiple times, most recently on December 29, 2022, through the Consolidated Appropriations Act, 2023, which extended the order until December 31, 2024. If finalized, this action would make permanent the existing regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess), or propose to handle these seven specific controlled substances.

DATES: Comments must be submitted electronically or postmarked on or before January 29, 2025.

Interested persons may file a request for a hearing or waiver of hearing pursuant to 21 CFR 1308.44 and in accordance with 21 CFR 1316.47 and/or 1316.49, as applicable. Requests for a hearing, and waivers of an opportunity for a hearing or to participate in a hearing, must be received on or before January 29, 2025.

ADDRESSES: Interested persons may file written comments on this proposal in accordance with 21 CFR 1308.43(g). To ensure proper handling of comments, please reference “Docket No. DEA–1457” on all electronic and written correspondence, including any attachments.

• **Electronic comments:** The Drug Enforcement Administration (DEA)

encourages commenters to submit all comments electronically through the Federal eRulemaking Portal which provides the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number for your comment. Submitted comments are not instantaneously available for public view on *Regulations.gov*. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

• **Paper comments:** Paper comments that duplicate electronic submissions are not necessary. Should you wish to mail a paper comment *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

• **Hearing requests:** All requests for a hearing and waivers of participation, together with a written statement of position on the matters of fact and law asserted in the hearing, must be filed with the DEA Administrator, who will make the determination of whether a hearing will be needed to address such matters of fact and law in the rulemaking. Such requests must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152. For informational purposes, a courtesy copy of requests for hearing and waivers of participation should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

• **Paperwork Reduction Act Comments:** All comments concerning collections of information under the Paperwork Reduction Act must be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for DOJ, Washington, DC 20503. Please state that your comment refers to Docket No. DEA–1457.

FOR FURTHER INFORMATION CONTACT: Dr. Terrence L. Boos, Drug and Chemical

Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362–3249.

SUPPLEMENTARY INFORMATION: In this proposed rule, the Drug Enforcement Administration (DEA) proposes to permanently schedule the following seven controlled substances in schedule I of the Controlled Substances Act (CSA), including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

- *para*-chlorofentanyl (*N*-(4-chlorophenyl)-*N*-(1-phenethylpiperidin-4-yl)propionamide),
- *ortho*-chlorofentanyl (*N*-(2-chlorophenyl)-*N*-(1-phenethylpiperidin-4-yl)propionamide),
- *meta*-fluorofentanyl (*N*-(3-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)furan-2-carboxamide),
- *ortho*-methylcyclopropyl fentanyl (*N*-(2-methylphenyl)-*N*-(1-phenethylpiperidin-4-yl)cyclopropanecarboxamide),
- *beta*-methylacetyl fentanyl (*N*-phenyl-*N*-(1-(2-phenylpropyl)piperidin-4-yl)acetamide),
- tetrahydrothiofuran fentanyl (*N*-(1-phenethylpiperidin-4-yl)-*N*-phenyltetrahydrothiophene-2-carboxamide),
- *para*-fluoro valeryl fentanyl (*N*-(4-fluorophenyl)-*N*-(1-phenethylpiperidin-4-yl)pentanamide).

Posting of Public Comments

All comments received in response to this docket are considered part of the public record. DEA will make comments available for public inspection online at <https://www.regulations.gov>, unless reasonable cause is given. Such information includes personal or business identifiers (such as name, address, state of federal identifiers, etc.) voluntarily submitted by the commenter.

Commenters submitting comments which include personal identifying information (PII), confidential, or proprietary business information that the commenter does not want made publicly available should submit two copies of the comment. One copy must be marked “CONTAINS CONFIDENTIAL INFORMATION” and should clearly identify all PII or business information the commenter does not want to be made publicly available, including any supplemental materials. DEA will review this copy, including the claimed PII and confidential business information, in its

consideration of comments. The second copy should be marked “TO BE PUBLICLY POSTED” and must have all claimed confidential PII and business information already redacted. DEA will post only the redacted comment on <https://www.regulations.gov> for public inspection. DEA generally will not redact additional information contained in the comment marked “TO BE PUBLICLY POSTED.” The Freedom of Information Act applies to all comments received.

For easy reference, an electronic copy of this document and supplemental information to this proposed scheduling action are available at <https://www.regulations.gov>.

Request for Hearing or Appearance; Waiver

Pursuant to 21 U.S.C. 811(a), this action is a formal rulemaking “on the record after opportunity for a hearing.” Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (APA), 5 U.S.C. 551–559.¹ Interested persons, as defined in 21 CFR 1300.01(b), may file requests for a hearing in conformity with the requirements of 21 CFR 1308.44(a) and 1316.47(a), and such requests must:

- (1) state with particularity the interest of the person in the proceeding;
- (2) state with particularity the objections or issues concerning which the person desires to be heard; and
- (3) state briefly the position of the person with regard to the objections or issues.

Any interested person may file a waiver of an opportunity for a hearing or to participate in a hearing in conformity with the requirements of 21 CFR 1308.44(c), together with a written statement of position on the matters of fact and law involved in any hearing.²

All requests for a hearing and waivers of participation, together with a written statement of position on the matters of fact and law involved in such hearing, must be sent to DEA using the address information provided above. The decision whether a hearing will be needed to address such matters of fact and law in the rulemaking will be made by the Administrator. If a hearing is needed, DEA will publish a notification of hearing on the proposed rulemaking in the **Federal Register**.³ Further, once the Administrator determines a hearing is needed to address such matters of fact and law in rulemaking, she will then

designate an Administrative Law Judge (ALJ) to preside over the hearing. The ALJ’s functions shall only commence upon designation, as provided in 21 CFR 1316.52.

In accordance with 21 U.S.C. 811 and 812, the purpose of a hearing would be to determine whether *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuran fentanyl, and *para*-fluoro valeryl fentanyl meet the statutory criteria for placement in schedule I, as proposed in this rule.

Legal Authority

The CSA provides that proceedings for the issuance, amendment, or repeal of the scheduling of any drug or other substance may be initiated by the Attorney General (delegated to the Administrator of DEA pursuant to 28 CFR 0.100) on his own motion, at the request of the Secretary of Health and Human Services (HHS), or on the petition of an interested party.⁴ This proposed action is initiated on the Administrator’s own motion and supported by, *inter alia*, a recommendation from the Assistant Secretary for Health of HHS (Assistant Secretary for HHS or Assistant Secretary) and an evaluation of all other relevant data by DEA. If finalized, this action would make permanent the existing temporary regulatory controls and administrative, civil, and criminal sanctions of schedule I controlled substances on any person who handles or proposes to handle these seven substances.

Background

On February 6, 2018, pursuant to 21 U.S.C. 811(h)(1), DEA published an order in the **Federal Register** (83 FR 5188) temporarily placing fentanyl-related substances, as defined in that order, in schedule I of the CSA based upon a finding that these substances pose an imminent hazard to the public safety.⁵ As discussed below in Factor 3, the seven substances named in this proposed rule meet the existing definition of fentanyl-related substances as they are not otherwise controlled in any other schedule (*i.e.*, not included under another DEA Controlled Substance Code Number) and are structurally related to fentanyl by one or more of the five modifications listed under the definition. That temporary

¹ 21 CFR 1308.41 through 1308.45; 21 CFR part 1316, subpart D.

² 21 CFR 1316.49.

³ 21 CFR 1308.44(b), 1316.53.

⁴ 21 U.S.C. 811(a).

⁵ *Schedules of Controlled Substances: Temporary Placement of Fentanyl-Related Substances in Schedule I*, 83 FR 5188 (Feb. 6, 2018).

order was effective upon the date of publication. Pursuant to 21 U.S.C. 811(h)(2), the temporary control of fentanyl-related substances, a class of substances as defined in the order, as well as the seven specific substances already covered by that order, was set to expire on February 6, 2020. However, on February 6, 2020, as explained in DEA's April 10, 2020 correcting amendment),⁶ Congress extended that expiration date until May 6, 2021, by enacting the Temporary Reauthorization and Study of the Emergency Scheduling of Fentanyl Analogues Act.⁷ This temporary order was subsequently extended multiple times, most recently on December 29, 2022, through the Consolidated Appropriations Act, 2023,⁸ which extended the order until December 31, 2024. Consequently, the temporary control of these seven substances will remain in effect until December 31, 2024, unless it is extended. Accordingly, as published elsewhere in this issue of the **Federal Register**, the DEA Administrator is ordering an extension of this temporary order as it relates to these seven substances.

The Administrator, on her own motion pursuant to 21 U.S.C. 811(a), is initiating proceedings to permanently schedule *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl in schedule I of the CSA. Pursuant to 21 U.S.C. 811(b), DEA gathered the necessary data and reviewed the available information regarding the pharmacology, chemistry, trafficking, actual abuse, pattern of abuse, and the relative potential for abuse for these substances. On April 3, 2023, in accordance with 21 U.S.C. 811(b), the Administrator submitted a request to the Assistant Secretary to provide DEA with a scientific and medical evaluation of available information and a scheduling recommendation for these seven substances.

On October 25, 2024, the Assistant Secretary submitted HHS's scientific and medical evaluation and scheduling recommendation for *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and

para-fluoro valeryl fentanyl and their salts to the Administrator. The Secretary recommended placing these seven fentanyl related substances in schedule I of the CSA. In accordance with 21 U.S.C. 811(c), upon receipt of the scientific and medical evaluation and scheduling recommendation from HHS, DEA reviewed the documents and all other relevant data and conducted its own eight-factor analysis of the abuse potential of these seven substances.

Proposed Determination To Permanently Schedule Seven Specific Fentanyl-Related Substances

As discussed in the background section, the Administrator is initiating proceedings, pursuant to 21 U.S.C. 811(a), to permanently add *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl to schedule I. DEA reviewed the scientific and medical evaluation and scheduling recommendation received from HHS, and all other relevant data and conducted its own eight-factor analysis of the abuse potential of these seven substances pursuant to 21 U.S.C. 811(c). Included below is a brief summary of each factor as analyzed by HHS and DEA, and as considered by DEA in its proposed scheduling action. Readers should refer to the full eight-factor analyses prepared by HHS and by DEA in support of this proposal, which are available in their entirety under "Supporting Documents" of the public docket for this proposed rule at <https://www.regulations.gov> under Docket Number "DEA-1457."

1. The Drug's Actual or Relative Potential for Abuse

In addition to considering the information HHS provided in its scientific and medical evaluation document for these seven fentanyl-related substances, DEA also considered all other relevant data regarding actual or relative potential for abuse of these three substances. The term "abuse" is not defined in the CSA; however, the legislative history of the CSA suggests that DEA consider the following criteria when determining whether a particular drug or substance has a potential for abuse:⁹

(a) There is evidence that individuals are taking the drug or drugs containing such a substance in amounts sufficient

to create a hazard to their health or to the safety of other individuals or to the community; or

(b) There is significant diversion of the drug or drugs containing such a substance from legitimate drug channels; or

(c) Individuals are taking the drug or drugs containing such a substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs in the course of his professional practice; or

(d) The drug or drugs containing such a substance are new drugs so related in their action to a drug or drugs already listed as having a potential for abuse to make it likely that the drug will have the same potentiality for abuse as such drugs, thus making it reasonable to assume that there may be significant diversions from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to the health of the user or to the safety of the community.

Law enforcement seizure data indicate that individuals have and are using *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs in the course of his professional practice, especially since there is no currently accepted medical use for these seven substances. According to the National Forensic Laboratory Information System (NFLIS-Drug)¹⁰ database, which collects drug identification results from drug cases submitted to and analyzed by Federal, State, and local forensic laboratories, there have been 214 reports for *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl between 2020 and 2024. According to HHS, *para*-

¹⁰ The National Forensic Laboratory Information System (NFLIS) represents an important resource in monitoring illicit drug trafficking, including the diversion of legally manufactured pharmaceuticals into illegal markets. NFLIS is a comprehensive information system that includes data from forensic laboratories that handle more than 96% of an estimated 1.0 million distinct annual State and local drug analysis cases. NFLIS includes drug chemistry results from completed analyses only. While NFLIS data is not direct evidence of abuse, it can lead to an inference that a drug has been diverted and abused. See *Schedules of Controlled Substances: Placement of Carisoprodol Into Schedule IV*, 76 FR 77330, 77332 (Dec. 12, 2011). NFLIS data were queried November 1, 2024.

⁶ *Schedules of Controlled Substances: Temporary Placement of Fentanyl-Related Substances in Schedule I; Correction*, 85 FR 20155 (Apr. 10, 2020).

⁷ Public Law 116-114, sec. 2, 134 Stat. 103.

⁸ Public Law 117-328, division O, title VI, sec. 601.

⁹ Comprehensive Drug Abuse Prevention and Control Act of 1970, H.R. Rep. No. 91-1444, 91st Cong., Sess. 1 (1970); reprinted in 1970 U.S.C.A.N. 4566, 4603.

chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl are not legally marketed as drugs in the United States or anywhere else in the world. These substances have no approved medical use other than their limited use in scientific research. As such, the legal sources of the substances are limited to legitimate chemical companies supplying them for scientific research.

para-Chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl are not approved for medical use and are not formulated or approved for clinical use. As such, all use is on an individual's own initiative, rather than on the basis of medical advice from a practitioner licensed by law to administer drugs. Law enforcement seizures and case reports demonstrate that individuals are taking these seven fentanyl-related substances on their own initiative, rather than on the basis of medical advice from a licensed practitioner.

Based on available data, *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl, are related in their effects to the actions of other mu-opioid receptor (MOR) agonists,¹¹ such as fentanyl, that are already listed as having potential for abuse. Because high doses of MOR agonists can produce respiratory depression leading to death, these fentanyl-related substances at high doses have substantial capability of creating hazards to the health of the user or to the safety of the community. According to HHS, these seven fentanyl-related substances exert their actions at least in part through the MOR and thus have a high likelihood of having substantially similar potential for abuse as other schedule I opioids. Both DEA's and HHS's eight-factor analyses found that the abuse potential of these substances is similar to other schedule I opioids and presents a hazard to the health and safety of individuals and the community.

¹¹ Drug Enforcement Administration—Veterans Affairs (DEA—VA) Interagency Agreement. Binding and Functional Activity at Delta, Kappa and Mu Opioid Receptors. In Vitro Receptor and Transporter Assays for Abuse Liability Testing for the DEA by the VA (unpublished data).

2. Scientific Evidence of the Drug's Pharmacological Effects, if Known

According to DEA and HHS, the pharmacological activity of these substances in humans is unknown. Data obtained from preclinical studies show that these fentanyl-related substances (*para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl) exhibit a pharmacological profile similar to that of fentanyl, morphine, and several schedule I opioid substances that are structurally related to fentanyl. Similar to fentanyl and other structurally related synthetic opioids, fentanyl-related substances namely *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl have been shown to bind to the mu-opioid receptors with varying affinities.¹² Also, similar to fentanyl and other structurally related synthetic opioids, these seven fentanyl-related substances behave as agonists at the MOR sites in *in vitro* functional studies.

Studies conducted to examine the antinociceptive effect of the seven fentanyl-related substances in a warm water tail-withdrawal assay and their mediation by opioid receptors as determined by naltrexone antagonism showed these seven fentanyl-related substances, similar to fentanyl and morphine, produced antinociceptive effects as measured by an increase in tail withdrawal latency.¹³ Pre-treatment with naltrexone, an opioid receptor antagonist, attenuated antinociceptive effects of the seven-fentanyl related substances. These data demonstrate that similar to morphine and fentanyl, *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, *para*-fluoro valeryl fentanyl produced dose-dependent antinociception in the warm-water tail-withdrawal assay that can be attenuated by naltrexone pre-treatment.

¹² *in vitro* Pharmacology data was collected through DEA—Veterans Affairs interagency agreement: "in vitro Receptor and Transporter Assays for Abuse Liability Testing for the DEA by the VA".

¹³ Gatch MB. (2024). Test of analgesic effects alone and in combination with naltrexone. 15DDHQ19F00001173, "Evaluation of Abuse Potential of Synthetic Opioids Using In Vivo Pharmacological Studies" (unpublished data).

There is a strong correlation between the discriminative stimulus effects of a given drug in animals and its subjective effects in humans.¹⁴ Data from drug discrimination studies¹⁵ show that the seven-fentanyl related substances fully and dose-dependently substitute for the discriminative stimulus effects produced by morphine in Sprague Dawley rats trained to discriminate 3.2 mg/kg morphine from saline.¹⁶ These data demonstrate *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl, similar to morphine (schedule II) and fentanyl (schedule II), are mu-opioid receptor agonists.

3. The State of Current Scientific Knowledge Regarding the Drug or Other Substance

para-Chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl are synthetic opioids in the 4-anilidopiperidine structural class which includes fentanyl. As defined in the February 6, 2018 temporary scheduling order, fentanyl-related substances include any substance not otherwise controlled in any schedule (*i.e.*, not included under any other Administration Controlled Substance Code Number) that is structurally related to fentanyl by one or more of the following modifications:

- (A) Replacement of the phenyl portion of the phenethyl group by any monocycle, whether or not further substituted in or on the monocycle;
- (B) substitution in or on the phenethyl group with alkyl, alkenyl, alkoxy, hydroxyl, halo, haloalkyl, amino or nitro groups;
- (C) substitution in or on the piperidine ring with alkyl, alkenyl, alkoxy, ester, ether, hydroxyl, halo, haloalkyl, amino or nitro groups;
- (D) replacement of the aniline ring with any aromatic monocycle, whether

¹⁴ Solinas M, Panlilio LV, Justinova Z, Yasar S, Goldberg SR. (2006). Using drug-discrimination techniques to study the abuse-related effects of psychoactive drugs in rats. *Nat Protoc.*1(3):1194–206.

¹⁵ Drug discrimination is widely used to determine whether a new test drug or substance is pharmacologically similar to a known drug of abuse.

¹⁶ DEA—Synthetic Opioids Purchase Agreement (2022–2024). Evaluation of synthetic opioid substances using analgesia and the drug discrimination assay. In Vivo Testing for the DEA by Gatch (Univ. of North Texas).

or not further substituted in or on the aromatic monocycle; and/or

(E) replacement of the *N*-propionyl group by another acyl group.

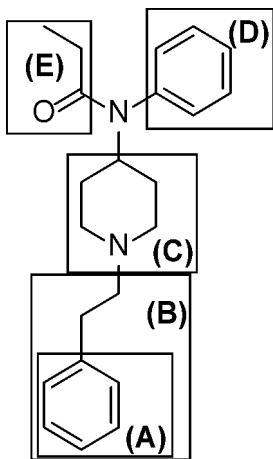


Figure 1: Regions of the Chemical Structure of Fentanyl Described in The Definition of a Fentanyl-Related Substance

According to the February 6, 2018 temporary scheduling order, the existence of a substance with anyone, or any combination, of above-mentioned modifications (see figure 1) would meet the structural requirements of the definition of fentanyl-related substances. The present seven substances fall within the definition of fentanyl-related substances by the following modifications:

1. *para*-chlorofentanyl: substitution on the aniline ring (meets definition for modification D);
2. *ortho*-chlorofentanyl: substitution on the aniline ring (meets definition for modification D);
3. *meta*-fluorofuranyl fentanyl: substitution on the aniline ring and replacement of the *N*-propionyl group with another acyl group (meets definition for modifications D and E);
4. *ortho*-methylcyclopropyl fentanyl: substitution on the aniline ring and replacement of the *N*-propionyl group with another acyl group (meets definition for modifications D and E);
5. *beta*-methylacetyl fentanyl: substitution on the phenethyl group with an alkyl group and replacement of the *N*-propionyl group with another acyl group (meets definition for modifications B and E);
6. tetrahydrothiofuranyl fentanyl: replacement of the *N*-propionyl group with another acyl group (meets definition for modification E);
7. *para*-fluoro valeryl fentanyl: substitution on the aniline ring and replacement of the *N*-propionyl group with another acyl group (meets definition for modifications D and E).

4. Its History and Current Pattern of Abuse

Evidence suggests that the pattern of abuse of *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl parallels that of prescription opioid analgesics. Currently, the United States is in the midst of an illicit opioid abuse epidemic. There has been a marked increase in the encounters of synthetic opioids that are structurally related to fentanyl that parallels an increase in deaths related to synthetic opioids. Thus, the recreational abuse of fentanyl-like substances continues to be a significant concern. These substances are distributed to users, often with unpredictable outcomes. *para*-Chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl have been encountered by law enforcement officials.

Law enforcement encountered these seven substances in the United States. According to the NFLIS¹⁷ database, 214 reports were registered containing six of the substances (*para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl) from state or local forensic laboratories from 2020 to 2024. *ortho*-Methylcyclopropyl fentanyl was not specifically listed in the NFLIS database, although in 2018, there were three reports of methylcyclopropyl fentanyl.

5. The Scope, Duration, and Significance of Abuse

The rapid appearance of fentanyl-related substances presents numerous challenges for forensic and toxicology laboratories. The identification of a new substance requires full structural elucidation, sometimes requiring specialized instrumentation not available to all forensic laboratories. Laboratories are required to quickly adapt testing procedures to identify new substances. It remains likely that the prevalence of these substances in opioid related emergency room admissions and deaths is underreported as standard immunoassays may not differentiate fentanyl from substances structurally related to fentanyl.

¹⁷ NFLIS data were queried November 1, 2024. NFLIS data reporting is still pending for 2023 and 2024 due to normal lag time.

The population likely to abuse fentanyl-related substances overlaps with the population abusing prescription opioid analgesics, heroin, fentanyl, and other synthetic opioid substances. Because abusers of fentanyl-related substances are likely to obtain these substances through unregulated sources, the identity, purity, and quantity are uncertain and inconsistent, thus posing significant adverse health risks to the end user. The misuse and abuse of opioids have been demonstrated and are well characterized. According to the most recent data from the National Survey on Drug Use and Health (NSDUH)¹⁸ of the Substance Abuse and Mental Health Services Administration (SAMHSA),¹⁹ in 2023, an estimated 8.9 million people aged 12 or older misused opioids in the past year, including 8.6 million prescription pain reliever misusers and 660,000 heroin users. In 2023, among people aged 12 or older, 828,000 people misused fentanyl in the past year. NSDUH data show that among people aged 12 or older in 2023, 627,000 people used illicitly manufactured fentanyl in the past year. This population is likely to be at risk of abusing fentanyl-related substances. Individuals who initiate (*i.e.*, use a drug for the first time) use of fentanyl-related substances are likely to be at risk of developing substance use disorder, overdose, and death, similar to the risks of other opioid analgesics (*e.g.*, fentanyl, morphine, etc.).

According to HHS, it is highly likely that the prevalence of these fentanyl-related substances in emergency room admissions and fatalities is under reported because standard immunoassays may not be sufficient to distinguish between fentanyl and

¹⁸ The National Survey on Drug Use and Health, formerly known as the National Household Survey on Drug Abuse (NHSDA), is conducted annually by the Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA). It is the primary source of estimates of the prevalence and incidence of nonmedical use of pharmaceutical drugs, illicit drugs, alcohol, and tobacco use in the United States. The survey is based on a nationally representative sample of the civilian, non-institutionalized population 12 years of age and older. The survey excludes homeless people who do not use shelters, active military personnel, and residents of institutional group quarters such as jails and hospitals. The NSDUH provides yearly national and state level estimates of drug abuse, and includes prevalence estimates by lifetime (*i.e.*, ever used), past year and past month abuse or dependence.

¹⁹ The Substance Abuse and Mental Health Services Administration (SAMHSA) is a branch of the U.S. Department of Health and Human Services (HHS). It is charged with improving the quality and availability of prevention, treatment, and rehabilitative services in order to reduce illness, death disability, and cost to society resulting from substance abuse and mental illness.

substances that are structurally related to fentanyl. Law enforcement reports demonstrate *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuran fentanyl, and *para*-fluoro valeryl fentanyl are being illicitly distributed and abused. The use of these seven fentanyl-related substances is likely to increase the scope, duration, and significance of abuse based on their pharmacological similarity to drugs that are abused in the current opioid epidemic (e.g., fentanyl).

6. What, if Any, Risk There Is to the Public Health

The increase in opioid overdose deaths in the United States has been exacerbated by the availability of potent synthetic opioids such as fentanyl and numerous other structurally related substances in the illicit drug market.²⁰ These substances have a history of being trafficked as replacements for other opioids, such as heroin and other synthetic opioids. Fentanyl is a potent synthetic opioid that is primarily prescribed for acute and chronic pain and is approximately 100 times more potent than morphine. As such, fentanyl has a high risk of abuse, dependence and overdose that can lead to death. Because fentanyl-related substances have a similar chemical structure to fentanyl, these substances are expected to have similar biological effects. Indeed, these seven fentanyl-related substances produced pharmacological effects similar to fentanyl. The adverse effects of substances structurally related to fentanyl on humans are largely identical to those of fentanyl and other opioid analgesics. These fentanyl-related substances pose the same qualitative public health risks as heroin, fentanyl, and other opioid analgesic substances. The DEA Toxicology Testing Program (DEA-Tox)²¹ identified

three drug paraphernalia where *para*-chlorofentanyl was detected. These cases occurred between May 2022 and June 2024. As the data demonstrate, the potential for overdoses exists for these substances and these substances pose risk to public health.

According to HHS, the lack of hospitalization or fatality for these seven fentanyl-related substances is not surprising because the enzyme linked immunosorbent assay (ELISA) which is used to detect fentanyl cross-reacts with fentanyl-related substances when fentanyl is present above a threshold level.²² Thus, fatalities that might be associated with the fentanyl-related substances may be underreported. As with any opioid not approved for medical use, the health and safety risks for users are high. Public health data suggest that *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuran fentanyl, and *para*-fluoro valeryl fentanyl may be a direct risk to public health.

7. Its Psychic or Physiological Dependence Liability

According to HHS, the psychic or physiologic dependence of these seven fentanyl-related substances has not been studied in clinical studies and is therefore unknown. HHS notes that pharmacology data for these substances as MOR agonists with known abuse potential demonstrates their property of producing physical and psychic dependence similar to other MOR agonists. The discontinuation of the use of MOR agonists, such as morphine and fentanyl (Schedule II drugs), is associated with withdrawal symptoms indicative of physical dependence. Opioid withdrawal syndrome is characterized by central nervous system irritability, gastrointestinal dysfunction, yawning, diaphoresis, and fever.²³ Thus, the pharmacological similarity and pattern of abuse of *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuran fentanyl, and *para*-fluoro valeryl fentanyl are indicative of their potential to possess a

of novel psychoactive substances, in addition to other drugs of abuse.

²² Guerrieri D, Kjellqvist F, Kronstrand R, Gr  n H. (2019). Validation and Cross-Reactivity Data for Fentanyl Analogs with the Immunolysis Fentanyl ELISA. *J Anal Toxicol*. 43(1):18–24.

²³ Katz R, Kelly W, Hsi A. (1994). Prospective study on the occurrence of withdrawal in critically ill children who receive fentanyl by continuous infusion. *Critical Care Medicine* 16:763–767.

psychic and physiological dependence liability similar to that of other mu opioid receptor agonist substances, such as heroin and fentanyl.

8. Whether the Substance is an Immediate Precursor of a Substance Already Controlled Under the CSA

para-Chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuran fentanyl, and *para*-fluoro valeryl fentanyl are not immediate precursors of any controlled substance of the CSA, as defined by 21 U.S.C. 802(23).

Conclusion: Based on consideration of the scientific and medical evaluation and accompanying recommendation of HHS, and on DEA's own eight-factor analysis, DEA finds that these facts and all relevant data constitute substantial evidence of potential for abuse of *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuran fentanyl, and *para*-fluoro valeryl fentanyl. As such, DEA proposes to permanently schedule these seven substances as controlled substances under the CSA.

Proposed Determination of Appropriate Schedule

The CSA establishes five schedules of controlled substances known as schedules I, II, III, IV, and V. The CSA also outlines the findings required to place a drug or other substance in any particular schedule.²⁴ After consideration of the analysis and recommendation of the Assistant Secretary for HHS and review of all other available data, the Administrator of DEA, pursuant to 21 U.S.C. 811(a) and 812(b)(1), finds that:

(1) *para*-Chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuran fentanyl, and *para*-fluoro valeryl fentanyl, similar to fentanyl, are mu-opioid receptor agonists. The seven fentanyl-related substances have analgesic effects, and these effects are mediated by μ -opioid receptor agonism. These substances that produce mu-opioid receptor agonist effects in the CNS are considered as having a high potential for abuse (e.g. morphine and fentanyl). Data obtained from drug discrimination studies indicate that *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofentanyl, *ortho*-methylcyclopropyl

²⁰ Centers for Disease Control and Prevention, (2024, April). Understanding the opioid overdose epidemic. <https://www.cdc.gov/overdose-prevention/about/understanding-the-opioid-overdoseepidemic.html> Spencer, M. R., Warner, M., Cisewski, J. A., Mini  o, A., Dodds, D., Perera, J., & Ahmad, F. B., Estimates of drug overdose deaths involving fentanyl, methamphetamine, cocaine, heroin, and oxycodone: United States, 2021. *Vital Statistics Rapid Release* (Report No. 27). National Center for Health Statistics; Zibbell, J. E., Aldridge, A., Grabenauer, M., Heller, D., Duhart Clarke, S., Pressley, D., & Smiley-McDonald, H. (2023). Associations between opioid overdose deaths and drugs confiscated by law enforcement and submitted to crime laboratories for analysis, United States, 2014–2019: An observational study. *The Lancet Regional Health—Americas*, 25.

²¹ DEA-TOX is a DEA-run program whereby unused biological samples from victims of drug overdoses can be extensively tested for the presence

²⁴ See 21 U.S.C. 812(b).

fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl fully substituted for the discriminative stimulus effects of morphine. Thus, these substances have a high potential for abuse.

(2) There is no FDA-approved drug application for *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl in the United States. Further, there are no adequate and well-controlled clinical studies for any of these substances, and there are no well-defined finished dosage forms for any of these fentanyl-related substances. There are no known therapeutic applications for these seven fentanyl-related substances, and thus they have no currently accepted medical use in the United States.²⁵

²⁵ Pursuant to 21 U.S.C. 812(b)(1)(B), when placing a drug or substance in schedule I of the CSA, DEA must consider whether the substance has a currently accepted medical use in treatment in the United States. First, DEA looks to whether the drug or substance has FDA approval. When no FDA approval exists, DEA has traditionally applied a five-part test to a drug or substance to determine whether a drug or substance has a currently medical use: i. the drug's chemistry must be known and reproducible; ii. there must be adequate safety studies; iii. there must be adequate and well-controlled studies proving efficacy; iv. the drug must be accepted by qualified experts; and v. the scientific evidence must be widely available. *Marijuana Scheduling Petition; Denial of Petition; Remand*, 57 FR 10499 (Mar. 26, 1992), *pet. for rev. denied*, *Alliance for Cannabis Therapeutics v. Drug Enforcement Admin.*, 15 F.3d 1131, 1135 (D.C. Cir. 1994). DEA applied the traditional five-part test and concluded the test was not satisfied. In a recent published letter in a different context, HHS applied an additional two-part test to determine currently accepted medical use for substances that do not satisfy the five-part test: (1) whether there exists widespread, current experience with medical use of the substance by licensed health care providers operating in accordance with implemented jurisdiction-authorized programs, where medical use is recognized by entities that regulate the practice of medicine, and, if so, (2) whether there exists some credible scientific support for at least one of the medical conditions for which part (1) is satisfied. On April 11, 2024, the Department of Justice's Office of Legal Counsel (OLC) issued an opinion, which, among other things, concluded that HHS's two-part test would be sufficient to establish that a drug has a currently accepted medical use. Office of Legal Counsel, Memorandum for Merrick B. Garland Attorney General Re: Questions Related to the Potential Rescheduling of Marijuana at 3 (April 11, 2024). In its eight-factor assessment, HHS determined that these seven fentanyl-related substances did not satisfy this two-part test. Therefore, since both DEA and HHS have determined that these seven fentanyl-related substances do not satisfy the five-part test, and HHS has determined that these seven fentanyl-related substances do not satisfy the additional two-part test, DEA concludes that *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl

(3) There is a lack of accepted safety for use of *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl under medical supervision. Because these seven substances have no FDA-approved medical use and have not been investigated as new drugs, their safety for use under medical supervision has not been determined. Therefore, there is a lack of accepted safety for use of these seven substances under medical supervision.

Based on these findings, the Administrator of DEA concludes that *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, warrant continued control in schedule I of the CSA.²⁶

Requirements for Handling *para*-Chlorofentanyl, *ortho*-Chlorofentanyl, *meta*-Fluorofuranyl fentanyl, *ortho*-Methylcyclopropyl fentanyl, *beta*-Methylacetyl fentanyl, Tetrahydrothiofuranyl fentanyl, and *para*-Fluoro valeryl fentanyl

As discussed above, these seven fentanyl-related substances are currently subject to a temporary scheduling order, which added them to schedule I. If this rule is finalized as proposed, *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl would be subject, on a permanent basis, to the CSA's schedule I regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, dispensing, importing, exporting, research, and conduct of instructional activities, including the following:

1. **Registration.** Any person who handles (manufactures, distributes, dispenses, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl

fentanyl, and *para*-fluoro valeryl fentanyl do not have a currently accepted medical use.

²⁶ 21 U.S.C. 812(b)(1).

fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl must be registered with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312.

2. **Security.** *para*-Chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl are subject to schedule I security requirements and must be handled and stored pursuant to 21 U.S.C. 821, 823, and in accordance with 21 CFR 1301.71 through 1301.76. Non-practitioners handling these seven substances also must comply with the screening requirements of 21 CFR 1301.90 through 1301.93.

3. **Labeling and Packaging.** All labels and labeling for commercial containers of *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl must comply with 21 U.S.C. 825 and 958(e) and be in accordance with 21 CFR part 1302.

4. **Quota.** Only registered manufacturers are permitted to manufacture *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303.

5. **Inventory.** Any person registered with DEA to handle *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl must have an initial inventory of all stocks of controlled substances (including these substances) on hand on the date the registrant first engages in the handling of controlled substances pursuant to 21 U.S.C. 827, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

After the initial inventory, every DEA registrant must take a new inventory of all stocks of controlled substances (including *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl) on hand

every two years pursuant to 21 U.S.C. 827 and 958(e) and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

6. *Records and Reports.* Every DEA registrant must maintain records and submit reports with respect to *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl, pursuant to 21 U.S.C. 827, 832(a), and 958(e), and in accordance with 21 CFR 1301.74(b) and (c) and 1301.76(b) and parts 1304, 1312, and 1317. Manufacturers and distributors would be required to submit reports regarding *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl to the Automation of Reports and Consolidated Order System pursuant 21 U.S.C. 827, and in accordance with 21 CFR parts 1304 and 1312.

7. *Order Forms.* Every DEA registrant who distributes *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl must comply with the order form requirements, pursuant to 21 U.S.C. 828 and 21 CFR part 1305.

8. *Importation and Exportation.* All importation and exportation of *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl must be in compliance with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

9. *Liability.* Any activity involving *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl not authorized by, or in violation of, the CSA or its implementing regulations is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Executive Orders 12866, 13563, and 14094 (Regulatory Review)

In accordance with 21 U.S.C. 811(a), this proposed scheduling action is

subject to formal rulemaking procedures done “on the record after opportunity for a hearing,” which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order (E.O.) 12866 and the principles reaffirmed in E.O. 13563. E.O. 14094 modernizes the regulatory review process to advance policies that promote the public interest and address national priorities.

Executive Order 12988, Civil Justice Reform

This proposed regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This proposed rulemaking does not have federalism implications warranting the application of E.O. 13132. The proposed rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have tribal implications warranting the application of E.O. 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Regulatory Flexibility Act

The Administrator, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–612, has reviewed this rule and by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities. On February 6, 2018, DEA published an order to temporarily place fentanyl-related substances, as defined in the order, in schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). However, as explained in DEA’s April

10, 2020 correcting amendment,²⁷ Congress extended that expiration date until May 6, 2021, by enacting the Temporary Reauthorization and Study of the Emergency Scheduling of Fentanyl Analogues Act.²⁸ This temporary order was subsequently extended multiple times, most recently on December 29, 2022, through the Consolidated Appropriations Act, 2023,²⁹ which extended the order until December 31, 2024. DEA estimates that all entities handling or planning to handle *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl have already established and implemented systems and processes required to handle these substances which meet the definition of fentanyl-related substances.

There are currently 170 registrations authorized to specifically handle the fentanyl-related substances as a class, which include one or more of the following substances: *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl, as well as a number of registered analytical labs that are authorized to handle schedule I controlled substances generally. Some of these entities are likely to be large entities. However, since DEA does not have information of registrant size, DEA conservatively assumes all of 170 registrants affected by this rule are small entities.

A review of the 170 registrations indicates that all entities that currently handle *para*-chlorofentanyl, *ortho*-chlorofentanyl, *meta*-fluorofuranyl fentanyl, *ortho*-methylcyclopropyl fentanyl, *beta*-methylacetyl fentanyl, tetrahydrothiofuranyl fentanyl, and *para*-fluoro valeryl fentanyl also handle other schedule I controlled substances and have established and implemented (or maintained) systems and processes required to handle these substances. Therefore, DEA anticipates that this proposed rule will impose minimal or no economic impact on any affected entities; and thus, will not have a significant economic impact on any of the 95 affected small entities. Therefore,

²⁷ *Schedules of Controlled Substances: Temporary Placement of Fentanyl-Related Substances in Schedule I; Correction*, 85 FR 20155 (Apr. 10, 2020).

²⁸ Public Law 116–114, sec. 2, 134 Stat. 103.

²⁹ Public Law 117–328, division O, title VI, sec. 601.

DEA has concluded that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.*, DEA has determined and certifies that this action would not result in any Federal mandate that may result “in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year” Therefore, neither a Small Government Agency Plan nor any other action is required under the UMRA of 1995.

Paperwork Reduction Act of 1995

This proposed rule would not impose a new collection or modify an existing collection of information under the Paperwork Reduction Act of 1995.³⁰ Also, this proposed rule would not impose new or modify existing recordkeeping or reporting requirements on state or local governments, individuals, businesses, or organizations. However, this proposed rule would require compliance with the following existing OMB collections: 1117–0003, 1117–0004, 1117–0006, 1117–0008, 1117–0009, 1117–0010, 1117–0012, 1117–0014, 1117–0021,

1117–0023, 1117–0029, and 1117–0056. 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.

Signing Authority

This document of the Drug Enforcement Administration was signed on December 19, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, DEA proposes to amend 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.11:

■ a. Redesignate paragraphs (b)(104) through (109) as paragraphs (b)(111) through (116);

■ b. Redesignate paragraphs (b)(87) through (103) as paragraphs (b)(93) through (109);

■ c. Redesignate paragraphs (b)(84) through (86) as paragraphs (b)(89) through (91);

■ d. Redesignate paragraphs (b)(82) and (83) as paragraphs (b)(86) and (87);

■ e. Redesignate paragraphs (b)(76) through (81) as paragraphs (b)(79) through (84);

■ f. Redesignate paragraphs (b)(59) through (75) as paragraphs (b)(61) through (77);

■ g. Redesignate paragraphs (b)(21) through (58) as paragraphs (b)(22) through (59); and

■ h. Add new paragraphs (b)(21), (60), (78), (85), (88), (92), and (110).

The additions read as follows:

§ 1308.11 Schedule I.

* * * * *

(b) * * *

(21)	<i>beta</i> -methylacetyl fentanyl (<i>N</i> -phenyl- <i>N</i> -(1-(2-phenylpropyl)piperidin-4-yl)acetamide)	9868
(60)	<i>meta</i> -fluorofuranyl fentanyl (<i>N</i> -(3-fluorophenyl)- <i>N</i> -(1-phenethylpiperidin-4-yl)furan-2-carboxamide)	9871
(78)	<i>ortho</i> -chlorofentanyl (<i>N</i> -(2-chlorophenyl)- <i>N</i> -(1-phenethylpiperidin-4-yl)propionamide)	9828
(85)	<i>ortho</i> -methylcyclopropyl fentanyl (<i>N</i> -(2-methylphenyl)- <i>N</i> -(1-phenethylpiperidin-4-yl)cyclopropanecarboxamide)	9849
(88)	<i>para</i> -chlorofentanyl (<i>N</i> -(4-chlorophenyl)- <i>N</i> -(1-phenethylpiperidin-4-yl)propionamide)	9818
(92)	<i>para</i> -fluoro valeryl fentanyl (<i>N</i> -(4-fluorophenyl)- <i>N</i> -(1-phenethylpiperidin-4-yl)pentanamide)	9870
(110)	tetrahydrothiofuranyl fentanyl (also known as: tetrahydrothiophene fentanyl) (<i>N</i> -(1-phenethylpiperidin-4-yl)- <i>N</i> -phenyltetrahydrothiophene-2-carboxamide)	9869

³⁰ 44 U.S.C. 3501–3521.

* * * * *

[FR Doc. 2024–30798 Filed 12–27–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 54**

[REG–124930–21]

RIN 1545–BQ35

DEPARTMENT OF LABOR**Employee Benefits Security Administration****29 CFR Part 2590**

RIN 1210–AC13

DEPARTMENT OF HEALTH AND HUMAN SERVICES**45 CFR Parts 147 and 156**

[CMS–9903–WN]

RIN 0938–AU94

Coverage of Certain Preventive Services Under the Affordable Care Act

AGENCY: Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws a notice of proposed rulemaking that appeared in the **Federal Register** on February 2, 2023, regarding coverage of certain preventive services under the Affordable Care Act.

DATES: As of December 23, 2024, the notice of proposed rulemaking that appeared in the **Federal Register** on February 2, 2023, at 88 FR 7236, is withdrawn.

FOR FURTHER INFORMATION CONTACT: Alex Krupnick, Internal Revenue Service, Department of the Treasury, at (202) 317–5500; Beth Baum or Matthew Meidell, Employee Benefits Security Administration, Department of Labor, at (202) 693–8335; David Mlawsky, Centers for Medicare & Medicaid Services, Department of Health and Human Services, at (410) 786–6851.

SUPPLEMENTARY INFORMATION: Section 2713 of the Public Health Service Act (PHS Act), as added by the Affordable

Care Act and incorporated into the Employee Retirement Income Security Act and the Internal Revenue Code, requires non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance coverage to provide coverage of certain recommended preventive services without imposing any cost-sharing requirements. These preventive services include, with respect to women, under comprehensive guidelines supported by the Health Resources and Services Administration, certain contraceptive services. Current regulations include exemptions and optional accommodations for entities and individuals with religious objections or non-religious moral objections to coverage of contraceptive services.

On February 2, 2023, the Departments of the Treasury, Labor, and Health and Human Services (HHS) (collectively, the Departments) proposed rules (88 FR 7236) that sought to resolve long-running litigation with regard to religious objections to providing contraceptive coverage, by respecting the objecting entities' religious objections while also ensuring that women enrolled in plans or coverage sponsored, arranged, or offered by objecting entities could independently obtain contraceptive services at no cost. The proposed rules would have rescinded the regulation providing for an exemption based on non-religious moral objections. The proposed rules would also have established a new individual contraceptive arrangement that individuals in plans or coverage subject to a religious exemption could use to obtain contraceptive services at no cost directly from a provider or facility that furnishes contraceptive services, without any involvement on the part of an objecting entity.

The Departments requested comments on all aspects of the proposed rules, as well as on a number of specific issues. The Departments received 44,825 comments in response to the proposed rules from a range of interested parties, including employers, health insurance issuers, State Exchanges, State regulators, unions, and individuals. The Departments received comments on specific proposals in the proposed rules, as well as general comments on the proposals. The Departments also received comments that were not related to the proposals in the proposed rules.

The Departments have determined it appropriate to withdraw the proposed rules at this time to focus their time and resources on matters other than finalizing these rules. Additionally, in light of the volume and breadth of scope

of the comments received, the Departments want to further consider the proposals made in the proposed rules. Moreover, should the Departments decide in the future that it is a priority to move forward with a rulemaking in this area, the Departments want to ensure that they will have the benefit of the most up-to-date facts and information on these important issues as the Departments consider how to best implement the contraceptive coverage requirements of PHS Act section 2713, while respecting religious objections to contraception. For these independently sufficient reasons, the Departments are withdrawing the proposed rules, and may propose new rules in the future, as appropriate to meet these goals.

This withdrawal does not limit the Departments' ability to make new regulatory proposals in the areas addressed by the withdrawn proposed rules, including new proposals that may be substantially identical or similar to those described therein. In addition, this withdrawal does not affect the Departments' ongoing application of existing statutory and regulatory requirements or its responsibility to faithfully administer the statutory requirements the proposed rules would have implemented if finalized.

Douglas W. O'Donnell,

Deputy Commissioner, Internal Revenue Service.

Lisa M. Gomez,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2024–31239 Filed 12–23–24; 4:15 pm]

BILLING CODE 4830–01–P; 4510–29–P; 4120–01–P

DEPARTMENT OF THE INTERIOR**National Park Service****36 CFR Part 7**

[NPS–WHIS–NPS38501;
PX.P0234207B.00.1–PPPWWHISM0–
PFE00FEPR.YP0000]

RIN 1024–AE52

Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area; Bicycling

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service proposes to amend the special regulations for Whiskeytown National

Recreation Area to allow bicycle use on approximately 79.8 miles of multi-use trails. National Park Service regulations require promulgation of a special regulation to allow bicycles on new trails outside of developed areas and for existing trails that require construction or significant modification to accommodate bicycles.

DATES: Comments on the proposed rule must be received by 11:59 p.m. EDT on February 28, 2025.

ADDRESSES: You may submit comments, identified by Regulation Identifier Number (RIN) 1024-AE52, by either of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments.

(2) *By hard copy:* Mail to: Superintendent, Whiskeytown National Recreation Area, P.O. Box 188, Whiskeytown, CA 96095.

Document Availability: The Trails Management Plan and Environmental Assessment and the Finding of No Significant Impact provide information and context for this proposed rule and are available online at <https://parkplanning.nps.gov/whis> by clicking the link entitled “All Docs & Projects,” then clicking the link entitled “Whiskeytown NRA Trails Management Plan,” and then clicking the link entitled “Document List.”

Instructions: Comments will not be accepted by fax, email, or in any way other than those specified above. All submissions received must include the words “National Park Service” or “NPS” and must include the docket number or RIN (1024-AE52) for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and search for “1024-AE52”.

FOR FURTHER INFORMATION CONTACT: Laura Shaskey, Division Manager, Resources and Interpretation, Whiskeytown National Recreation Area; phone: 530-242-3457; email: Laura_Shaskey@nps.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. In

compliance with the Providing Accountability Through Transparency Act of 2023, the plain language summary of the proposal is available on [Regulations.gov](https://www.regulations.gov) in the docket for this rulemaking.

SUPPLEMENTARY INFORMATION:

Background

Purpose and Management Authority for the Recreation Area

Congress established the Whiskeytown-Shasta-Trinity National Recreation Area in 1965 for public outdoor recreation, use and enjoyment. 16 U.S.C. 460q. Congress directed the Secretary of the Interior to administer the Whiskeytown unit and directed the Secretary of Agriculture to administer the Shasta and Trinity units. The National Park Service (NPS) administers the Whiskeytown unit, on the behalf of the Secretary of the Interior, as the Whiskeytown National Recreation Area (referred to in this document as the “recreation area”). The U.S. Forest Service manages the Shasta and Trinity units, on behalf of the Secretary of Agriculture, as the Shasta-Trinity National Recreation Area. Each bureau is required to administer their units in a manner that will best provide for public outdoor recreation benefits and conserve the scenic, scientific, historic, and other values that contribute to public enjoyment. 16 U.S.C. 460q-3. In addition to the enabling legislation described above, the NPS manages the recreation area pursuant to the NPS Organic Act of 1916, which gives the NPS broad authority to regulate the use of the lands and waters that it administers as part of the National Park System. See 54 U.S.C. 100101; 100751(a).

Significance and Visitor Use of the Recreation Area

The recreation area encompasses 42,497 acres in Shasta County, nestled within the Klamath Mountains in Northern California. The recreation area has diverse ecosystems ranging from oak scrubland to dense coniferous forests, with elevations ranging from 800 feet in lower Clear Creek to more than 6,200 feet atop Shasta Baldy. This dynamic landscape, range in elevation, rugged topography, and numerous soil types contribute to a rich biodiversity. These habitats provide shelter and sustenance to an abundant and diverse wildlife community, including numerous species of concern and other rare species. High-elevation forests have been profoundly influenced by wildland fire. Fire management continues to play a key role in the preservation and

restoration of natural communities in the recreation area.

The recreation area includes significant cultural resources. For thousands of years before the arrival of European Americans, the Wintu People and their ancestors lived in villages along Clear Creek and its tributaries. Archeological remains document their extensive habitation and use of the land, and traditional ties to the recreational area remain among contemporary Wintu. In the early part of the 19th century, European explorers and trappers began visiting the upper Sacramento Valley and Wintu homelands. They were soon followed by parties of settlers on their way to central California and Oregon, and in 1848 gold was discovered on Clear Creek just south of the recreation area. During the 100-year gold rush, lands within the recreation area were subject to intensive mining exploration and development. This history of mining is evident throughout the recreation area.

In the early 1900s, the United States Government began establishing the Central Valley Project to manage the water of the Sacramento River and provide for its use in the Central Valley of California. The construction of Whiskeytown Dam in 1962 created Whiskeytown Lake. With 36 miles of shoreline, the crystal-clear water of Whiskeytown Lake is perhaps the most recognized feature of the recreation area. Due to its forested, mountain setting and consistent water level, the lake provides high-quality recreational opportunities throughout the primary recreation season. Visitors enjoy swimming, beaches, lakeside camping, boating, sport fishing, and picnicking. Beyond the shoreline of the lake, the rugged canyons, forests, streams, and waterfalls within the recreation area provide visitors with outstanding recreational opportunities. An extensive trail system allows visitors to experience a variety of forested terrain for birdwatching, camping, picnicking, wildlife viewing, hiking, horseback riding, and bicycling. Trails are located primarily upon historic logging and mining infrastructure south, east, and west of Whiskeytown Lake. In total, more than 800,000 visitors come to enjoy the recreation area each year, including casual sightseers, experienced adventurers and everyone in between.

Bicycle Use in the Recreation Area

Bicycle use has occurred in the recreation areas for several decades. Today, bicycles are used on roads that are open to public motor vehicle use, on 42.2 miles of administrative roads that are closed to motor vehicle use by the

public but open to motor vehicle use by the NPS for administrative purposes, and on the majority of trails in the existing trail system. Public roads, administrative roads, and trails that are open to traditional bicycles are also open to Class 1 electric bicycles, which are defined in NPS regulations as an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of 20 miles per hour. Class 2 and 3 electric bicycles are not allowed on trails or administrative roads within the recreation area, however they are permitted on roads that are open to public motor vehicle use. The trails identified below are closed to bicycle use:

- All portions of the Shasta Divide Nature Trail between Kennedy Memorial Drive and Whiskeytown Lake.
- All portions of the Davis Gulch Trail between the trailheads at Kennedy Memorial Drive and the Brandy Creek Day Use Area.
- All portions of the Crystal Creek Water Ditch Trail.
- James K. Carr Trail to Whiskeytown Falls (from Mill Creek Trail junction to the falls).
- Boulder Creek Falls Trail.
- The portion of Brandy Creek Falls Trail beyond the intersection with Rich Gulch Trail.

Other trails in the network are reserved for use by the Whiskeytown Environmental School (WES) and are not open to the public. These WES-only trails are the Ladybug Lane Trail, Martha's Ditch Trail and the Ridge Trail.

Trails Management Plan Environmental Assessment

With the growth of the city of Redding eight miles to the east, the recreation area has transitioned from a wildland setting to an urban location that offers recreation opportunities for the largest metropolitan area in the northern Sacramento Valley. Facilities and infrastructure within the recreation areas were primarily constructed in the 1960s and were not designed to accommodate current levels of visitation. To address emerging management challenges and accommodate current levels of visitation, the NPS initiated a comprehensive trail management project to help guide, plan, and manage trail use and maintenance within the recreation area. In 2017 the NPS sought public input on the existing trail system. The NPS used this input to develop preliminary alternatives for a trails management plan. In 2018 the Carr Fire burned approximately 39,000 out of

42,000 acres within the recreation area. To date, this is the most destructive fire in the history of the National Park System. The entire recreation area was closed and NPS resources were diverted to the rebuilding effort. NPS staff, partners, and contractors have made significant headway in rebuilding lost infrastructure and reopening much of the recreation area. As of August 2024 approximately 9% of the trails remain closed because of the fire. The NPS will continue to reopen trails provided there are no safety or resource issues associated with using the trails after the fire.

In 2020 the NPS restarted the trail planning process, with alternatives that were revised to reflect the changed landscape and address the need for long term solutions to poorly designed and unsustainable trails. On June 8, 2021, the NPS published the Trails Management Plan and Environmental Assessment and accepted public comments for 30 days. In February 2022 the NPS issued a revised Trails Management Plan and Environmental Assessment (EA) to reflect updated trail mileages and additional best management practices. The EA describes one action alternative (the preferred alternative) and the no-action alternative. The no-action alternative would continue the existing management of the trail system into the future. The action alternative would involve trail construction, including building new trails, rerouting some existing trails, and restoring other existing trails to natural condition. The EA evaluates the suitability of each trail surface and soil conditions for accommodating bicycle use; and life cycle maintenance costs, safety considerations, methods to prevent or minimize user conflict, and methods to protect natural and cultural resources and mitigate impacts associated with bicycle use on each trail. The EA contains a full description of the purpose and need for taking action, the alternatives considered, a map of the affected area, and the environmental impacts associated with the project.

On March 11, 2022, the Regional Director for DOI Unified Regions 8, 9, 10 and 12 signed a Finding of No Significant Impact (FONSI) that identified the preferred alternative in the EA as the selected alternative.¹ Trail

¹ During the NEPA process, the NPS evaluated the impacts of bicycle use on all trails where the NPS proposes to authorize their use in this rulemaking. The NPS acknowledges minor trail mileage discrepancies between the FONSI and this proposed rule. Small discrepancies in GIS estimates are reasonable and expected. The differing mileage estimates between documents are a result of simple

work will occur on approximately 32.8 miles of trails and will include minor improvements to existing trails, the construction of new multiuse trails, the rerouting of some existing trails, and trail closures and restoration to natural conditions. The longest new trail, the proposed lakefront trail, will be approximately 8 miles in length and improve access to the lake. The NPS will also establish a new trail along the Shasta Divide at the east side of the recreation area, offering views of Mount Shasta and the Lassen Peak. The NPS also will formalize three social trails by merging them into one mile of new trail. All of the new trails will connect to existing trails to create more trail loops. The new trails will generate opportunities for new and diverse visitor experiences in different locations in the recreation area.

The NPS will reroute seven multiuse trails because the existing routes have become unsustainable due to erosive soils or soil compaction, steep alignment, and undesirable visitor experiences. The new routes will have a more sustainable alignment and capacity for use. Other trails totaling 5.1 miles will be closed and not rerouted, which will allow those areas to return to their natural condition. In total, the selected alternative will expand the trail network and result in approximately 79.8 miles of trails open to bicycle use within the recreation area.

NPS Management of Bicycle Use

From 1966 until 1987 NPS regulations allowed bicycles on trails in recreation areas unless they were restricted by posted signs or markings on a map. See 31 FR 16650 (December 29, 1966) and 39 FR 11882 (April 1, 1974). In 1987 the NPS replaced what had been an "open unless closed" management framework for bicycle use in recreation areas with a framework that required that the NPS promulgate a special regulation in order to allow bicycles in any System unit on routes outside of developed areas and special use zones. Further, routes could only be designated for bicycle use upon a determination that such use was consistent with the protection of a park area's natural scenic and aesthetic values, safety considerations and management objectives and would not disturb wildlife or park resources. See 52 FR 10685 (April 2, 1987).

In 2012 the NPS amended its regulations for bicycle use again. These amended regulations are in place today and are codified at 36 CFR 4.30. These regulations focus on planning and

addition and rounding errors as well as improved data quality and increased accuracy in GIS layers.

environmental compliance under the National Environmental Policy Act (NEPA). Bicycles are allowed by default on park roads and parking areas open to public motor vehicles. Bicycles may be allowed on administrative roads that are closed to motor vehicle use by the public but open to motor vehicle use by the NPS for administrative purposes, but only after the Superintendent makes the same determination that has been required since 1987 (see above). The use of bicycles on trails is subject to a thorough review and approval process. The NPS must complete a planning process that evaluates bicycle use on each specific trail, including impacts to trail surface and soil conditions, maintenance costs, safety considerations, potential user conflicts, and methods to protect resources and mitigate impacts. The NPS also must complete either an environmental assessment or environmental impact statement that concludes that bicycle use in the park and on each specific trail will have no significant impacts on the environment. If an environmental assessment is prepared, the public must be notified and provided 30 days to review and comment. In addition to the planning and NEPA compliance documents (which are typically the same document), the Superintendent must prepare and the regional director must approve the same written determination about bicycle use that is required for administrative roads. For existing trails or new trails within developed areas, the NPS must publish the written determination in the **Federal Register** for a 30-day public comment period. For all trails, including new trails outside of developed areas, the Regional Director must approve the written determination. For new trails outside of developed areas, the NPS must publish a special regulation designating the trails for bicycle use, which is subject to a separate notice-and-comment period under the Administrative Procedure Act, 5 U.S.C. 553(b). New trails, whether they are in developed areas or not, must be developed and constructed in accordance with appropriate sustainable trail design principles and guidelines. Adherence to the procedures in these regulations helps ensure that bicycles are allowed only in locations where, in the judgment of the NPS, their use is appropriate and will not cause unacceptable impacts.

Proposed Rule

Compliance With NPS Regulations

This proposed rule would authorize the Superintendent to allow bicycles, by

designation in the Superintendent's Compendium, on all of the trails where bicycles would be allowed under the selected alternative. This includes existing trails that are not being rerouted, existing trails that are being rerouted, and new trails that will be constructed. Although NPS regulations do not require special regulations to allow bicycles on existing trails that do not require any construction or significant modification, the NPS proposes to include those trails in the special regulation so that all of the trails that may be designated for bicycle use are identified in one place. The NPS expects this approach to increase compliance with the regulations by making it easier for visitors to understand where bicycles are allowed and how they can be used.

The EA constitutes the planning document and evaluates the criteria required by the regulations at 36 CFR 4.30. The no action alternative evaluates continued bicycle use on existing trails that will not be rerouted; and the action alternative evaluates the rerouting of existing trails and construction of new trails, plus the impact of bicycle use on those trails. The FONSI concludes that the development and use of the new trail system would not significantly affect the quality of the human environment.

The Superintendent of the recreation area has signed a written determination that bicycle use on all of the trails where bicycles would be allowed under the selected alternative is consistent with the protection of the park's natural, scenic, and aesthetic values; safety considerations; management objectives; and will not disturb wildlife or park resources. This written determination is available on the recreation area's planning website at <https://parkplanning.nps.gov/whis> by clicking the link entitled "All Docs & Projects," then clicking the link entitled "Whiskeytown NRA Trails Management Plan," and then clicking the link entitled "Document List." The NPS is not publishing the written determination separately in the **Federal Register** but welcomes comments on the written determination during the public comment period for this proposed rule, and will consider those comments before submitting the written determination to the Regional Director for approval. The written determination also determines that continued bicycle use on administrative roads within the recreation area is consistent with the protection of the park's natural, scenic, and aesthetic values; safety considerations; management objectives;

and will not disturb wildlife or park resources.

Content of the Proposed Rule

This proposed rule would add a new paragraph (e) to 36 CFR 7.91, which contains the special regulations for the recreation area. The proposed rule would authorize the Superintendent to designate 79.8 miles of trails within the recreation area for bicycle use. The proposed rule would require the Superintendent to notify the public of any designated trails through one or more of the methods identified in 36 CFR 1.7 and to identify the designated trails on maps available at visitor centers and on the recreation area's website (<https://www.nps.gov/whis>). The proposed rule would authorize the Superintendent to limit, restrict, or impose conditions on bicycle use, or close any trail to bicycle use, or terminate such limits, restrictions, conditions or closures, after considering public health and safety, resources protection, and other management activities and objectives. Pursuant to 36 CFR 4.30(i), the Superintendent may allow electric bicycles on any trails that are open to traditional bicycles, and will notify the public pursuant to 36 CFR 1.7 if electric bicycles are so allowed.

Compliance With Other Laws, Executive Orders and Department Policy

Regulatory Planning and Review (Executive Orders 12866 and 13563 and 14094)

Executive Order 14094 (E.O.) amends E.O. 12866 and reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866 and E.O. 13563. Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The NPS has developed this proposed rule in a manner consistent with these requirements.

E.O. 12866, as reaffirmed by E.O. 13563 and amended and reaffirmed by E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA determined that this proposed rule is not significant.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

This proposed rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on information contained in the economic analyses found in the report entitled “Cost-Benefit and Regulatory Flexibility Threshold Analyses: Proposed Special Regulations to Designate New and Existing Trails for Bicycle Use at Whiskeytown National Recreation Area.” The report may be viewed on the recreation area’s planning website at <https://parkplanning.nps.gov/whis> by clicking the link entitled “All Docs & Projects,” then clicking the link entitled “Whiskeytown NRA Trails Management Plan,” and then clicking the link entitled “Document List.”

Congressional Review Act (CRA)

This proposed rule is not a major rule under 5 U.S.C. 804(2). This rulemaking:

- (a) Does not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

This proposed rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The proposed rule does not have a significant or unique effect on State, local or Tribal governments or the private sector. It addresses public use of national park lands and imposes no requirements on other agencies or governments. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This rulemaking does not affect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, the rulemaking does not have sufficient federalism implications to warrant the preparation

of a federalism summary impact statement. This proposed rule only affects use of federally administered lands and waters. It has no direct effects on other areas. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rulemaking complies with the requirements of Executive Order 12988. This rulemaking:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. The NPS has evaluated this proposed rule under the criteria in Executive Order 13175 and under the Department’s Tribal consultation policy and has determined that Tribal consultation is not required because the proposed rule will have no substantial direct effect on federally recognized Indian Tribes. Nevertheless, in support of the Department of the Interior and NPS commitment for government-to-government consultation, during the EA process, the NPS worked with the Native American Heritage Commission (NAHC) to identify Tribal partners that may be interested in the trails management plan. The NPS shared information about the proposed action and copies of the draft trails management plan/EA with one federally recognized American Indian Tribe identified by the NAHC and five non-federally recognized Tribal groups. These Tribes are the Shasta Nation, Nor-Rel-Muk Nation, Redding Rancheria, Winnemem Wintu Tribe, Wintu Tribe of Northern California, and Toyon-Wintu Center Wintu Educational and Cultural Council. The proposed new trails and trail reroutes under the selected action alternative would not impact known ethnographic resources or impede tribes’ ability to utilize Whiskeytown for traditional purposes. The proposed trail construction activities and routes would be designed to avoid known ethnographic resources in consultation

with tribes. The NPS informed Tribal partners that the trails management plan requires regular consultation for individual actions in accordance with section 106 of the National Historic Preservation Act under 36 CFR part 800. Additional details about Tribal consultation are available in chapter 4 of the EA.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required. The NPS may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 et seq.)

The NPS has prepared the EA to determine whether this proposed rule will have a significant impact on the quality of the human environment under the National Environmental Policy Act of 1969. This proposed rule would not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required because of the FONSI. A copy of the EA and FONSI can be found online at <https://parkplanning.nps.gov/whis> by clicking the link entitled “All Docs & Projects,” then clicking the link entitled “Whiskeytown NRA Trails Management Plan,” and then clicking the link entitled “Document List.”

Effects on the Energy Supply (Executive Order 13211)

This proposed rule is not a significant energy action under the definition in Executive Order 13211; the proposed rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and the proposed rule has not otherwise been designated by the Administrator of OIRA as a significant energy action. A Statement of Energy Effects is not required.

Clarity of This Rule

The NPS is required by Executive Orders 12866 (section 1(b)(12)) and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule the NPS publishes must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;

(c) Use common, everyday words and clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that the NPS has not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help the NPS revise the proposed rule, your comments should be as specific as possible. For example, you should identify the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods listed in the **ADDRESSES** section of this document.

Public Availability of Comments

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.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 7 as set forth below:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 54 U.S.C. 100101, 100751, 320102; Sec. 7.96 also issued under D.C. Code 10–137 and D.C. Code 50–2201.07.

■ 2. Amend § 7.91 by adding paragraph (e) to read as follows:

§ 7.91 Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area.

* * * * *

(e) *Bicycle Use.* (1) The Superintendent may designate all or a portion of the following trails as open to bicycle use:

(i) Boulder Creek Trail (approximately 3.8 miles).

(ii) Brandy Creek Falls Trail (approximately 1.1 miles between the

trailhead and Rich Gulch Trail intersection).

(iii) Brandy Creek Picnic Trail (approximately 0.3 miles).

(iv) Brandy Creek RV Trail (approximately 0.2 miles).

(v) Brandy Creek Trail (approximately 2.0 miles).

(vi) Buck Hollow Trail (approximately 1.0 miles).

(vii) Camden Water Ditch Trail (approximately 1.1 miles).

(viii) Clear Creek Canal Trail (approximately 5.2 miles).

(ix) Clear Creek Picnic Trail (approximately 0.3 miles).

(x) Clear Creek Vista Trail (approximately 2.5 miles).

(xi) Crystal Creek Falls Trail (approximately 0.5 miles).

(xii) Crystal Creek Trail (approximately 2.3 miles).

(xiii) East Boundary Vista Trail (approximately 1.4 miles).

(xiv) Guardian Rock Equestrian Trail (approximately 1.3 miles).

(xv) Horse Camp Trail (approximately 0.4 miles).

(xvi) Hydraulic Mine Trail (approximately 0.5 miles).

(xvii) James K. Carr Trail (approximately 0.4 miles between the trailhead and Mill Creek Trail intersection).

(xviii) Kanaka Peak Trail (approximately 3.3 miles).

(xix) Knobcone Trail (approximately 0.3 miles).

(xx) Ladybug Lane Trail (approximately 0.3 miles, Whiskeytown Environmental School use only).

(xxi) Logging Camp Trail (approximately 0.9 miles).

(xxii) Martha's Ditch Trail (approximately 2.5 miles, Whiskeytown Environmental School use only).

(xxiii) Mill Creek Trail (approximately 3.9 miles).

(xxiv) Mount Shasta Mine Loop Trail (approximately 5.0 miles).

(xxv) Mule Mountain Loop Trail (approximately 1.2 miles).

(xxvi) Mule Mountain Pass Trail (approximately 1.3 miles).

(xxvii) Oak Bottom Water Ditch Trail (approximately 2.8 miles).

(xxviii) Orofino Trail (approximately 0.3 miles).

(xxix) Papoose Connector Trail (approximately 0.2 miles).

(xxx) Papoose Pass Trail (approximately 5.2 miles).

(xxxi) Peltier Bridge Trail (approximately 0.6 miles).

(xxxii) Peltier Trail (approximately 2.5 miles).

(xxxiii) Princess Ditch Trail (approximately 2.1 miles).

(xxxiv) Prospect Trail (approximately 1.1 miles).

(xxxv) Rich Gulch Trail (approximately 2.4 miles).

(xxxvi) Ridge Trail (approximately 1.8 miles, Whiskeytown Environmental School use only).

(xxxvii) Salt Gulch Trail (approximately 2.0 miles, connecting Peltier Trail to Rich Gulch Trail).

(xxxviii) Shasta Divide Trail (approximately 7.0 miles, connecting the Visitor Center with the NPS and BLM trail system in the area of Mule Mountain).

(xxxix) Tower Grave Trail (approximately 0.2 miles).

(xl) WES Camp Emergency Access Road (approximately 0.6 miles).

(xli) Whiskeytown Lake Trail (approximately 8.0 miles, connecting the Brandy Creek area with Carr Powerhouse area).

(2) The Superintendent may authorize bicycle use on administrative roads within the recreation area pursuant to § 4.30(b) of this chapter.

(3) A map showing trails and administrative roads open to bicycle use will be available at recreation area visitor centers and posted on the recreation area website. The Superintendent will provide notice of all trails and administrative roads designated for bicycle use in accordance with § 1.7 of this chapter.

(4) The Superintendent may limit, restrict, or impose conditions on bicycle use, or close any trail to bicycle use, or terminate such conditions, closures, limits, or restrictions in accordance with § 4.30 of this chapter. A violation of any such condition, closure, limit, or restriction is prohibited.

Shannon Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2024–31207 Filed 12–27–24; 8:45 am]

BILLING CODE 4312–52–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2024–0529; FRL–12471–02–R5]

Air Plan Approval; Ohio; Nitrogen Oxide Standards Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Ohio State Implementation Plan (SIP) submitted by the Ohio Environmental Protection

Agency (Ohio EPA) on November 4, 2024. Ohio EPA requested that EPA approve the revised rules for nitrogen oxide standards in the Ohio Administrative Code into Ohio's SIP. The revised rules include non-substantive updates to rule language and updates to referenced material. The revisions will assist with Ohio's efforts to attain and maintain the National Ambient Air Quality Standards for nitrogen dioxide.

DATES: Comments must be received on or before January 29, 2025.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2024-0529 at <https://www.regulations.gov> or via email to langman.michael@epa.gov. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI, PBI, or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Delaney Kilgour, Air and Radiation Division (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-1106, kilgour.delaney@epa.gov. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this issue of the **Federal Register**, EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse

comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives such comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: December 19, 2024.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2024-30735 Filed 12-27-24; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[EPA-R05-OAR-2024-0282; FRL-12468-01-R5]

Air Plan Approval; Ohio; Title V Operating Permit Rules Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to Ohio EPA's title V rules. These revisions include revisions to the definition of hazardous air pollutants and requirements for a permit statement of basis that are consistent with recent Federal rulemaking actions. Other changes are insignificant and part of the state's statutory five-year review of adopted regulations.

DATES: Comments must be received on or before January 29, 2025.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2024-0282 at <https://www.regulations.gov> or via email to damico.genevieve@epa.gov. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket.

Do not submit electronically any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI, PBI, or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Sam Portanova, Air Permits Section, Air and Radiation Division (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-3189, portanova.sam@epa.gov. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the state's submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives such comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: December 19, 2024.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2024–30740 Filed 12–27–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[241220–0333]

RIN 0648–BN29

International Fisheries; Pacific Tuna Fisheries; 2025–2026 Commercial Fishing Restrictions for Pacific Bluefin Tuna in the Eastern Pacific Ocean

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

ACTION: Proposed rule; notice of availability of a draft environmental assessment; request for comments.

SUMMARY: NMFS is proposing regulations under the Tuna Conventions Act of 1950, as amended (TCA), to implement Inter-American Tropical Tuna Commission (IATTC) Resolution C–24–02 (Measures for the Conservation and Management of Bluefin Tuna in the Eastern Pacific Ocean) adopted by the IATTC in September 2024. This proposed rule would implement annual and trip limits on United States commercial catch of Pacific bluefin tuna (*Thunnus orientalis*) (PBF) in the eastern Pacific Ocean (EPO) for 2025–2026. This action is necessary to conserve PBF and for the United States to satisfy its obligations as a member of the IATTC. In accordance with the National Environmental Policy Act (NEPA), NMFS also announces the availability of a draft environmental assessment (EA) that analyzes the potential effects of the associated proposed rule.

DATES: Comments on the proposed rule, draft environmental assessment, and supporting documents must be submitted in writing by January 29, 2025.

ADDRESSES: A plain language summary of this proposed rule is available at <https://www.regulations.gov/docket/NOAA-NMFS-2024-0146>.

You may submit comments on this document, identified by NOAA–NMFS–2024–0146 or the draft environmental assessment by:

- **Electronic Submission:** Submit all electronic public comments via the

Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter “NOAA–NMFS–2024–0146” in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Comments must be submitted electronically to ensure they are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Please specify whether the comments provided are associated with the proposed rule, draft environmental assessment, or other supporting documents.

Copies of the draft Regulatory Impact Review (RIR) and other supporting documents are available via the Federal eRulemaking Portal: <http://www.regulations.gov>, docket NOAA–NMFS–2024–0146 or contact Highly Migratory Species Branch, Amanda Munro, NMFS, Amanda.Munro@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Amanda Munro, NMFS, (619) 407–9284, Amanda.Munro@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background on the IATTC

The United States is a member of the IATTC, which was established in 1949 and operates under the Convention for the Strengthening of the Inter-American Tropical Tuna Commission Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention).

The IATTC consists of 21 member nations and 5 cooperating non-member nations. The IATTC facilitates scientific research into, as well as the conservation and management of, tuna and tuna-like species in the IATTC Convention Area. The IATTC Convention Area is defined as waters of the EPO within the area bounded by the west coast of the Americas and by 50° N latitude, 150° W longitude, and 50° S latitude. The IATTC maintains a scientific research and fishery

monitoring program and regularly assesses the status of tuna, shark, and billfish stocks in the EPO to determine appropriate catch limits and other measures to promote sustainable fisheries and prevent overexploitation.

The text of the Antigua Convention can be found here: https://www.iattc.org/PDFFiles/IATTC-Instruments/English/IATTC_Antigua_Convention%20Jun%202003.pdf.

International Obligations of the United States Under the Convention

As a Party to the Antigua Convention and a member of the IATTC, the United States is legally bound to implement decisions of the IATTC. The TCA, 16 U.S.C. 951 *et seq.*, directs the Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the U.S. Coast Guard, to promulgate such regulations as may be necessary to carry out the United States’ obligations under the Antigua Convention, including recommendations and decisions adopted by the IATTC. The authority of the Secretary of Commerce to promulgate such regulations has been delegated to NMFS. All resolutions adopted by the IATTC can be found online: <http://iattc.org/ResolutionsActiveENG.htm>.

Pacific Bluefin Tuna Stock Status

In 2011, NMFS determined overfishing was occurring on PBF (76 FR 28422, May 17, 2011), which is considered a single Pacific-wide stock. In 2013, based on the results of a stock assessment conducted by the International Scientific Committee for Tuna and Tuna-like Species in the North Pacific Ocean (ISC), NMFS determined that PBF was not only subject to overfishing, but was also overfished (78 FR 41033, July 9, 2013). Subsequently, based on the results of the 2014, 2016, 2018, and 2020 ISC stock assessments, NMFS determined that PBF continued to be overfished and subject to overfishing (See 80 FR 12621, March 10, 2015; 82 FR 18434, April 19, 2017; 84 FR 19905, May 7, 2019; 86 FR 9910, Feb. 17, 2021).

Since 2016, the IATTC and the Northern Committee (NC) to the Western and Central Pacific Fisheries Commission (WCPFC) have held annual joint working group meetings intended to develop a Pacific-wide approach to management of PBF. Joint IATTC–WCPFC NC Working Group (JWG) recommendations have included establishing rebuilding targets and criteria that must be met before considering catch limit increases. Conservation measures adopted by the

IATTC and WCPFC have considered the recommendations of the JWG.

At its sixth meeting in 2021, the JWG considered the most recent ISC stock assessment and noted that the initial rebuilding target may have been met early. The JWG recommended the IATTC and WCPFC increase catch limits consistent with the rebuilding plan previously agreed to by the IATTC and WCPFC. Subsequently, the IATTC adopted Resolution C-21-05, which established catch limits consistent with the JWG recommendation. NMFS implemented Resolution C-21-05 through a rulemaking which established catch and trip limits for 2022–2024 (87 FR 47939, August 5, 2022). In 2022, NMFS determined that the stock was still overfished but no longer experiencing overfishing.

In 2024, the ISC stock assessment for PBF determined that the stock had likely met the second rebuilding target 12 years ahead of schedule. NMFS subsequently determined that the stock was no longer overfished. The ISC projected that further catch increases were possible while maintaining the continued growth of the stock.

At its ninth meeting held July 10–14, 2024, the JWG considered the ISC projection scenarios and recommended increasing harvest of PBF. The ISC is currently undertaking a management strategy evaluation (MSE) for PBF to be completed in 2025. The JWG's recommended catch increases are based on an ISC projection scenario that is expected to ensure a greater than 50 percent probability of not overfishing relative to all of the candidate reference points being evaluated in that MSE. The recommended catch increases also result in an increased fishery impact ratio on the stock for the EPO compared to the fishery impact for the western and central Pacific Ocean (WCPO), increasing the EPO fishery's current impact of 17 percent to 21 percent by 2034.

IATTC Pacific Bluefin Tuna Resolutions

The IATTC has adopted PBF catch limits in the Convention Area since 2012. For more information about previous management measures, see the final rules implementing Resolution C-14-06 (80 FR 38986, July 8, 2015), Resolution C-16-08 (82 FR 18704, April 21, 2017), Resolutions C-18-01 and C-18-02 (84 FR 18409, May 1, 2019), Resolution C-20-02 (86 FR 16303, March 29, 2021), and Resolution C-21-05 (87 FR 47939, August 05, 2022).

On August 5, 2022, NMFS published a final rule (87 FR 47939) implementing IATTC Resolution C-21-05 (Measures

for the Conservation and Management of Pacific Bluefin Tuna in the Eastern Pacific Ocean). That rule established an initial combined catch limit for 2023–2024 of 1,017 metric tons (mt). It also implemented an initial trip limit of 30 mt, intermediate trip limits of 20 mt and 10 mt, and a low trip limit of 3 mt. These trip limits were designed to adjust seasonally throughout the year as total catch approached the annual limit. However, U.S. vessels did not utilize enough of the annual catch limit to trigger reduced trip limits in 2023 or 2024.

At its 102nd Meeting in September 2024, the IATTC adopted Resolution C-24-02, which establishes catch limits consistent with the 2024 JWG recommendation and determines how the EPO increase will be divided between the United States and Mexico. The Resolution contains catch increases for both Mexico and the United States and adds a footnote allowing up to 10 mt to be caught by members not named in the Resolution, recognizing that other fleets in the EPO have reported small catches of bluefin due to the increased stock abundance. The 2025–2026 biennial catch limit for the United States established in C-24-02 is 1,822 mt, not to exceed 1,285 mt in any one year.

As in previous resolutions, an IATTC member may add to the new catch limit any under-harvest from the previous catch limit in an amount not to exceed 5 percent of the last biennial catch limit. In this case, the United States may add up to 5 percent of 1,017 mt (*i.e.*, 50.85 mt) from 2023–2024 to the 2025–2026 biennial catch limit. From the California Department of Fish and Wildlife reports, NMFS estimates that U.S. commercial vessels will catch less than 335 mt in 2023–2024. Therefore, NMFS projects that the 2025–2026 biennial catch limit will be approximately 1,873 mt. This number will be finalized before publication of the final rule.

Pacific Fishery Management Council Recommendations for the Implementation of Resolution C-24-02

At its November 2024 meeting, the Pacific Fishery Management Council (PFMC) considered advisory body reports and recommended a trip limit scheme similar to the ones implemented for 2021 and 2022–2024, but with higher initial, intermediate, and low trip limits. The annual catch and trip limits proposed in this rule are consistent with the PFMC's recommendation and are described in the next section.

Proposed Regulations for Pacific Bluefin Tuna for 2025–2026

Consistent with recommendations from the PFMC and its advisory bodies at the November 2024 meeting, this proposed rule would establish trip limits for 2025 and 2026 while maintaining an adaptive management approach. The intent behind these trip limits is to encourage U.S. vessel owners and operators to fully utilize the U.S. catch limit while allowing ample opportunity for multiple gear types. Trip limits would adjust seasonally, with the intent to ensure a portion of the annual catch limit remains available to smaller-volume gear types throughout the year. The proposed annual catch and trip limits are described in detail below.

Proposed PBF Management Regime for 2025–2026

The proposed annual catch limit for 2025 is 1,285 mt. The proposed annual catch limit for 2026 is the total cumulative catch in 2025 subtracted from the biennial limit, not to exceed 1,285 mt. The proposed initial trip limit for both 2025 and 2026 is 60 mt and would adjust as follows:

January–June:

- The trip limit decreases to 40 mt if the total catch is within 400 mt of the annual limit.

- The trip limit decreases to 5 mt if the total catch is within 225 mt of the annual limit.

July–September:

- The trip limit decreases to 40 mt if the catch is within 300 mt of the annual limit.

- The trip limit decreases to 5 mt if the total catch is within 175 mt of the annual limit.

October–December:

- The trip limit decreases to 40 mt if the catch is within 200 mt of the annual limit.

- The trip limit decreases to 5 mt if the total catch is within 125 mt of the annual limit.

Under the terms of this proposed rule, NMFS would announce the 2026 annual limit in a notice published in the **Federal Register** in January or early February 2026. This notice would also be posted on the NMFS website: <https://www.fisheries.noaa.gov/west-coast/sustainable-fisheries/pacific-bluefin-tuna-commercial-harvest-status>.

The catch and trip limits proposed in this rulemaking represent approximately an 80 percent increase over the current (*i.e.*, 2022–2024) management regime (87 FR 47939, August 5, 2022). This is based on a recent stock assessment and subsequent

status determinations which found the PBF stock in the eastern Pacific Ocean is no longer overfished nor subject to overfishing.

Landing Receipt Submission Deadlines

Under California law and regulations, electronic landing receipts (*i.e.*, e-tickets) are required for landings in California and are required to be submitted to the California Department of Fish and Wildlife (DFW) within 3 business days (*see* California Fish and Game Code section 8046 and 14 California Code of Regulations § 197). Under current Federal regulations (*see* 50 CFR 300.25(g)(9)), if landing PBF in California, fish landing receipts must be submitted within 24 hours to DFW. This proposed rule would maintain that requirement.

In-Season Action Announcements

Under this proposed rulemaking, NMFS would use available fishery information (*i.e.*, landing receipts) to estimate when the overall catch is expected to reach thresholds at which the agency would reduce the trip limit. NMFS would then make decisions on in-season actions to reduce the trip limit or close the fishery based on those estimates.

Under current Federal regulations (*see* 50 CFR 300.25(g)(8)), if an in-season action taken under paragraphs is based on overestimate of actual catch, NMFS will reverse that action in the timeliest possible manner, provided NMFS finds that reversing that action is consistent with the management objectives for the affected species. This proposed rule would maintain that requirement.

Under current Federal regulations (*see* 50 CFR 300.25(g)(7)), NMFS posts a notice on the NMFS website announcing in-season actions to reduce trip limits or close the fishery (<https://www.fisheries.noaa.gov/west-coast/sustainable-fisheries/pacific-bluefin-tuna-commercial-harvest-status>). In-season actions to reduce trip limits or close the fishery are also announced by email to vessel owners and published in the **Federal Register** as soon as practicable. In-season actions are effective upon the earlier of either receipt by email of such notice or publication in the **Federal Register**. This proposed rule would maintain these announcement procedures.

In 2025–2026, if NMFS determines that cumulative catch is expected to meet any of the thresholds described previously (based on landing receipts or other available information), an intermediate or lower trip limit would be imposed by NMFS using the in-season action procedures described

previously. Upon the effective date of an in-season action to change trip limits, targeting, retaining on board, transshipping, or landing PBF in the Convention Area in violation of the in-season action would be prohibited, with the exception that any PBF already on board a fishing vessel on the effective date of the notification of in-season action may be retained on board and landed or transshipped within 24 hours after the effective date of the notice. If NMFS determines in 2025 or 2026 that the annual catch limits are expected to be reached, NMFS would close the fishery effective upon the date provided in the notification. The exception allowing any PBF already on board a fishing vessel on the effective date of the notice to be retained, landed, or transshipped would apply, provided they are landed or transshipped within 14 days after the closure date.

Catch Reporting

Under this proposed rulemaking, NMFS would continue to provide updates on PBF catches in the Convention Area to the public via the NMFS website: <https://www.fisheries.noaa.gov/west-coast/sustainable-fisheries/pacific-bluefin-tuna-commercial-harvest-status>. NMFS would update the website as long as the updates do not disclose confidential information. These updates are intended to help participants in the U.S. commercial fishery plan for reduced trip limits and attainment of annual limits.

Classification

Tuna Conventions Act

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the Tuna Conventions Act and other applicable laws, subject to further consideration after public comment.

National Environmental Policy Act

NMFS addressed NEPA requirements through preparation of an EA that describes the impact on the human environment that would result from implementation of this action. Based on the EA, Regulatory Impact Review, and review of criteria for significance (*see* 40 CFR 1501.3(b)) and section 7(C) of NOAA's Policies and Procedures for Compliance with National Environmental Policy Act and Related Authorities (Companion Manual for NOAA Administrative Order 216–6A)), no significant effect on the quality of the human environment is anticipated as a result of any of the action alternatives contained in the draft EA. A copy of the draft EA is available from NMFS (*see*

ADDRESSES). This action also announces a public comment period on the draft EA.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The rationale for this certification follows.

The SBA defines a “small business” (or “small entity”) as one with annual revenue that meets or is below an established size standard. On December 29, 2015, NMFS issued a final rule establishing a small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for RFA compliance purposes only (80 FR 81194). The \$11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. SBA current standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016. *Id.* at 81194.

The proposed action is intended to provide increased fishing opportunity to U.S. fishermen now that the PBF stock is rebuilt, while ensuring that catches remain within the annual and biennial limits. The entities the proposed action would directly affect are U.S. commercial fishing vessels that catch and retain PBF in the IATTC Convention Area (*e.g.*, coastal purse seine vessels and drift gillnet vessels). U.S. commercial catch of PBF from the IATTC Convention Area is primarily made in waters off of California by the coastal pelagic purse seine fleet, which targets PBF opportunistically, and the surface hook-and-line fleet. Other fleets (*e.g.*, California large-mesh drift gillnet and North Pacific albacore troll) catch PBF incidentally or in small quantities.

U.S. Coastal Purse Seine Fleet

Coastal purse seiners fish relatively close to shore off of California within the U.S. exclusive economic zone. They primarily target small coastal pelagic species such as Pacific mackerel, Pacific sardine, anchovy, and market squid. These vessels opportunistically target PBF when they enter the coastal waters of the Southern California Bight from

May to October. The fleet will also opportunistically target tropical tunas (yellowfin and skipjack) when intrusions of warm water from the south bring these species within range of the fleet.

Since 2006, the average annual revenue per vessel from all finfish

fishing activities for the U.S. purse seine fleet that have landed PBF has been far less than \$11 million. From 2019–2023, coastal purse seine vessels that caught highly migratory species (HMS) had ex-vessel revenues ranging from less than \$20 to \$512,956 per vessel per year

(based on all species landed). Therefore, all of the vessels in this fleet are considered small businesses. Over the past 5 years, PBF has accounted for 17 percent of the total revenues of the coastal purse seine fleet.

TABLE 1—EX-VESSEL REVENUE OF COASTAL PURSE SEINE VESSELS THAT MADE LANDINGS OF HIGHLY MIGRATORY SPECIES (HMS), BY YEAR: MINIMUM, MAXIMUM, AND MEAN
[Data from PacFIN]

	2019	2020	2021	2022	2023
Num. Vessels	11	12	<5	10	8
Min	\$23	\$7,271	<\$7,000	\$9	\$5,848
Max	\$135,549	\$512,956	<\$55,000	\$183,012	\$76,154
Mean	\$57,563	\$170,507	\$24,055	\$77,626	\$25,095

Prior to the implementation of a 25 mt trip limit in 2015, coastal purse seine vessels landed an average of 41 mt per trip, and were capable of landing over 70 mt in a single trip. For the years 2022–2024, NMFS implemented a 30 mt trip limit. U.S. purse seine vessels did not utilize enough of the annual catch limit to trigger reduced trip limits in any year between 2022 and 2024. This may be because the 30 mt trip limits imposed were too restrictive for the purse seine fleet with growing schools of PBF. Because the annual and trip limits in 2025–2026 are higher than in recent years (trip limits starting at 60 mt), the proposed action is expected to provide more opportunity to the purse seine fleet when compared to the management of commercial PBF from 2015–2024. Buffer points that reduce trip limits throughout the year are intended to avoid overutilization and ensure that

fleets other than purse seine can continue to fish throughout the year.

Catch and trip limits would be higher than the past 5 years of management for this stock, so the proposed rule is expected to provide increased revenue opportunity for this fleet. Purse seine vessels are also able to switch to other species if PBF trip limits decrease or the annual limit approaches. PBF has not been the primary revenue source of this fleet in recent years, and the proposed rule would not affect opportunities to fish other species. NMFS does not expect revenues, costs, or corresponding profitability of coastal purse seine vessels to be significantly altered as a result of this proposed rule.

Surface Hook-and-Line

The surface hook-and-line fishery mainly operates off the coast of California, although some landings

occur in Oregon and Washington. The number of surface hook-and-line vessels in the U.S. fleet has ranged from 79–188 in the past 5 years with a mean of 160 total vessels. As the PBF stock has recovered, the hook-and-line fishery has also grown. In 2019, 13 percent of total PBF landings came from the hook-and-line fleet. Hook-and-line PBF landings have since grown to 88 percent of total landings in 2023. Metric tons of PBF caught by this fleet have also steadily increased over the past 5 years, from 36.07 mt in 2019 to 162.63 mt in 2023. However, the catch of PBF per trip in this fleet is relatively small. On average, vessels in this fleet catch only 0.15 mt of PBF per trip.

Ex-vessel revenue of the surface hook-and-line fleet has ranged from less than \$20 to \$217,660. Therefore, all of the vessels in this fleet are considered small businesses.

TABLE 2—EX-VESSEL REVENUE OF SURFACE HOOK-AND-LINE VESSELS THAT MADE HMS LANDINGS, BY YEAR: MINIMUM, MAXIMUM, AND MEAN
[Data from PacFIN]

	2019	2020	2021	2022	2023
Num. Vessels	79	111	145	188	178
Min	\$48	\$90	\$78	\$9	\$96
Max	\$55,264	\$114,851	\$123,740	\$139,529	\$217,660
Mean	\$5,106	\$8,215	\$8,915	\$9,487	\$11,505

The catch limits proposed in this rule are higher than the past 5 years of management for this stock, which would provide increased revenue opportunity for this fleet. PBF makes up the majority of this fleet's revenue, but due to the low volume of PBF landings per trip these vessels would not be subjected to reduced trip limits. The trip limit of 5 mt would allow the surface hook-and-line fleet to continue to catch this valuable stock throughout the year,

even in a scenario of increased purse seine effort. This proposed rule is expected to increase fishing opportunities for the surface hook-and-line vessels. NMFS does not expect revenues, costs, or corresponding profitability of surface hook-and-line vessels to be significantly altered as a result of this proposed rule.

Other U.S. Fleets That Catch PBF

Other gears known to land PBF include large-mesh drift gillnet, North Pacific albacore troll, and non-HMS fisheries. Since 2006, the average annual ex-vessel revenue for all U.S. vessels that landed PBF in small quantities has been less than \$11 million. All of these vessels are considered small businesses.

The number of vessels from these fisheries that have landed PBF have

ranged from 14–39 over the past 5 years, with an average of 23 per year. The metric tons of PBF landed by these gears have ranged from 11.38 to 57.15 mt per year, with a mean of 27.34 mt. Revenue from PBF landings by these fleets makes up a small percentage of their total revenue.

The majority of these landings came from the large-mesh drift gillnet fishery (DGN), which targets swordfish and thresher shark and also retains other marketable species. The number of vessels in this fishery has steadily decreased over the past 5 years. The Driftnet Modernization and Bycatch Reduction Act enacted in 2022 will

sunset the use of large-mesh drift gillnets after 5 years, which will be December 2027. Landings of PBF from the DGN fleet have ranged from 9.57 mt to 54.74 mt in the past 5 years. DGN gear has never landed PBF in quantities greater than 5 mt in a single trip, so they are not likely to be impacted by any of the proposed trip limits.

TABLE 3—EX-VESSEL REVENUE OF DRIFT GILLNET VESSELS, BY YEAR: MINIMUM, MAXIMUM, AND MEAN
[Data from PacFIN]

	2019	2020	2021	2022	2023
Num. Vessels	15	12	7	7	5
Min	\$617	\$7,959	\$224	\$10,226	\$12,302
Max	\$59,127	\$83,447	\$233,929	\$136,880	\$157,287
Mean	\$26,842	\$32,117	\$77,787	\$64,052	\$97,690

The proposed rule would establish a trip limit of 5 mt to reduce the possibility of regulatory discards in these fleets as total catch approaches the annual limit. NMFS does not expect revenues, costs, or corresponding profitability of drift gillnet vessels to be significantly altered as a result of this proposed rule.

Overall Expected Economic Impacts of Proposed Regulations and Certification

Pursuant to the RFA and NMFS’ December 29, 2015, final rule (80 FR 81194), this certification was developed using NMFS’ revised size standards. NMFS considers all entities subject to this action to be small entities as defined by both the former size standards and the revised size standards. The proposed action would likely result in increased fishing opportunities relative to previous years, and would not cause significant negative economic impacts to the affected fishing fleets. Any impact to the income of U.S. vessels is expected to be minor. Because each affected vessel is a small business, there are no disproportionate economic impacts on small entities relative to large entities.

In summary, the proposed action, if adopted, is not expected to have a significant adverse economic impact on the profitability of a substantial number of small entities, or a disproportionate economic effect on small entities relative to large entities. Given these conclusions, an Initial Regulatory Flexibility Analysis is not required and none has been prepared.

Paperwork Reduction Act

This proposed rule does not contain a change to a collection of information requirement for purposes of the Paperwork Reduction Act of 1995 (PRA). The existing collection of

information requirements would continue to apply under the following OMB Control Number(s): 0648–0778, Reporting and Notification Requirements in West Coast PBF Fishery.

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

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13175

NMFS has determined that this action 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; therefore, consultation with Tribal officials under Executive Order 13175 is not required, and the requirements of sections (5)(b) and (5)(c) of Executive Order 13175 also do not apply. A Tribal summary impact statement under section (5)(b)(2)(B) and section (5)(c)(2)(B) of Executive Order is not required and has not been prepared.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: December 20, 2024.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 300 as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

■ 1. The authority citation for part 300, subpart C, continues to read as follows:

Authority: 16 U.S.C. 951 *et seq.*

■ 2. In § 300.24, revise paragraph (u) to read as follows:

§ 300.24 Prohibitions.

* * * * *

(u) Use a United States commercial fishing vessel in the Convention Area to target, retain on board, transship, or land Pacific bluefin tuna in contravention of § 300.25(g).

* * * * *

■ 3. In § 300.25, revise paragraph (g) to read as follows:

§ 300.25 Fisheries management.

* * * * *

(g) *Pacific bluefin tuna (Thunnus orientalis) commercial catch limits, reporting requirements, and in-season action procedures—(1) Biennial catch limit for 2025–2026.* The biennial catch limit for 2025–2026 is 1,822 metric tons, plus up to 5 percent of under-harvest from the 2023–2024 biennial catch limit.

(2) *Annual catch and trip limits for 2025.* For the calendar year 2025, all commercial fishing vessels of the United States combined may capture, retain, transship, or land no more than 1,285 metric tons. A 60 mt trip limit will be in effect until the following criteria are met:

If the time of year is . . .	And NMFS anticipates cumulative catch will be . . .	Then the trip limit will be . . .
(i) January through June	885 mt	40 mt.
	1,060 mt	5 mt.
(ii) July through September	985 mt	40 mt.
	1,110 mt	5 mt.
(iii) October through December	1,085 mt	40 mt.
	1,160 mt	5 mt.

(3) *Annual catch and trip limits for 2026.* For the calendar year 2026, all commercial fishing vessels of the United States combined may capture, retain,

transship, or land no more than the amount caught in 2025 subtracted from the biennial limit, not to exceed 1,285 metric tons.

(i) If the 2026 catch limit is more than 200 metric tons, a 60-metric ton trip limit will be in effect until the following criteria are met:

If the time of year is . . .	And NMFS anticipates cumulative catch will be within . . .	Then the trip limit will be . . .
(A) January through June	400 mt of the annual limit	40 mt.
	225 mt of the annual limit	5 mt.
(B) July through September	300 mt of the annual limit	40 mt.
	175 mt of the annual limit	5 mt.
(C) October through December	200 mt of the annual limit	40 mt.
	125 mt of the annual limit	5 mt.

(ii) If the 2026 catch limit is 200 metric tons or less, the trip limit will be 5 metric tons for the entire calendar year.

(4) *In-season actions for trip limits and closure of the fishery.* If NMFS determines that action to change a trip limit needs to be taken under paragraph (g)(2) or (3) of this section, the revised trip limit will be effective upon the date provided in a notification of in-season action in accordance with paragraph (g)(5) of this section. Upon the effective date of an in-season action to change trip limits under paragraph (g)(2) or (3), targeting, retaining on board, transshipping, or landing Pacific bluefin tuna in the Convention Area in violation of the in-season action shall be prohibited, with the exception that any Pacific bluefin tuna already on board a fishing vessel on the effective date of the notification of in-season action may be retained on board and landed or transshipped within 24 hours after the effective date of the notice, to the extent authorized by applicable laws and regulations. After NMFS determines that the annual catch limits under paragraph

(g)(2) or (3) of this section are expected to be reached, NMFS will close the fishery effective upon the date provided in the notification in accordance with paragraph (g)(5) of this section. Upon the effective date in the notification, targeting, retaining on board, transshipping, or landing Pacific bluefin tuna in the Convention Area shall be prohibited through the end of the calendar year, with the exception that any Pacific bluefin tuna already on board a fishing vessel on the effective date of the notice may be retained on board and landed or transshipped within 14 days after the effective date published in the fishing closure notification, to the extent authorized by applicable laws and regulations.

(5) *Announcement and effective dates of in-season actions.* If in-season actions under paragraphs (g)(2) through (4) of this section are needed, NMFS will post a notice on the NMFS web page announcing the in-season action, including effective dates. NMFS will also send emails with notice of the in-season action to affected vessel owners. This action will also be published in the

Federal Register as soon as practicable. The in-season action will be effective upon whichever is earlier: receipt by email of such notice or publication in the **Federal Register**.

(6) *Reversal of in-season actions.* If an in-season action taken under paragraphs (g)(2) through (5) of this section is based on overestimate of actual catch, NMFS will reverse that action in the timeliest possible manner, provided NMFS finds that reversing that action is consistent with the management objectives for the affected species. The fishery will be subject to the change in trip limit or reopened effective on the date provided in the notice in accordance with paragraph (g)(5) of this section.

(7) *State of California fish landing receipts.* If landing Pacific bluefin tuna into the State of California, fish landing receipts must be submitted within 24 hours to the California Department of Fish and Wildlife in accordance with the requirements of applicable State regulations.

[FR Doc. 2024–31315 Filed 12–27–24; 8:45 am]

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Notices

Federal Register

Vol. 89, No. 249

Monday, December 30, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Adoption of Recommendations

AGENCY: Administrative Conference of the United States.

ACTION: Notice.

SUMMARY: The Assembly of the Administrative Conference of the United States adopted three recommendations at its hybrid (virtual and in-person) Eighty-second Plenary Session: Using Algorithmic Tools in Regulatory Enforcement, Public Engagement in Agency Rulemaking Under the Good Cause Exemption, and Nonlawyer Assistance and Representation in Agency Adjudications.

FOR FURTHER INFORMATION CONTACT: For Recommendation 2024–5, Kazia Nowacki; Recommendation 2024–6, Benjamin Birkhill; and Recommendation 2024–7, Lea Robbins. For each of these recommendations the address and telephone number are: Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW, Washington, DC 20036; Telephone 202–480–2080.

SUPPLEMENTARY INFORMATION: The Administrative Conference Act, 5 U.S.C. 591–596, established the Administrative Conference of the United States. The Conference studies the efficiency, adequacy, and fairness of the administrative procedures used by Federal agencies and makes recommendations to agencies, the President, Congress, and the Judicial Conference of the United States for procedural improvements (5 U.S.C. 594(1)). For further information about the Conference and its activities, see www.acus.gov.

The Assembly of the Conference met during its Eighty-second Plenary Session on December 12, 2024, to consider three proposed recommendations and conduct other

business. All three recommendations were adopted.

Recommendation 2024–5, *Using Algorithmic Tools in Regulatory Enforcement*. This recommendation provides best practices for using artificial intelligence, predictive analytics, and other algorithmic tools to support agencies' regulatory enforcement efforts. It addresses the potential benefits and risks of using algorithmic tools to detect, investigate, and prosecute noncompliance with the law and identifies policies, practices, and organizational structures that agencies can put in place to ensure they enforce the law fairly, accurately, and efficiently.

Recommendation 2024–6, *Public Engagement in Agency Rulemaking Under the Good Cause Exemption*. This recommendation provides best practices for public engagement when agencies find good cause to forgo notice-and-comment rulemaking procedures under the Administrative Procedure Act. It encourages agencies to use direct final rulemaking, interim final rulemaking, and alternative methods of public engagement to ensure robust public participation even when they rely properly on the good cause exemption.

Recommendation 2024–7, *Nonlawyer Assistance and Representation in Agency Adjudications*. This recommendation provides best practices for agencies to increase the availability of nonlawyer representation and assistance to participants in their adjudicative systems. It provides guidance on the establishment of rules authorizing qualification or, as appropriate, accreditation of nonlawyer representatives; ways to make such processes accessible and transparent; and strategies for coordinating with other government agencies and nongovernmental organizations to increase the availability of representation and assistance.

The Conference based its recommendations on research reports and prior history that are posted at: <https://www.acus.gov/event/82nd-plenary-session>.

Authority: 5 U.S.C. 595.

Dated: December 23, 2024.

Shawne C. McGibbon,
General Counsel.

Appendix—Recommendations of the Administrative Conference of the United States

Administrative Conference Recommendation 2024–5

Using Algorithmic Tools in Regulatory Enforcement

Adopted December 12, 2024

The use of artificial intelligence (AI) and other algorithmic tools is changing how government agencies do their work. As the Administrative Conference has recognized, these tools “hold out the promise of lowering the cost of completing government tasks and improving the quality, consistency, and predictability of agencies’ decisions.” At the same time, these tools “raise concerns about the full or partial displacement of human decision making and discretion.”¹ The Conference adopted Statement #20, *Agency Use of Artificial Intelligence*, in 2020 to help agencies consider when and how to use algorithmic tools appropriately.² More recently, it adopted specific recommendations addressing the use of algorithmic tools to review regulations,³ manage public comments,⁴ and provide guidance to the public.⁵

In this Recommendation, the Conference turns to the use of algorithmic tools in regulatory enforcement. An algorithmic tool is a computer-based process that “uses a series of rules or inferences drawn from data to transform specified inputs into outputs to make decisions or support decision making.”⁶ Many agencies engage in regulatory enforcement—that is, detecting, investigating, and prosecuting potential violations of the laws they administer. These agencies are often “faced with assuring the compliance of an increasing number of entities and products without a corresponding growth in agency resources.”⁷

¹ Admin. Conf. of the U.S., Statement #20, *Agency Use of Artificial Intelligence*, 86 FR 6616 (Jan. 22, 2021).

² *Id.*

³ Admin. Conf. of the U.S., Recommendation 2023–3, *Using Algorithmic Tools in Retrospective Review of Agency Rules*, 88 FR 42,681 (July 3, 2023).

⁴ Admin. Conf. of the U.S., Recommendation 2021–1, *Managing Mass, Computer-Generated, and Falsely Attributed Comments*, 86 FR 36,075 (July 8, 2021).

⁵ Admin. Conf. of the U.S., Recommendation 2022–3, *Automated Legal Guidance at Federal Agencies*, 87 FR 39,798 (July 5, 2022).

⁶ Recommendation 2023–3, *supra* note 3. For purposes of this Recommendation, “algorithmic tools” includes AI technologies but not basic scientific or computing tools.

⁷ See Admin. Conf. of the U.S., Recommendation 2012–7, *Agency Use of Third-Party Programs to*

As agencies seek ways to make regulatory compliance “more effective and less costly,”⁸ many are considering how they can use algorithmic tools to perform regulatory enforcement tasks such as monitoring compliance; detecting potential noncompliance; identifying potential subjects for investigation, inspection, or audit; and gathering evidence to determine whether corrective action against a regulated person is warranted. Indeed, a report to the Conference analyzing the use of AI in federal administrative agencies found that “AI has made some of its most substantial inroads in the context of agency enforcement activities.”⁹

The use of algorithmic tools in regulatory enforcement presents special opportunities for agencies. When used appropriately, such tools may enable agencies to perform enforcement tasks even more efficiently, accurately, and consistently. Algorithmic tools may be particularly useful in performing many of the most time- and resource-intensive tasks associated with regulatory enforcement, such as synthesizing voluminous records, determining patterns in complex filings, and identifying activities that might require additional review by a human being.

At the same time, significant challenges and concerns arise in agencies’ use of algorithmic tools in regulatory enforcement.¹⁰ The Conference has previously identified possible risks associated with agencies’ use of algorithmic tools, including insufficient transparency, internal and external oversight, and explainability;¹¹ the potential to unintentionally create or exacerbate “harmful biases” by encoding and deploying them at scale;¹² and the possibility that agency personnel will devolve too much decisional authority to AI systems.¹³ Such risks are

Assess Regulatory Compliance, 78 FR 2941, 2941 (Jan. 15, 2013).

⁸ *Id.* In Recommendation 2012–7, the Conference noted that agencies “may leverage private resources and expertise in ways that make regulation more effective and less costly.” *Id.*

⁹ David Freeman Engstrom, Daniel E. Ho, Catherine M. Sharkey & Mariano-Florentino Cuéllar, Government by Algorithm in Federal Administrative Agencies 22 (Feb. 2020) (report to the Admin. Conf. of the U.S.); accord Cary Coglianese, A Framework for Governmental Use of Machine Learning 31 (Dec. 8, 2020) (report to the Admin. Conf. of the U.S.).

¹⁰ Michael Karanicolas, Artificial Intelligence and Regulatory Enforcement (Dec. 9, 2024) (report to the Admin. Conf. of the U.S.); cf. Recommendation 2023–3, *supra* note 3; Admin. Conf. of the U.S., Recommendation 2021–10, *Quality Assurance Systems in Agency Adjudication*, 87 FR 1722 (Jan. 12, 2022); Recommendation 2021–1, *supra* note 4; Statement #20, *supra* note 1; Admin. Conf. of the U.S., Recommendation 2018–3, *Electronic Case Management in Federal Administrative Adjudication*, 83 FR 30,686 (June 29, 2018).

¹¹ “Explainability” allows those using or overseeing AI systems to “gain deeper insights into the functionality and trustworthiness of the system, including its outputs,” and helps users understand the potential effects and purposes of an AI system. Nat’l Inst. Of Standards & Tech., Artificial Intelligence Risk Management Framework (AI RMF 1.0) 16 (2023) [hereinafter AI RMF 1.0].

¹² Statement #20, *supra* note 1, at 6617.

¹³ See *id.* at 6618.

heightened when, as in the regulatory enforcement context, agencies use algorithmic tools to make decisions or take actions that affect a person’s rights, civil liberties, privacy, safety, equal opportunities, or access to government resources or services.¹⁴

Since the Conference issued Statement #20, Congress enacted the AI in Government Act, which directs the Director of the Office of Management and Budget (OMB) to provide agencies with guidance on removing barriers to agency AI use “while protecting civil liberties, civil rights, and economic and national security” and on best practices for identifying, assessing, and mitigating harmful bias.¹⁵ Executive Order 13,960, *Promoting the Use of Trustworthy Artificial Intelligence in the Federal Government*, identifies principles for agencies when designing, developing, acquiring, and using AI and directs agencies to inventory their uses of AI and make those inventories publicly available.¹⁶ Executive Order 14,110, *Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence*, requires agencies to designate Chief AI Officers, who have primary responsibility for overseeing their agencies’ AI use and coordinating with other agencies, and establishes the Chief AI Officer Council to coordinate the development and use of AI across agencies.¹⁷ OMB Memorandum M–24–10, *Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence*, which implements the AI in Government Act and Executive Order 14,110, provides guidance to agencies on strengthening the effective and appropriate use of AI, advancing innovation, and managing risks, particularly those related to rights-impacting uses of AI.¹⁸ Memorandum M–24–10 further provides risk-management practices for agency uses of AI that affect people’s rights, which are derived from the Office of Science and Technology Policy’s Blueprint for an AI Bill of Rights and the National Institute of Standards and Technology’s AI Risk Management Framework.¹⁹ Those practices include “conducting public consultation; assessing data quality; assessing and mitigating disparate impacts and algorithmic discrimination; providing notice of the use of AI; continuously monitoring and evaluating deployed AI; and granting human consideration and remedies for adverse

¹⁴ See Off. Of Mgmt. & Budget, Exec. Off. Of The President, M–24–10, *Advancing Governance, Innovation, And Risk Management For Agency Use Of Artificial Intelligence* 29 (2024) (providing a comprehensive definition of “rights-impacting” uses of AI).

¹⁵ Pub. L. 116–260, div. U, title 1, § 104 (2020) (codified at 40 U.S.C. 11301 note).

¹⁶ See Exec. Order No. 13,960, *Promoting the Use of Trustworthy Artificial Intelligence in the Federal Government*, 85 FR 78,939 (Dec. 3, 2020).

¹⁷ Exec. Order No. 14,110 § 10.1(b), *Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence*, 88 FR 75,191, 75,218 (Oct. 30, 2023); OMB Memorandum M–24–10, *supra* note 14.

¹⁸ See OMB Memorandum M–24–10, *supra* note 14, at 29.

¹⁹ *Id.*; see also Off. of Sci. & Tech. Pol’y, Exec. Off. of the President, Blueprint for an AI Bill of Rights (2022); AI RMF 1.0, *supra* note 11.

decisions made using AI.”²⁰ Additionally, OMB issued Memorandum M–24–18, *Advancing the Responsible Acquisition of Artificial Intelligence in Government*, which “integrat[es] these considerations for AI risk management into agency acquisition planning.”²¹

Consistent with these authorities, this Recommendation provides a framework for using algorithmic tools in regulatory enforcement in ways that promote the efficient, accurate, and consistent administration of the law while also safeguarding rights, civil liberties, privacy, safety, equal opportunities, and access to government resources and services.

RECOMMENDATION

1. When considering possible uses of algorithmic tools to perform regulatory enforcement tasks, agencies should consider whether and to what extent such tools will:

- Promote efficiency, accuracy, and consistency;
- Create or exacerbate unlawful or harmful biases;
- Produce an output that agency decisionmakers can understand and explain;
- Devolve decisional authority to automated systems;
- Adversely affect rights, civil liberties, privacy, safety, equal opportunities, and access to government resources or services;
- Use inappropriately or reveal publicly, directly or indirectly, confidential business information or trade secrets; and
- Affect the public’s perception of the agency and how fairly it administers regulatory programs.

2. When agencies use algorithmic tools to perform regulatory enforcement tasks, they should assess the risks associated with using such tools, including those in Paragraph 1, and put in place oversight mechanisms and data quality assurance practices to mitigate such risks. During a risk assessment process, agencies should consider, among other things, the:

- Ability to customize tools and systems to the agency’s ongoing needs and to specific use cases;
- Tendency of such tools to produce unexpected outcomes that could go beyond their intended uses or have the potential for biased or harmful outcomes;
- Training and testing methodologies used in developing and maintaining such tools;
- Quality assurance practices available for data collection and use, including the dependency of such tools on the completeness and veracity of the underlying data on which they rely; and
- Oversight procedures available to the agency and the public to ensure responsible use of such tools.

3. When agencies use algorithmic tools to perform regulatory enforcement tasks, agencies should ensure that any agency personnel who use such tools or rely on their outputs to make enforcement decisions receive adequate training on the capabilities,

²⁰ Exec. Order No. 14,110, *supra* note 17.

²¹ Off. of Mgmt. & Budget, Exec. Off. of the President, M–24–18, *Advancing the Responsible Acquisition of Artificial Intelligence in Government* (2024), at 1.

risks, and limits of such tools and understand how to appropriately assess their outputs before relying on them.

4. When agencies provide notice to regulated persons of an action taken during an investigation, inspection, audit, or prosecution, they should specify if an algorithmic tool provided a meaningful basis for taking that action, consistent with existing legal requirements.

5. Consistent with legal requirements, agencies should notify the public on their websites of algorithmic tools they meaningfully use to investigate, inspect, audit, or gather evidence to discover non-compliance by regulated entities, along with information about the sources and nature of the data used by such tools.

6. Agencies that meaningfully use or are considering using algorithmic tools in regulatory enforcement should engage with persons interested in or affected by the use of such tools to identify possible benefits and harms associated with their use.

7. Agencies that use algorithmic tools to perform regulatory enforcement tasks should provide effective processes whereby persons can voice concerns or file complaints regarding the use or outcome resulting from the use of such tools so that agencies may respond or take corrective action.

8. The Chief AI Officer Council should facilitate collaboration and the exchange of information among agencies that use or are considering using algorithmic tools in regulatory enforcement.

Administrative Conference Recommendation 2024–6

Public Engagement in Agency Rulemaking Under the Good Cause Exemption

Adopted December 12, 2024

Public participation plays an essential role in agency rulemaking. Agencies facilitate such participation through public engagement activities designed to elicit input from the public, including efforts to enhance public understanding of the rulemaking process and foster meaningful public participation in it. As the Administrative Conference has recognized, “[b]y providing opportunities for public input and dialogue, agencies can obtain more comprehensive information, enhance the legitimacy and accountability of their decisions, and increase public support for their rules.”¹ The Administrative Procedure Act (APA) recognizes the value of public participation in rulemaking by generally requiring agencies to publish a notice of proposed rulemaking in the **Federal Register** and provide interested persons an opportunity to submit written comments on rulemaking proposals.²

However, notice-and-comment procedures can be time-consuming and resource-intensive, and there are circumstances in which the costs of those procedures may outweigh their benefits in terms of public participation. For this reason, the APA permits agencies to forgo notice-and-

comment procedures when, among other reasons, they find for “good cause” that such procedures would be “impracticable, unnecessary, or contrary to the public interest” and they incorporate this finding and “a brief statement of reasons” for it in their rules.³ Notice and comment may be “impracticable” when an agency “finds that due and timely execution of its functions would be impeded by the notice otherwise required [by the APA].”⁴ Notice and comment may be “unnecessary” when a rule is “a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public”⁵ or when the agency lacks discretion regarding the substance of the rule.⁶ And notice and comment may be “contrary to the public interest” in “the rare circumstance when ordinary procedures—generally presumed to serve the public interest—would in fact harm that interest.”⁷

The Conference has long encouraged robust public participation in agency rulemaking and has identified effective methods for engaging with the public outside of, and to supplement, the notice-and-comment process.⁸ The fact that *notice and comment* is unnecessary, impracticable, or contrary to the public interest does not mean that *no* public engagement is appropriate. Indeed, such engagement may be especially important precisely because standard notice and comment is not occurring. And such engagement can also help agencies determine whether the good cause exemption is applicable.

Of course, the same factors that make a comment period inappropriate may weigh equally against other types of public engagement as well. Neither the agency nor the public is well served by needless or counterproductive efforts to engage the public. Such circumstances are rare, however. The goal of this Recommendation is to identify ways in which agencies can meaningfully and usefully engage the public even when relying on the good cause exemption.

Agencies engage with the public in a variety of ways when invoking the good cause exemption. The two primary rulemaking mechanisms are usually referred to as direct final rulemaking and interim final rulemaking.⁹ When notice and comment is unnecessary, agencies sometimes use direct final rulemaking, in which the agency

simultaneously publishes a final rule and solicits comments on it, with the rule going into effect only if no significant adverse comments are received. When notice and comment is impracticable or contrary to the public interest, agencies sometimes use interim final rulemaking, in which, at the same time the rule is published, they request public comment on a final rule for the purpose of deciding whether to reaffirm, modify, or replace the published rule in light of those comments. Agencies sometimes also use other, more informal procedures—including publishing requests for information, engaging in targeted outreach, and convening listening sessions with interested persons—when they invoke the good cause exemption.

The Conference has addressed direct final rulemaking and interim final rulemaking in prior recommendations. In Recommendation 83–2, *The “Good Cause” Exemption from APA Rulemaking Requirements*, the Conference encouraged agencies to “provide a post-promulgation comment opportunity for rules they adopt under the good cause exemption.”¹⁰ In Recommendation 95–4, *Procedures for Noncontroversial and Expedited Rulemaking*, the Conference recommended that agencies “use direct final rulemaking in all cases where the ‘unnecessary’ prong of the good cause exemption is available, unless the agency determines that the process would not expedite issuance of such rules,” and provided best practices for doing so.¹¹ In Recommendation 95–4, the Conference recommended that agencies use interim final rulemaking when they conclude that using notice-and-comment procedures would be “impracticable” or “contrary to the public interest,” and provided best practices for doing so.¹²

The Conference is revisiting the topic of public engagement in rulemaking under the good cause exemption for two reasons. First, best practices for public engagement have become increasingly important as agencies rely more frequently on the good cause exemption.¹³ Second, there have been legal developments since 1995, particularly a 2020 decision by the Supreme Court on interim final rulemaking.¹⁴

Based on a reexamination of agency rulemaking practices under the good cause exemption,¹⁵ this Recommendation identifies best practices for enhancing public

³ *Id.* § 553(b)(B).

⁴ *Util. Solid Waste Activities Grp. v. EPA*, 236 F.3d 749, 754 (D.C. Cir. 2001); see also *Attorney General’s Manual on the Administrative Procedure Act* 30–31 (1947).

⁵ *Mack Trucks, Inc. v. EPA*, 682 F.3d 87, 94 (D.C. Cir. 2012) (quoting *Util. Solid Waste Activities Grp.*, 236 F.3d at 755).

⁶ *Metzenbaum v. Fed. Energy Regul. Comm’n*, 675 F.2d 1282, 1291 (D.C. Cir. 1982).

⁷ *Mack Trucks, Inc.*, 682 F.3d at 95.

⁸ See Recommendation 2018–7, *supra* note 1; see also Admin. Conf. of the U.S., Office of the Chair, Statement of Principles for Public Engagement in Agency Rulemaking (rev. Sept. 1, 2023).

⁹ The APA does not define direct final rulemaking or interim final rulemaking. Agencies developed these terms to describe commonly used processes for engaging with the public when they invoke the good cause exemption.

¹⁰ Admin. Conf. of the U.S., Recommendation 83–2, *The “Good Cause” Exemption from APA Rulemaking Requirements*, 48 FR 31180 (July 7, 1983).

¹¹ Admin. Conf. of the U.S., Recommendation 95–4, *Procedures for Noncontroversial and Expedited Rulemaking*, 60 FR 43110 (Aug. 18, 1995).

¹² *Id.*

¹³ See, e.g., U.S. Gov’t Accountability Off., GAO–13–21, *Agencies Could Take Additional Steps to Respond to Public Comments* (2012); see also Cong. Rsch. Serv., R44356, *The Good Cause Exemption to Notice and Comment Rulemaking: Judicial Review of Agency Action* (2016).

¹⁴ *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 683 (2020).

¹⁵ See Mark Squillace, *Best Practices for Agency Use of the Good Cause Exemption for Rulemaking* (Dec. 4, 2024) (report to the Admin. Conf. of the U.S.).

¹ See Admin. Conf. of the U.S., Recommendation 2018–7, *Public Engagement in Rulemaking*, 84 FR 2146 (Feb. 6, 2019).

² 5 U.S.C. 553(b)–(c).

engagement in rulemaking under the good cause exemption, particularly when agencies use direct final rulemaking and interim final rulemaking. It also encourages agencies to use alternative methods—such as publishing requests for information, engaging in targeted outreach, convening listening sessions with interested persons, and soliciting post-adoption comments—to reap the benefits of robust public participation even when they rely properly on the good cause exemption. Recommendations 83–2 and 95–4 are superseded to the extent that they recommend public engagement practices that are inconsistent with this Recommendation. Recommendation

Direct Final Rulemaking

1. Except in the rare instance that an agency determines that direct final rulemaking would not expedite issuance of a rule, an agency should use direct final rulemaking when it:

a. For good cause finds that it is “unnecessary” to undertake notice-and-comment rulemaking; and

b. Concludes that the rule is unlikely to elicit any significant adverse comments.

2. When an agency uses direct final rulemaking, it should publish in the **Federal Register** a rule that:

a. Identifies the rule as a “direct final rule”;

b. Provides a brief statement explaining the basis for the agency’s finding that it is unnecessary to undertake notice-and-comment rulemaking;

c. Provides a statement of the rule’s basis and purpose and explains the issues the agency considered in developing the rule;

d. Provides a period of at least 30 days during which interested persons may submit comments regarding the substance of the rule;

e. Explains that the agency will withdraw the direct final rule if it receives any significant adverse comments and specifies any additional actions that the agency may take if it withdraws the direct final rule;

f. Specifies when the rule will take effect if the agency receives no significant adverse comments (see Paragraph 5);

g. If applicable, specifies whether the agency will issue a subsequent notice in the **Federal Register** confirming that the agency received no significant adverse comments (see Paragraph 5); and

h. Identifies any companion proposed rule, as described in Paragraph 3.

3. When an agency issues a direct final rule, it may consider publishing in the same issue of the **Federal Register** a companion proposed rule that will serve as a notice of proposed rulemaking if the agency later withdraws the direct final rule upon receiving any significant adverse comments. In the event the agency receives significant adverse comments, the agency should consider providing an additional period for public comment on the companion proposed rule.

4. An agency should consider any comment received during direct final rulemaking to be a significant adverse comment if the comment explains why:

a. The rule would be inappropriate, including challenges to the rule’s underlying premise or approach; or

b. The rule would be ineffective or unacceptable without a change.

5. Absent exceptional circumstances for providing a different effective date, the agency should provide that a direct final rule will take effect at least 30 days after the close of the comment period if the agency receives no significant adverse comments or at least 30 days after publication of a subsequent notice in the **Federal Register** confirming that the agency received no significant adverse comments. An agency that does not publish a confirmation notice should consider providing an effective date greater than 30 days after the close of the comment period if the agency believes it is necessary to ensure that it has adequate time to withdraw the rule in the event it receives significant adverse comments.

6. If the agency receives any significant adverse comments or otherwise decides to withdraw the direct final rule before it takes effect, the agency should publish a notice in the **Federal Register** that states that the agency is withdrawing the direct final rule and describes any further rulemaking the agency will conduct on the matter. If the agency previously requested comments in a companion proposed rule as described in Paragraph 3, the agency may proceed with notice-and-comment rulemaking consistent with the proposed rule.

Interim Final Rulemaking

7. An agency is encouraged to use interim final rulemaking when it for good cause finds that it is “impracticable” or “contrary to the public interest” to undertake notice-and-comment rulemaking.

8. When an agency uses interim final rulemaking, it should publish in the **Federal Register** a rule that:

a. Identifies the rule as an “interim final rule”;

b. Provides a brief statement explaining the basis for the agency’s finding that is “impracticable” or “contrary to the public interest” to undertake notice-and-comment rulemaking;

c. Provides a statement of the rule’s basis and purpose and explains the issues the agency considered in developing the rule;

d. Provides a period of at least 30 days (or in most cases at least 60 days, in particular for “major rules” as defined in the Congressional Review Act) during which interested persons may submit comments regarding the substance of the rule or the agency’s finding that notice-and-comment rulemaking is impracticable or contrary to the public interest;

e. Explains that the agency will consider any comments that it receives in response to the interim final rule;

f. As applicable, sets forth the agency’s plans for supplemental public engagement (see Paragraph 11) and solicits public input on those public engagement plans;

g. Explains that the rule is being adopted without prior notice and comment, specifies the date upon which the rule will take effect, and identifies the rule’s expiration date if applicable; and

h. Specifies that the agency will consider the comments and complete the rulemaking by reaffirming, modifying, or withdrawing the interim final rule (see Paragraph 9).

9. An agency should conclude the interim final rulemaking by publishing a new final rule in the **Federal Register** that responds to all significant comments and reaffirms, modifies, or withdraws the interim final rule as appropriate. Consistent with agency resources and priorities, an agency should publish the new final rule as expeditiously as possible and should prioritize “major rules” as defined in the Congressional Review Act.

Additional Public Engagement

10. When appropriate, an agency should use additional forms of public engagement, including those identified in Recommendation 2018–7, *Public Engagement in Rulemaking*, before considering whether to invoke the good cause exemption when such engagement would help the agency (a) determine if notice-and-comment rulemaking is unnecessary, impracticable, or contrary to the public interest or (b) develop the rule. The agency should explain in the direct or interim final rule what additional public engagement the agency undertook.

11. An agency should consider using supplemental forms of public engagement after issuing an interim final rule. Consistent with Executive Order 13,563 and Recommendation 2021–2, *Periodic Retrospective Review*, an agency should prioritize for retrospective review interim final rules that are “major rules” as defined in the Congressional Review Act. An agency should explain in any subsequent final rule what supplemental public engagement the agency undertook.

12. Consistent with Recommendation 2014–4, “*Ex Parte Communications in Informal Rulemaking*,” an agency should disclose ex parte communications that occur during supplemental public engagement. For purposes of applying Recommendation 2014–4, an interim final rule should be considered the equivalent of a notice of proposed rulemaking.

Administrative Conference Recommendation 2024–7

Nonlawyer Assistance and Representation in Agency Adjudications

Adopted December 12, 2024

Millions of people each year participate in administrative adjudicative proceedings to access federal programs and resolve legal issues. Some adjudicative proceedings are simple enough—or could be made simple enough—for people to navigate on their own, and the Administrative Conference has identified best practices for reducing administrative burdens and assisting self-represented parties.¹ But many adjudicative

¹ See Admin. Conf. of the U.S., Recommendation 2023–6, *Identifying and Reducing Burdens on the Public in Administrative Proceedings*, 89 FR 1511 (Jan. 10, 2024); Admin. Conf. of the U.S., Recommendation 2016–6, *Self-Represented Parties in Administrative Proceedings*, 81 FR 94319 (Dec. 23, 2016).

proceedings are so complex, or involve such significant stakes, that people engaging with them benefit from representation by individuals with expertise in those programs or assistance from individuals who can help them navigate the proceedings.

It is helpful to distinguish between “representation” and “assistance.” Representation is used to denote that the individual is “standing in the shoes” of the participant and can speak for that individual even when they are not present. Other activities that likely indicate representation include counseling on eligibility for an agency program or signing official records.² “Assistance” is broader and used to indicate many other forms of help that may be beneficial to a person in dealing with an agency; this may include educating someone on process, counseling someone about rights and remedies generally, and, in some cases, helping someone navigate a form or benefits application. In most cases, representation will include various forms of assistance, but assistance does not include representation.

Representation and assistance, whether by lawyers or nonlawyers, are particularly valuable, even in seemingly straightforward adjudicatory proceedings, when they help people access relevant and accurate information about agency programs, program eligibility, and information on how to complete forms correctly and submit required information.³ For example, although the use of digital technologies, such as online forms and virtual hearings, is an effective strategy for increasing accessibility, it can also act as a barrier for people who lack access to digital tools or lack the skills to navigate these systems. Such challenges can be present for anyone, but those lacking representation or assistance may become so overwhelmed that they forgo rights and benefits to which they are entitled.⁴ More generally, a lack of representation or assistance often can lead to incorrect or unfair outcomes.

Representation and assistance not only help participants in adjudicatory proceedings but also benefit agencies. Without representation or assistance, an individual may be less likely to properly and timely complete adjudicative requirements, which can delay proceedings. Additionally, those without representation or assistance may require more support from the agency, including the adjudicator, which can strain resources and reduce efficiency.⁵

Many people, however, particularly low-income people and members of historically

underserved communities, are unable to access representation or assistance.⁶ One barrier is the shortage of affordable legal services. This concern is particularly acute in remote and rural areas, where not only are lawyers relatively scarce and may not have relevant expertise, but they may not be accessible to people who need them due to the long distances required to visit in person, inability to consult virtually, and other barriers.

Federal agencies have long innovated various ways to widen the pool of available representatives and expand assistance. For example, many agencies currently permit participants in agency adjudications to be represented by qualified or accredited nonlawyers.⁷ In many instances, the decision maker (whether or not an administrative law judge) makes an informal determination whether a representative is “qualified,” but some adjudicative systems provide for a formal accreditation system to determine which nonlawyer representatives are qualified to practice in those systems.⁸

Increasing availability of nonlawyer representation and assistance can be particularly beneficial in meeting the needs of communities of special populations, including veterans and servicemembers, members of tribal communities, people with disabilities, people with criminal records, immigrants, and disaster survivors.⁹ Members of such communities often benefit from representation and assistance provided by nongovernmental organizations, advocacy groups, and others already operating to meet

the needs and face the challenges within such communities. These community ties function as a way to build trust among participants and serve as a deep source of knowledge and expertise that can bear on representation and assistance. That trust can in turn inspire public confidence in agency adjudication. Agencies can engage with such groups to help increase availability and awareness of nonlawyer representation and assistance in these communities.

There are barriers to increasing availability of nonlawyer representation and assistance, including barriers that agencies may be able to address through their rules regarding representation and assistance. Agencies vary in their requirements, oversight, and encouragement of such representation and assistance. While reasonable requirements for qualification or accreditation, as well as continuing education, help ensure the quality and competence of representation, overly burdensome requirements can unnecessarily reduce the availability of nonlawyer representation. When agencies do not affirmatively inform participants of the availability of such representation or assistance, participants may not be aware of these resources.

The issue of nonlawyer representation and assistance has been a long-standing concern of the Conference. As early as 1986, the Conference recommended that agencies permit and encourage nonlawyer representation and assistance because of the substantial number of individuals needing or desiring representation and assistance in filling out forms, filing claims, and appearing in agency proceedings who were unable to afford or otherwise obtain such representation or assistance by lawyers.¹⁰ In 2023, the Conference adopted two recommendations addressing agency adjudicatory processes that encourage agencies to allow participants in many adjudications “to be represented by a lawyer or a lay person with relevant expertise”¹¹ and to establish “rules authorizing accredited or qualified nonlawyer representatives to practice before the agency.”¹² And in 2024, the Conference’s Chair released *Model Rules of Representative Conduct*, that, among other topics, address the qualifications and conduct of nonlawyer representatives.¹³

This Recommendation expands on the Conference’s previous recommendations by identifying best practices for incorporating and increasing representation and assistance by permitting broader practice by nonlawyers in different types of adjudicative systems and providing guidance to make processes governing nonlawyer representation and assistance more accessible and transparent.

² Admin. Conf. of the U.S., Recommendation 86–1, *Nonlawyer Assistance and Representation*, 51 FR 25641, 25642 n.2 (July 16, 1986).

³ White House Legal Aid Interagency Roundtable, *Access to Justice in Federal Administrative Proceedings: Nonlawyer Assistance and Other Strategies 1* (2023) [hereinafter WH–LAIR Report].

⁴ Pamela Herd, Donald Moynihan, & Amy Widman, *Identifying and Reducing Burdens in Administrative Processes 41* (Dec. 5, 2023) (report to the Admin. Conf. of the U.S.).

⁵ Recommendation 2016–6, *supra* note 1, at 94,320; *see also*, Recommendation 86–1, *supra* note 2, at 25,642; WH–LAIR Report, *supra* note 3, at 19 (“Studies show that legal assistance improves legal outcomes.”).

⁶ *See* Amy Widman, *Nonlawyer Assistance and Representation* (Dec. 9, 2024) (report to the Admin. Conf. of the U.S.).

⁷ *See* 5 U.S.C. 555(b) (“A person compelled to appear in person before an agency . . . is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative.”). Examples of nonlawyers who represent or assist parties in agency proceedings include other licensed professionals such as accountants, social workers, and paralegals; law students; union representatives; human resources professionals; corporate officers; tribal advocates; agency employees; community members; and family members. The Conference recognizes that there is an ongoing discussion about the best way to describe representatives who do not hold an active law license. For the purposes of this Recommendation, the Conference refers to this group as “nonlawyer representatives” because it is consistent with two prior recommendations of the Conference, the *Model Rules of Representative Conduct*, and the 2023 report of the White House Legal Aid Interagency Roundtable. Use of the term “nonlawyer” is not meant to suggest any deficiencies in representation offered by such individuals, nor should it deter any individual agency from adopting a different term. The Conference encourages agencies to remain attentive to the ongoing discussion within the legal community about terminology in this area and to consider updating their usage accordingly.

⁸ Federal law may specify criteria or processes that an agency must use in determining whether a nonlawyer representative is qualified to represent participants in proceedings before it. *See, e.g.*, 5 U.S.C. 500(c) (providing that individuals duly qualified to practice as a certified public accountant in a state may represent participants in Internal Revenue Service proceedings upon filing with the agency a written declaration as specified by law).

⁹ *See* WH–LAIR Report, *supra* note 3, at vii.

¹⁰ Recommendation 86–1, *supra* note 2, at 25,642.

¹¹ Admin. Conf. of the U.S., Recommendation 2023–5, *Best Practices for Adjudication Not Involving an Evidentiary Hearing*, 89 FR 1509 (Jan. 10, 2024).

¹² Recommendation 2023–6, *supra* note 1, at 1513.

¹³ Admin. Conf. of the U.S., *Model Rules of Representative Conduct* (2024). The Model Rules were developed by a working group of public- and private-sector representatives.

Recommendation

Availability of Nonlawyer Assistance

1. Agencies should permit nonlawyers—including friends, family members, and other individuals—to assist participants throughout the adjudicative process. For example, agencies should freely allow nonlawyers to help participants navigate and complete forms, obtain necessary documents and records, and accompany participants to interviews and hearings for moral support, unless there is reason to exclude such individuals (e.g., allowing participation in an interview or hearing could cause a disruption or adversely affect testimony).

2. Agencies should encourage and expand opportunities for nonlawyer assistance through programs that authorize, educate, and/or certify individuals to provide participants with information, support, and dedicated assistance, either by staffing and operating such programs directly or providing guidance and/or grant funding to nonprofit organizations to perform those functions.

Availability of Nonlawyer Representation

3. To increase the availability of representation for participants in their adjudications, agencies should establish rules authorizing qualified (see paragraphs 4–5) and, as appropriate, accredited (see paragraphs 6–9) nonlawyer representatives to practice before them.

Qualifications of Nonlawyer Representatives

4. Agencies should establish reasonable qualifications required for nonlawyer representatives to practice before them, without adding unnecessary burdens. When determining whether a nonlawyer is qualified to represent a participant in an agency proceeding, agencies should consider the factors listed in the *Model Rules of Representative Conduct*, such as the representative's relationship to the participant; their knowledge, expertise, experience, or skill; and their fitness to serve.

5. Agencies should have a process for determining whether an individual who has been disbarred should thereby be disqualified from serving as a nonlawyer representative in a particular case.

Accreditation of Nonlawyer Representatives

6. In addition to establishing qualifications for nonlawyer representatives, the following types of agencies should consider developing and implementing accreditation programs for nonlawyer representatives to help ensure the quality and competency of representation in their adjudicative proceedings:

- a. Agencies conducting adversarial adjudications with evidentiary hearings;
- b. Agencies that adjudicate a high volume of cases involving historically underserved communities; and
- c. Agencies with adjudications that involve specialized or technical subject matter.

7. Agencies with accreditation programs should consider implementing reasonable initial and continuing education requirements for nonlawyer representatives, either by providing such education directly or by working with organizations that employ, educate, or mentor nonlawyer

representatives. In doing so, agencies should avoid imposing education requirements that unnecessarily burden representatives.

8. Agencies regularly should review the requirements of their accreditation programs to ensure they are reasonable and beneficial without adding unnecessary burdens.

9. Agencies with programs for accrediting, educating, and regulating nonlawyer representatives who practice before them should have funding to ensure availability of representation and reduce wait times for accreditation.

Oversight and Enforcement

10. Agencies should establish rules to govern the conduct and ethical obligations of nonlawyer representatives.

11. Agencies should establish procedures for reviewing allegations or evidence of noncompliance by nonlawyer representatives with their rules of conduct; adjudicating allegations that nonlawyer representatives have violated those rules; and imposing sanctions on nonlawyer representatives found to have violated the rules of conduct. Agencies should also ensure they have procedures for enforcing such sanctions.

12. Agencies should provide for administrative review of any sanctions imposed on nonlawyer representatives for violation of relevant conduct rules.

13. Agencies may consider using the *Model Rules of Representative Conduct* as a resource in establishing the rules and procedures outlined in paragraphs 10–12.

Transparency With Regard to Representation and Assistance

14. To improve participants' awareness of options for representation and assistance, including by qualified or accredited nonlawyers, agencies should inform participants about such options early and throughout adjudications, including at levels of decision making prior to an opportunity for a hearing and by posting relevant information on their websites.

15. Agencies should publish the following in the *Code of Federal Regulations* and on their websites:

- a. Rules prescribing the qualifications required for nonlawyer representatives;
- b. Rules for accrediting, educating, and regulating nonlawyer representatives, for agencies with formal accreditation programs; and
- c. Rules governing the conduct and ethical obligations of nonlawyer representatives, as well as procedures for adjudicating alleged violations of these rules and imposing sanctions.

16. To inform and protect participants, agencies should publish on their websites the names of nonlawyer representatives who have been sanctioned, the nature of the sanction, and, as relevant, the specified period of the sanction. Agencies may omit certain information regarding the nature of the violation or sanction as necessary to preserve recognized privacy interests. Agencies should consider establishing, when appropriate, procedures for removing information about sanctioned representatives from their websites after a certain period of time has elapsed or a sanction is no longer in effect.

Coordination and Collaboration With Regard to Representation and Assistance

17. Agencies with overlapping subject matters, similar adjudication systems, or similar regulatory structures for nonlawyer representation should identify opportunities for interagency coordination of accreditation or education programs for nonlawyer representatives, to save resources and promote consistency.

18. When authorized by law, agencies should expand grant funding opportunities for nonprofit organizations that employ, educate, or mentor nonlawyers who represent or assist participants.

19. Agencies should work with law and other professional school clinics to expand programs that allow students to represent participants under the supervision of lawyers or other accredited professionals or to provide assistance to participants.

20. Agencies should engage with community-based organizations, nongovernmental organizations, advocacy groups, and other organizations that can assist in building trust among participants and improve nonlawyer representation and assistance by bringing knowledge of and expertise in issues facing those communities.

21. Agencies should collaborate with state bar associations and other relevant licensing authorities to reduce the effect that state prohibitions against unauthorized practice of law may have on the ability of nonlawyers to represent parties before them.

Data

22. Agencies should gather and maintain baseline comparative data on representation, including by nonlawyers, to (1) help agencies and others assess whether rules and procedures regarding nonlawyer representation are achieving agency goals in making such representation available and accessible; and (2) identify opportunities for expanding access to representation. Such data should include, at a minimum, the type and number of nonlawyer representatives; the outcomes, in aggregate, of cases in which parties have no representation, lawyer representation, or nonlawyer representation; the number of pending applications for accreditation; and average wait time for applications to be reviewed. Agencies should make data regarding representation publicly available, including on their websites, and regularly update it.

23. To the extent practicable, agencies should gather and maintain data on assistance, including by nonlawyers, to assess participants' experiences with and access to various forms of assistance. Agencies may collect such information by, for example, surveying participants regarding whether they received any assistance, the type of assistance they received, and the effectiveness of such assistance. To help with the assessment of funding opportunities, agencies may also require grantees, as a condition of their grants, to report on the types of assistance they provide, the number of participants they assist, and the outcomes of such assistance (e.g., the individual applied for benefits). Agencies should make data on assistance publicly available,

including on their websites, and regularly update it.

[FR Doc. 2024–31352 Filed 12–27–24; 8:45 am]

BILLING CODE 6110–01–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Center for Faith-Based and Neighborhood Partnerships (FBNP) Partner Meeting Survey

AGENCY: United States Agency for International Development.

ACTION: Notice of information collection; request for comment.

SUMMARY: The U.S. Agency for International Development/Center for Faith-Based and Neighborhood Partnerships (USAID/IPI/LFT/FBNP), as part of the Agency's continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the following new information collection, as required by the Paperwork Reduction Act of 1995. Comments are requested concerning: Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information collected; and ways to minimize the burden of the collection of the information on the respondents.

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: To access and review the electronic Google forms survey tool, please use: <https://forms.gle/4JR8nLzZmmsPNkv8>.

Interested persons are invited to submit comments regarding the proposed information collection to Amanda Vigneaud, Initiative Lead, USAID/IPI/LFT/FBNP at cfbnp@usaid.gov.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Amanda Vigneaud, Initiative Lead, USAID/IPI/LFT/FBNP at cfbnp@usaid.gov or 202–712–1815.

SUPPLEMENTARY INFORMATION:

Title of Collection: Center for Faith-Based and Neighborhood Partnerships (FBNP) Partner Meeting Survey 2024.

OMB Number: Not yet known.

Expiration Date: Not yet known.

Type of Request: New collection.

Form Number: Not yet known.

Affected Public: Point of contact from faith-based organizations that have met with USAID/IPI/LFT/FBNP in 2024.

Estimated Number of Respondents: 70.

Estimated Total Annual Burden

Hours: 20–25.

Abstract: The Center for Faith-Based and Neighborhood Partnerships (USAID/IPI/LFT/FBNP) met with approximately 70 organizations in 2024. This survey will be sent to the points of contact from the partner meetings to collect information on outcomes following the partner's meeting with the team. If the collection is not conducted, it will affect the ability of USAID/IPI/LFT/FBNP to improve their partner engagement process. Method of collection will be electronic using Google forms survey. The data will be collected and maintained by USAID/IPI/LFT/FBNP on their Google platform.

Amanda Vigneaud,

Initiative Lead, USAID/IPI/LFT/FBNP.

[FR Doc. 2024–31189 Filed 12–27–24; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, *Public Law 104–13*. Comments are required regarding: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by January 29, 2025 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this

particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Production and Conservation Business Center

Title: Request for Geospatial Products and Services.

OMB Control Number: 0565–NEW.

Summary of Collection: In accordance with the Paperwork Reduction Act, 1995, the Farm Production and Conservation (FPAC) is requesting comments from all interested individuals and organizations on a new information collection request for the. The information collection is needed to enable the Department of Agriculture to effectively administrate the Geospatial and Aerial Photography Programs. GEO has the responsibility for acquiring and conducting coordination of the FPAC's geospatial datasets and the aerial photography flying contracts and remote sensing programs. The geospatial data and digital aerial imagery secured by FPAC BC is public domain and reproductions are available at cost to any customer with a need. All receipts from the sale of geospatial products and services are retained by FPAC BC. This collection will get an FPAC OMB control number. The FPAC–ISD–441, Request for Geospatial Products and Services, is the form FPAC supplies to the customers for placing an order for aerial imagery products and services. The burden hours have decreased because FPAC–ISD–441B Request for Custom Aerial Print and FPAC–ISD441D One Time Credit Card Payment Authorization forms are now obsolete.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per responses hours multiplied by the estimated total annual responses. The information collection request will get new FPAC OMB control number.

Estimate of Burden: Public reporting burden for the information collection is estimated to average 16 minutes per response.

Type of Respondents: Farmers, Ranchers, and other customers who

wish to purchase imagery products and services.

Estimated Number of Respondents: 1,425.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 1,425.

Estimated Average Time per Response: 0.303.

Estimated Total Annual Burden Hours on Respondents: 432 hours.

Rachelle Ragland-Greene,

Departmental Information Collection Clearance Officer.

[FR Doc. 2024-31053 Filed 12-27-24; 8:45 am]

BILLING CODE 3411-E2-P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and approval under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments are requested regarding: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments regarding these information collections are best assured of having their full effect if received by January 29, 2025. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such

persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Plan for Estimating Daily Livestock Slaughter under Federal Inspection.

OMB Control Number: 0581-0050.

Summary of Collection: The Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627) (AMA), as amended, authorizes the Secretary of Agriculture "to collect and disseminate marketing information, including adequate outlook information on a market-area basis, for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income, and bringing about a balance between production, and utilization of agricultural products." The collection of information in this request is based on the AMA, title II, subtitle A, sec. 203, principally, paragraphs (b), (g), and (k) that direct the Secretary of Agriculture to determine agricultural marketing costs and develop efficient marketing methods to reduce the price spread between producer and consumer; to collect and disseminate marketing information to bring about a balance between production and utilization of agricultural products; and to collect, tabulate, and disseminate agricultural marketing statistics.

Under this authority, the Agricultural Marketing Service (AMS) Livestock, Poultry, and Grain Market News (LPGMN) Division works to provide timely information of prices, supply, demands, trends, movement, and other details affecting the trade of livestock, poultry, meat, eggs, grain, and their related products, as well as locally produced and marketed products. The information requested is used to compile and disseminate market reports that provide current, unbiased information to all stakeholders in the U.S. agricultural industry.

Need and Use of the Information: AMS will collect information on estimation of the current day's slaughter at their plant(s) and the actual slaughter of the previous day. The report is used to make market outlook projections and maintain statistical data. The up-to-the-minute reports collected and disseminated by professional market reporters are intended to provide both buyers and sellers with the information necessary for making intelligent, informed marketing decisions, thus putting everyone in the marketing system in an equal bargaining position. Since the government is a large purchaser of meat, a system to monitor

the collection and reporting of data is needed. Collecting this information less frequently would hinder the timely use of this data.

Description of Respondents: Business or other for-profit; Individuals or households; Farms.

Number of Respondents: 69.

Frequency of Responses: Reporting; Weekly; Other: Daily.

Total Burden Hours: 597.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2024-31249 Filed 12-27-24; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments are requested regarding: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology.

Comments regarding this information collection received by January 29, 2025 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

Forest Service

Title: Significant Cave Nomination.

OMB Control Number: 0596–0244.

Summary of Collection: The Federal Cave Resources Protection Act (FCRPA) [Pub. L. 100–691, 107 Stat. 4546] requires the Secretaries of Agriculture and Interior to identify and protect significant caves on Federal lands within their respective jurisdictions. The information covered in this collection applies to caves on Federal lands administered by the Forest Service. The FCRPA does not define what constitutes a “significant” cave, but it does require the Secretaries, in cooperation and consultation with each other, to issue regulations that define criteria for identification of significant caves found at (16 U.S.C. 4303(a)).

Need and Use of the Information: In accordance with FCRPA, the FS collects information from appropriate private sector interests, including “cavers,” to update a list of significant caves under USDA’s jurisdiction. FS will use form FS–2800–0023 “Significant Cave Nomination Worksheet” to collect name, address, telephone number of individual or organization submitting the nomination and the individual who is knowledgeable about the resources in the cave; name and location of the cave, a discussion of how the cave meets the criteria, studies, maps, research papers and other supporting documentation. If this information is not collected FS might not become aware of potentially significant caves’ existence or have insufficient information upon which to base a judgment as to their significance.

Description of Respondents:

Individuals and households.

Number of Respondents: 10.

Frequency of Responses: Reporting: One time.

Total Burden Hours: 110.

Levi S. Harrell,

Departmental Information Collection
Clearance Officer.

[FR Doc. 2024–31248 Filed 12–27–24; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2020–0047]

Privacy Act of 1974; System of Records

AGENCY: Animal and Plant Health
Inspection Service, USDA.

ACTION: Notice of a new system of
records.

SUMMARY: Pursuant to the Privacy Act of 1974 and Office of Management and Budget Circular No. A–108, the U.S. Department of Agriculture gives notice that a component agency, the Animal and Plant Health Inspection Service (APHIS) proposes to add a new system of records to its inventory of records. The system of records being proposed is the APHIS Student Outreach Programs System, USDA/APHIS–26. The purpose of this system is to facilitate the submission and review of information submitted by students and their parents or guardians as part of the application process for student outreach programs.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this notice is applicable upon publication, subject to a 30-day notice and comment period in which to comment on the routine uses described in the “Routine Uses of Records Maintained in the System” section of this system of records notice. Please submit any comments by January 29, 2025.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to www.regulations.gov. Enter APHIS–2020–0047 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.

- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2020–0047, Regulatory Analysis and Development, PPD, APHIS, Station 2C–10.16, 4700 River Road, Unit 25, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at www.regulations.gov or in our reading room, which is located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact Ms. Sophia Kirby, Chief, Outreach and Communications, OCRDI, 4700 River Road, Unit 92, Riverdale, MD 20737; (301) 851–4192; email: sophia.l.kirby@usda.gov. For Privacy Act questions concerning this system of records notice, please contact Director, Freedom of Information and Privacy Act Staff, 4700 River Road, Unit 50, Riverdale, MD 20737; (301) 851–4076; email:

APHISPrivacy@usda.gov. For USDA Privacy Act questions, please contact the USDA Chief Privacy Officer, Information Security Center, Office of Chief Information Officer, USDA, Jamie L. Whitten Building, 1400 Independence Ave. SW, Washington, DC 20250; email: USDAPrivacy@usda.gov.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) is proposing to add a new system of records, titled APHIS Student Outreach Programs System, USDA/APHIS–26, that APHIS’ Office of Civil Rights, Diversity, and Inclusion (OCRDI) will use to facilitate the submission and review of information submitted by students and their parents or guardians as part of the application process for outreach programs such as AgDiscovery. (AgDiscovery is a summer outreach program designed to help teenagers explore careers in areas such as plant and animal science, wildlife management, and agribusiness (<https://www.aphis.usda.gov/careers/students-grads/agdiscovery>)). APHIS Student Outreach Programs challenge students to consider the importance of American agriculture, and the role USDA plays in this critical mission. Students participate in experiential learning activities on and off campus, attend workshops, lectures, laboratory, and field exercises, in addition to a variety of cultural and teambuilding activities. The maintenance of this system is conducted in a manner consistent with the guidelines established in 7 U.S.C. 2279 (Farming Opportunities Training and Outreach).

The application process for OCRDI’s outreach programs provides information needed to discover and explore a student’s interest in agriculture and provides recommendations from others who are familiar with the student’s character. That information, which is collected annually from applicants, will be used to evaluate and select the participants for APHIS Student Outreach Programs. The application process also provides the agency and participating educational institutions information required to evaluate and rate the applicants.

Individuals covered by the system include students who apply for APHIS Student Outreach Programs and their parent(s) or guardian(s).

APHIS will share information from the system pursuant to the requirements of the Privacy Act and, in the case of its routine uses, when the disclosure is compatible with the purpose for which

the information was compiled. A full list of routine uses is included in the routine uses section below.

SYSTEM NAME AND NUMBER:

APHIS Student Outreach Programs System, USDA/APHIS-26.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The electronic component is completed via the IBM Forms Filler for application submissions. This component and the paper files are located in the Office of Civil Rights, Diversity, and Inclusion, 4700 River Road, Unit 92, Riverdale, MD 20737.

SYSTEM MANAGER(S):

APHIS Student Outreach Programs Manager, APHIS, 4700 River Road, Unit 92, Riverdale, MD 20737.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The maintenance of this system is conducted in a manner consistent with the guidelines established through the Farming Opportunities Training and Outreach found in 7 U.S.C. 2279.

PURPOSE(S) OF THE SYSTEM:

APHIS Student Outreach Programs System is used to facilitate the submission and review of information submitted by students, their parents, or guardians, and those that provide recommendations for the students as part of the application process for Office of Civil Rights, Diversity, and Inclusion programs such as AgDiscovery. These programs are designed to help teenagers explore careers in areas such as plant and animal science, wildlife management, and agribusiness.

The application process provides the information needed to assess a student's interest in agriculture, and provides recommendations from others who are familiar with the student's interests and character. The information, which is collected annually from applicants, will ultimately be used to select the participants for APHIS Student Outreach Programs. The application process also provides the APHIS and the participating educational institutions the information to rate and rank the applicants.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by the system include students who apply for APHIS Student Outreach Programs, their parent(s) or guardian(s), and individuals mentioned or referenced in documents entered into the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in the system include, but are not limited to, the name, address, phone number(s), gender, grade, name of educational institution, name of parent(s) or guardian(s) and their contact information, emergency contact information, email address, essay, volunteer service, extracurricular activities, student contract, parental release form, applicant rating and ranking, past program participation, photo release, agency comments, and individuals mentioned or referenced in documents entered into the system. Records also include a letter of recommendation form that is completed by a teacher, educational institution counselor or administrator, as well as other persons with personal knowledge of the student. (Three letters of recommendation are required for applicants.) The name of the specific host educational institution associated with the student is also maintained in the system, as well as information about the applicant's past participation in the program.

RECORD SOURCE CATEGORIES:

The sources for the information in this system comes directly from the applicant, the applicant's parent(s) or guardian(s), and those who have provided recommendation letters for them, such as parents, teachers, and other persons.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, records contained in the system may be disclosed outside USDA as a routine use under 5 U.S.C. 552a(b)(3), to the extent that such uses are compatible with the purposes for which the information was collected. Such permitted routine uses include the following:

- (1) To the partnering educational institutions that receive the funding via the cooperative agreement to administer the APHIS Student Outreach Programs and assists in the application review, rating, and selection of participants;
- (2) When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program, statute, or by regulation, rule, or order issued pursuant thereto, APHIS may disclose the record to the appropriate agency, whether Federal, foreign, State, Tribal, local, or other

public authority responsible for enforcing, investigating, or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility of the receiving entity;

(3) To the Department of Justice when: (a) USDA or any component thereof; or (b) any employee of USDA in his or her official capacity, or any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (c) the United States Government, is a party to litigation or has an interest in such litigation, and USDA determines that the records are relevant and necessary to the litigation and the use of such records by the Department of Justice is for a purpose that is compatible with the purpose for which USDA collected the records;

(4) In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the USDA or other agency representing the USDA determines that the records are both relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding;

(5) To appropriate agencies, entities, and persons when: (a) USDA suspects or has confirmed that there has been a breach of the system of records; (b) USDA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, USDA (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with USDA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(6) To another Federal agency or Federal entity, when information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) 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;

(7) To a Congressional office in response to an inquiry from that

Congressional office made at the written request of the individual about whom the record pertains;

(8) To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the USDA, when necessary to accomplish an agency function related to this system of records; and

(9) To the National Archives and Records Administration (NARA) or other Federal Government agencies pursuant to records management activities conducted under 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in paper copy and electronically. Paper records are maintained at APHIS Headquarters at 4700 River Road Unit 92, Riverdale, MD 20737. The office is locked during non-business hours and requires the presentation of employee identification for admittance at all times. Electronic copies are housed on the USDA secured computer system and are entered into an electronic database stored on the USDA secured computer system at the address above in Riverdale, MD.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The records can be retrieved by the name of the applicant or applicant's parent or guardian and educational institution.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

APHIS has requested records disposition authority from NARA. Records will be retained until appropriate disposition authority is obtained, and records will then be disposed of in accordance with the authority granted.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

External users (educational institution coordinators) will only be able to access applications submitted on behalf of their respective organizations and must obtain Identity Assurance Level (IAL) 2 eAuthentication access credentials. Access to system data is granted by the system owner on a limited basis to participating educational institutions, OCRDI student program employees and administrators, and applicants and educational institutions are granted access to their own basic information. These entities can use their identification and password to access the system and modify their own personal information and information

within their own profile; however, they do not have access to modify sensitive data or data that is locked/password protected.

Marketing and Regulatory Programs Information Technology (MRP IT) has access to user information on a limited basis allowing them to perform only their specific job functions. Access is limited to administrators on a least privileged basis utilizing separation of duties. MRP IT application support staff have accounts with the appropriate level of access and permissions that allow them to access and modify user data. These permissions are granted by a limited number of management personnel.

Access is monitored by USDA Office of the Chief Information Officer, Cybersecurity and Privacy Operations Center, and MRP IT application support staff to ensure authorized and appropriate use of the data. To gain full access to the system, internal users must have an IAL eAuthentication using a personal identity verification (PIV) card.

RECORD ACCESS PROCEDURES:

All requests for access to records must be in writing and should be submitted to the APHIS Privacy Act Officer, 4700 River Road Unit 50, Riverdale, MD 20737; or by facsimile (301) 734-5941; or by email APHISPrivacy@usda.gov. In accordance with 7 CFR 1.112, (Procedures for requests pertaining to individual records in a record system), the request must include the full name of the individual making the request; the name of the system of records; any other information specified in the system notice; and preference of inspection, in person or by mail. In accordance with 7 CFR 1.113, prior to inspection of the records, the requester shall present sufficient identification (*e.g.*, driver's license, employee identification card) to establish that the requester is the individual to whom the records pertain. In addition, if an individual submitting a request for access wishes to be supplied with copies of the records by mail, the requester must include with his or her request sufficient data for the agency to verify the requester's identity.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend records maintained in this system of records must direct their request to the address indicated in the "RECORD ACCESS PROCEDURES" paragraph, above and must follow the procedures set forth in 7 CFR 1.116, (Request for correction or amendment to record). All requests must state clearly and concisely what record is being

contested, the reasons for contesting it, and the proposed amendment to the record.

NOTIFICATION PROCEDURES:

Individuals may be notified if a record in this system of records pertains to them when the individuals request information utilizing the same procedures as those identified in the "RECORD ACCESS PROCEDURES" paragraph, above.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HISTORY:

N/A.

A report on this new system of records, required by 5 U.S.C. 552a(r), as implemented by Office of Management and Budget Circular A-108, was sent to the Chairman and Ranking Member of the House Committee on Oversight and Reform, Chairman and Ranking Member of the Senate Committee on Homeland Security and Governmental Affairs, and the Administrator of the Office of Management and Budget's Office of Information and Regulatory Affairs.

Done in Washington, DC, this 23rd day of December 2024.

Donna Lalli,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2024-31321 Filed 12-27-24; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2020-0024]

Importation of Fresh Pineapple (*Ananas comosus*) Fruit From Indonesia Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are advising the public that we have prepared a pest risk analysis that evaluates the risks associated with the importation of fresh pineapple fruit (*Ananas comosus*) for consumption from Indonesia into the United States. Based on the analysis, we have determined that the application of one or more phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh pineapple fruit from Indonesia. We are making the pest risk analysis available to the public for review and comment.

DATES: We will consider all comments that we receive on or before February 28, 2025.

ADDRESSES: We will submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to www.regulations.gov. Enter APHIS–2020–0024 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.

- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2020–0024, Regulatory Analysis and Development, PPD, APHIS, Station 2C–10.16, 4700 River Road, Unit 25, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov> or in our reading room, which is located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. Hesham Abuelnaga, Senior Regulatory Policy Specialist, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1236; (301) 851–2010; email: Hesham.A.Abuelnaga@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in “Subpart L—Fruits and Vegetables” (7 CFR 319.56–1 through 319.56–12, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into or disseminated within the United States.

Section 319.56–4 contains a performance-based process for approving the importation of certain fruits and vegetables that, based on the findings of a pest risk analysis, can safely be imported subject to one or more of the five designated phytosanitary measures listed in paragraph (b) of that section.

APHIS received a request from the national plant protection organization of Indonesia to allow the importation of fresh pineapple fruit (*Ananas comosus*) from Indonesia into the United States. As part of our evaluation of Indonesia’s request, we have prepared a pest risk assessment to identify the pests of quarantine significance that could

follow the pathway of the importation of fresh pineapple fruit (*Ananas comosus*) from Indonesia into the United States. Based on the pest risk assessment, a risk management document (RMD) was prepared to identify phytosanitary measures that could be applied to the fresh pineapple fruit to mitigate the pest risk.

Therefore, in accordance with § 319.56–4(c), we are announcing the availability of our pest risk assessment and RMD for public review and comment. Those documents, as well as a description of the economic considerations associated with the importation of fresh pineapple for consumption from Indonesia may be viewed on the *Regulations.gov* website or in our reading room (see **ADDRESSES** above for a link to *Regulations.gov* and information on the location and hours of the reading room). You may request paper copies of the pest risk assessment and RMD by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the analysis you wish to review when requesting copies.

After reviewing any comments we receive, we will announce our decision regarding the import status of fresh pineapple fruit from Indonesia in a subsequent notice. If the overall conclusions of our analysis and the Administrator’s determination of risk remain unchanged following our consideration of the comments, then we will authorize the importation of fresh pineapple fruit from Indonesia into the United States subject to the requirements specified in the RMD.

Authority: 7 U.S.C. 1633, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 19th day of December 2024.

Michael Watson,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2024–30969 Filed 12–27–24; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2024–0029]

2025 Rate Changes for the Basetime, Overtime, Holiday, Laboratory Services, and Export Application Fees

AGENCY: Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture (USDA).

ACTION: Notice.

SUMMARY: FSIS is announcing the 2025 rates it will charge meat, poultry, and egg products establishments, and importers and exporters for providing voluntary, overtime, and holiday inspection and identification, certification, and laboratory services. Additionally, FSIS is announcing a change to the fee FSIS assesses to exporters that choose to apply for export certificates electronically through the export component of the Agency’s Public Health Information System. The 2025 basetime, overtime, holiday, and laboratory services rates will be applied on January 12, 2025.

DATES: FSIS will charge the rates announced in this notice beginning January 12, 2025.

FOR FURTHER INFORMATION CONTACT: For further information contact Michael Toner, Director, Budget Division, Office of the Chief Financial Officer; email: Michael.toner@usda.gov, telephone:(202) 365–1352.

SUPPLEMENTARY INFORMATION:

Background

On April 12, 2011, FSIS published a final rule amending its regulations to establish formulas for calculating the rates it charges meat, poultry, and egg products establishments and importers and exporters for providing voluntary, overtime, and holiday inspection and identification, certification, and laboratory services (76 FR 20220). In the final rule, FSIS stated that it would use the formulas to calculate the annual rates, publish the rates in **Federal Register** notices prior to the start of each calendar year, and apply the rates on the first FSIS pay period at the beginning of the calendar year. This notice provides the 2025 rates, which will be applied starting on January 12, 2025.

Export Component

On September 6, 2017, FSIS published the **Federal Register** notice, *Public Health Information System (PHIS) Export Component Country Implementation* (82 FR 42056). The notice announced the delayed implementation of the export component to ensure sufficient testing and outreach to stakeholders and that the application fee would be recalculated based on available costs and number of applications but would not be assessed prior to January 1, 2019. In addition, FSIS announced that it would implement the PHIS Export Component with a limited number of countries and gradually expand implementation to additional countries.

On April 29, 2019, FSIS published the **Federal Register** notice, *Public Health*

Information System Export Component Fee (84 FR 17999). The notice announced that starting June 1, 2019, FSIS would assess a fee of \$4.01 to exporters that chose to apply for export

certificates electronically through the export component of PHIS. As noted below, the application fee has been recalculated based on updated costs and number of applications.

2025 Rates and Calculations

The following table lists the 2025 Rates per hour, per employee, by type of service:

Service	2025 rate (estimates rounded to reflect billable quarter hour)
Basetime	\$73.04
Overtime	89.68
Holiday	106.32
Laboratory	105.68
Export Application	4.83*

* Per application.

The regulations that cover these fees (other than the export application fee) state that FSIS will calculate the rates using formulas that include the Office of Field Operations (OFO) inspection program personnel's previous fiscal year's regular direct pay and regular hours (9 CFR 391.2, 391.3, 391.4, 590.126, 590.128, 592.510, 592.520, and 592.530). The final rates have been rounded to make the amount divisible by the quarter hour (15 minutes). Fifteen minutes is the minimum charge for the services covered by these rates.

FSIS determined the 2025 rates using the following calculations:

Basetime Rate = The quotient of dividing the OFO inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage of cost-of-living increase, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

The calculation for the 2025 basetime rate per hour per program employee is:

[FY 2024 OFO Regular Direct Pay divided by the previous fiscal year's Regular Hours (\$488,399,073/14,973,938)] = \$32.62 + (\$32.62 * 2.0% (calendar year 2025 Cost of Living Increase)) = \$33.27 + \$13.34 (benefits rate) + \$2.91 (travel and operating rate) + \$23.53(overhead rate) + \$0.02 (bad debt allowance rate) = \$73.05, rounded down to \$73.04, so that it is divisible by 4.

Overtime Rate = The quotient of dividing the OFO inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus that quotient multiplied by the calendar year's percentage of cost-of-living increase, multiplied by 1.5 (for overtime), plus the benefits rate, plus the travel and

operating rate, plus the overhead rate, plus the allowance for bad debt rate.

The calculation for the 2025 overtime rate per hour per program employee is:

[FY 2024 OFO Regular Direct Pay divided by previous fiscal year's Regular Hours (\$488,399,073/14,973,938)] = \$32.62 + (\$32.62 * 2.0% (calendar year 2025 Cost of Living Increase)) = \$33.27 * 1.5 = \$49.90 + \$13.34 (benefits rate) + \$2.91 (travel and operating rate) + \$23.53(overhead rate) + \$0.02(bad debt allowance rate) = \$89.68, which is divisible by 4.

Holiday Rate = The quotient of dividing the OFO inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus that quotient multiplied by the calendar year's percentage of cost-of-living increase, multiplied by 2 (for holiday pay), plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

The calculation for the 2025 holiday rate per hour per program employee calculation is:

[FY 2024 OFO Regular Direct Pay divided by previous fiscal year's Regular Hours (\$488,399,073/14,973,938)] = \$32.62 + (\$32.62 * 2.0% (calendar year 2025 Cost of Living Increase)) = \$33.27 * 2 = \$66.54 + \$13.34 (benefits rate) + \$2.91 (travel and operating rate) + \$23.53(overhead rate) + \$0.02(bad debt allowance rate) = \$106.32, which is divisible by 4.

Laboratory Services Rate = The quotient of dividing the Office of Public Health Science (OPHS) previous fiscal year's regular direct pay by the OPHS previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage cost of living increase, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

The calculation for the 2025 laboratory services rate per hour per program employee is:

[FY 2024 OPHS Regular Direct Pay/OPHS Regular hours (\$28,720,306/444,635)] = \$64.59 + (\$64.59 * 2.0% (calendar year 2025 Cost of Living Increase)) = \$65.88 + \$13.34 (benefits rate) + \$2.91 (travel and operating rate) + \$23.53 (overhead rate) + \$0.02 (bad debt allowance rate) = \$105.67, rounded up to \$105.68, so that it is divisible by 4.

Calculations for the Benefits, Travel and Operating, Overhead, and Allowance for Bad Debt Rates

These rates are components of the basetime, overtime, holiday, and laboratory services rates formulas.

Benefits Rate: The quotient of dividing the previous fiscal year's direct benefits costs by the previous fiscal year's total hours (regular, overtime, and holiday), plus that quotient multiplied by the calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan basic and matching contributions.

The calculation for the 2025 benefits rate per hour per program employee is:

[FY 2024 Direct Benefits/(Total Regular hours + Total Overtime hours + Total Holiday hours) (\$235,393,201/17,994,567)] = \$13.08 + (\$13.08 * 2.0% (calendar year 2025 Cost of Living Increase)) = \$13.34.

Travel and Operating Rate: The quotient of dividing the previous fiscal year's total direct travel and operating costs by the previous fiscal year's total hours (regular, overtime, and holiday), plus that quotient multiplied by the calendar year's percentage of inflation.

The calculation for the 2025 travel and operating rate per hour per program employee is:

[FY 2024 Total Direct Travel and Operating Costs/(Total Regular hours + Total Overtime hours + Total Holiday hours) (\$51,107,348/17,994,567)] = \$2.84 + (\$2.84 * 2.023% (2025 Inflation)) = \$2.91.

Overhead Rate: The quotient of dividing the previous fiscal year's indirect costs plus the previous fiscal year's information technology (IT) costs in the Public Health Data Communication Infrastructure System Fund plus the provision for the operating balance less any Greenbook costs (*i.e.*, costs of USDA support services prorated to the service component for which fees are charged) that are not related to food inspection by the previous fiscal year's total hours (regular, overtime, and holiday) worked across all funds, plus the quotient multiplied by the calendar year's percentage of inflation.

The calculation for the 2025 overhead rate per hour per program employee is: [FY 2024 Total Overhead/(Total Regular hours + Total Overtime hours +

Total Holiday hours) (\$413,946,871/17,994,567)] = \$23.00 + (\$23.00 * 2.023% (2025 Inflation)) = \$23.53.

Allowance for Bad Debt Rate = Previous fiscal year's total allowance for bad debt (for example, debt owed for overtime and holiday inspection services that is not paid in full by establishments that declare bankruptcy) divided by previous fiscal year's total hours (regular, overtime, and holiday) worked.

The 2025 calculation for bad debt rate per hour per program employee is:

[FY 2024 Total Bad Debt/(Total Regular hours + Total Overtime hours + Total Holiday hours) = (\$390,688/17,994,564)] = \$0.02.

2025 Electronic Export Application Fee

As published in FSIS' final rule, *Electronic Export Application and Certification Charge; Flexibility in the Requirements for Export Inspection Marks, Devices, and Certificates; Egg Products Export Certification* (81 FR

42225), the Electronic Export Application Fee Formula is: Labor Cost (Technical Support + Export Library Maintenance) + IT Cost (Ongoing Operations and Maintenance + eAuthentication ¹)

Number of Export Applications

FSIS stated in the 2016 final rule (81 FR 42225) and the 2017 **Federal Register** notice (82 FR 42056) that it would update and recalculate the fee based on the best available estimates for costs and number of applications. As of November 2024, most countries have been included in the export component. Therefore, FSIS is able to accurately estimate the number of export applications (the denominator in the formula) and update costs to include the transition from eAuthentication to *Login.gov*. The electronic export application fee has been changed to \$4.83 for 2025.

The 2025 Electronic Export Application Fee:

Labor Cost (\$590,070 + (\$191,050)) + IT Cost (\$1,620,000 + \$24,000)

501,984

= \$4.83

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: <https://www.fsis.usda.gov/federal-register>.

FSIS will also announce and provide a link through the FSIS *Constituent Update*, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and

information. This service is available at: <https://www.fsis.usda.gov/subscribe>. Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or

funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.*, Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720-2600 (voice and TTY); or the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a complainant should complete a Form, AD-3027, *USDA Program Discrimination Complaint Form*, which can be obtained online at <https://www.usda.gov/forms/electronic-forms>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name,

¹ As of September 2024, Login.gov accounts are required by all public customers to access USDA

websites and applications, *i.e.*, FSIS' PHIS. More information can be found on the USDA eAuth

FAQ's page at: <https://www.eauth.usda.gov/eauth/b/usda/faq>.

address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

(1) *Mail*: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410; or (2) *Fax*: (833) 256-1665 or (202) 690-7442; or (3) *Email*: program.intake@usda.gov.

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

Done at Washington, DC.

Denise Eblen,

Administrator.

[FR Doc. 2024-31145 Filed 12-27-24; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Waiver and State Plans (WiSP)

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a: New collection.

DATES: Written comments must be received on or before TBD February 28, 2025.

ADDRESSES: We invite you to submit written comments on this notice.

—*Preferred method*: Federal eRulemaking Portal. Go to <https://www.regulations.gov>, and follow the online instructions for submitting comments electronically.

—*Mail*: Amanda Vega, WIC Program Integrity and Monitory Branch, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Alexandria, Virginia 22314.

—*Email*: email comments to amanda.vega@usda.gov.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of this information collection

should be directed to Andrea Whitley at andrea.whitley@usda.gov, 703-305-2465.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed 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 proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Waivers and State Plans (WiSP).

Form Number: Not Yet Determined.

OMB Number: Not Yet Assigned.

Expiration Date: Not Yet Determined.

Type of Request: New collection.

Abstract: The burden activities that are covered by this Information Collection Request include the transition from individual collections for Program waivers and State Plans to a new application supporting multiple USDA Programs. This application will allow State agencies to request Program waivers and submit State Plans to the USDA Food and Nutrition Service (FNS), FNS staff to manage data provided within the application, and covers the gathering and maintenance of all supporting data from each State agency. The Waivers and State Plans (WiSP) application will support the following USDA Programs and be available to all participating State agencies in each Program: Special Supplemental Nutrition Program for Woman, Infants and Children (WIC), Farmers Market Nutrition Program (FMNP), and Seniors Farmers Market Nutrition Program (SFMNP).

The purpose of WIC is to provide supplemental foods, nutrition education, and health care referrals to low income, nutritionally at-risk pregnant, breastfeeding and postpartum women, infants, and children up to age five. The WIC Program is authorized by the Child Nutrition Act of 1966, as amended. WIC currently operates through a Federal/State partnership in which the Department of Agriculture/ Food and Nutrition Service (FNS) provides grants to State agencies in 50 U.S. States, 6 U.S. Territories, and 32 Indian Tribal Organizations (ITO's). The

WIC Program requirements are specified in Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)(8)), and WIC regulations at 7 CFR part 246.

FMNP is designed to provide fresh, unprepared, locally grown fruits and vegetables to WIC participants and expand the awareness, use of, and sales at farmers markets. FMNP currently operates through a Federal/State partnership in which FNS provides grants to State agencies in 42 U.S. States, 3 U.S. Territories, and 6 ITOs. FMNP Program requirements are specified in Section 17(m)(8) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)(8)), and FMNP regulations at 7 CFR part 248.

SFMNP is designed to provide low-income seniors with access to locally grown fruits, vegetables, honey and herbs and aid in the development of new and additional farmers markets, roadside stands, and community support agricultural programs. SFMNP currently operates through a Federal/State partnership in which FNS provides grants in 44 U.S. States, 3 U.S. Territories, and 7 ITOs. SFMNP Program requirements are specified in the Farm Security and Rural Investment Act of 2002, as amended, (Pub. L. 107-171) and SFMNP regulations at 7 CFR part 249.

The reporting and record-keeping burden activities that are covered by the information collection include requirements that involve the new application allowing State agencies to submit waiver requests and State Plan submissions to FNS. The WiSP application will provide a way for State agency staff to request pre-defined standard waivers, nationwide opt-in waivers, disaster related waivers, and to build custom ad hoc waiver requests. The application will support current and future legislation providing FNS with waiver authority for WIC, FMNP, and SFMNP program requirements. Depending on the legislation, this waiver authority may be temporary, as is the case for waivers granted under the American Rescue Plan Act (ARPA, Pub. L. 117-2), or permanent, as is the case for waivers granted under the Access to Baby Formula Act of 2022 (ABFA, Pub. L. 117-129). Application users will be able to respond to requests for more information, as needed, within the application. This will streamline the waiver request process and ensure that all waiver correspondence is kept associated to the waiver request. Waivers are requested on an as needed basis, and not all State agencies will request a waiver for a Program requirements. Waivers are authorized by specific legislation and may have a

scope that only applies to some of the Programs. State Plan Program operations are also supported in the WiSP application. Federal regulations require that State Plan Program-related information be collected and that full and complete records concerning Program operations are maintained. State Plans are the principal source of information about how each State agency operates WIC, FMNP and SFMNP. State agencies gather information to inform their initial and annual State Plan submissions throughout their work during an average year. This involves consolidating and summarizing the results of: local agency authorization and monitoring; participant certification of eligibility; authorized outlet selection, authorization, disqualification, monitoring visits, and monitoring reviews; face-to-face training results; Food instrument receipt, issuance, and disposition; complaint handling; policy establishment for sanctions; financial management system establishment and maintenance; management evaluation system establishment and maintenance; and corrective action plan establishment and maintenance all of which are associated to the reporting burden approved under OMB Control Numbers: 0584–0687 (WIC), 0584–0447 (FMNP) and 0584–0541 (SFMNP).

Current and new State agencies are required to submit State Plans annually per the guidelines of the respective Programs, as an application or prerequisite to the receipt of federal funds from FNS.

Each Program has one or more designated checklists that cover different Program requirements. FMNP and SFMNP optionally allow for some Programs to be combined into a single, consolidated State Plan checklist. The new application will support each Program's individual checklists, and allowable, consolidated checklists.

WIC State agencies are required to submit their full Program planning data in 10 distinct checklist documents. Each fiscal year, only a portion of the total

checklists are required to be submitted. The required checklists are published prior to the due date of WIC State Plans and apply equally to all State agencies. It is estimated that each State agency will be required to annually submit 4 checklists per FY from each WIC State agency. State agencies may choose provide updates to the other 6 checklists on file but are not required to submit updates for these.

FMNP and SFMNP Programs require that each of their State agencies submit 1 (one) of the of the 3 different versions of State Plan checklists available: FMNP only, SFMNP only, and S/FMNP Consolidated. The Consolidated checklist is for State agencies who administer both Programs.

The burden table information collection items are grouped by Waivers and then State Plan items, then by the collection items. The lines in the collection grouping identify the State agency category group for the respondents. For each collection item, we have identified the estimated burden by State agency category.

Reporting Burden

Affected Public: Respondent groups identified include State agency officials from the 50 geographic States, 6 US Territories, and 32 Indian Tribal Organizations. Not all identified State agencies participate with all Programs or with all application features. Program Waivers are issued based upon regulations these non-mandatory requests are available for the State agencies at their option. WIC, FMNP and SFMNP Programs require that each of their State agencies file a Program specific State Plan each year.

Estimated Number of Respondents: The total estimated number of respondents is 2,656 (1176 Waiver respondents + 1480 State Plan respondents including one time effort activities), which represents the estimated sum of all State agencies for all applicable FNS Programs, across all collection items for both Waivers and State Plans.

Estimated Number of Responses per Year: The State agencies will be able to use the WiSP application to submit Program Waivers, and State Plans. The estimated total number of responses per year is 2,652.28 (380.28 Waiver responses + 2272.00 State Plan responses including one time effort activities), which represents the estimated sum of all requests estimated from State agencies for all applicable FNS Programs, across all collection items for both Waivers and State Plans. The distinct number of responses is broken down below for Waivers and then State Plans.

Estimated Time per Response: The estimated time of response for both Waivers and State Plans varies from 0.89 to 11.77 hours depending on respondent group and instrument, as shown in the table below, with an average estimated time of 10.21 hours for all participants.

Estimated Total Annual Burden on Respondents: The estimated total annual burden on respondents for both Waivers and State Plan items is 27,074.66 hours. See the table below for estimated total annual burden for each type of respondent.

Record-Keeping Burden

Affected Public: Record-keeping groups identified include State agency officials from the 50 geographic States, 6 US Territories, and 32 Indian Tribal Organizations.

Estimated Number of Record-Keepers: The total estimated number of record-keepers is 196.00 which represents the estimated sum of all State agencies for all applicable FNS Programs, across all collection items for State Plans.

Estimated Number of Records per Year: The estimated total number of annual records is 196.00 for State Plans.

Estimated Time per Record Keeper: The estimated time per record-keeper for State Plans is 1.00 hours.

Estimated Total Record-Keeping Burden Hours: The estimated total annual burden on record-keepers State Plans is 196.00 hours.

Information collected	Estimated number of respondents	Estimated annual frequency of response per respondent	Total annual responses	Hours per response	Total annual burden (hours)
Gathering data for waiver request	196.00	0.48	94.90	1.00	94.90
Waiver request form	588.00	0.34	202.47	2.67	162.29
Supplemental Data waiver requests	196.00	0.16	31.89	1.00	31.89
Waiver Sub Total	1,176.00	0.32	380.28	0.89	340.10
Import of all existing State Plans	196.00	5.04	988.00	2.00	1,976.00
Application data entry training	500.00	1.00	500.00	2.00	1,000.00

Information collected	Estimated number of respondents	Estimated annual frequency of response per respondent	Total annual responses	Hours per response	Total annual burden (hours)
State Plan One Time Effort Sub Total	696.00	2.14	1,488.00	2.00	2,976.00
State Plan of Operations	588.00	1.00	588.00	40.07	23,562.56
State Plan Record Maintenance	196.00	1.00	196.00	1.00	196.00
State Plan Annual Effort Sub Total	784.00	1.00	784.00	30.30	23,758.56
State Plan Sub Total	1,480.00	1.54	2,272.00	11.77	26,734.56
Grand Totals	2,656.00	1.00	2,652.28	10.21	27,074.66

Tameka Owens,

Acting Administrator and Assistant Administrator, Food and Nutrition Service.

[FR Doc. 2024-31264 Filed 12-27-24; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Non-Timber Forest Products

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service (Forest Service or Agency) is requesting public comment on the reapproval and proposed revisions of an approved information collection (ICR), 0596-0243, Non-Timber Forest Products.

DATES: Comments on reapproval and the proposed revisions of the ICR must be received in writing by February 28, 2025.

ADDRESSES: Comments may be sent to Forest Service Research and Development, 201 14th Street SW, Washington, DC 20250-1124. Comments also may be submitted by email to: julie.minde@usda.gov.

Comments submitted in response to this notice will be available to the public through relevant websites and upon request. Therefore, do not include confidential information, such as sensitive personal information or proprietary information. An email address associated with a comment will be included with the comment when it is made publicly available online.

The public may inspect the draft supporting statements for the ICR and comments received at 201 14th Street SW, Washington, DC 20250, on business days between 8:30 a.m. and 4:00 p.m. Visitors are encouraged to call ahead at 703-559-2972 to facilitate entry to the

building. The public may request an electronic copy of the supporting statements and comments via return email. Requests should be emailed to julie.minde@usda.gov.

FOR FURTHER INFORMATION CONTACT: Julie Minde, Social Science Analyst, at julie.minde@usda.gov or 703-559-2972. Individuals who use telecommunication devices for the deaf and hard of hearing may call 711 to reach the Telecommunications Relay Service, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Non-Timber Forest Products.

OMB Number: 0596-0243.

Expiration Date of Approval: February 28, 2025.

Type of Request: Reapproval and proposed revisions of an approved ICR.

Abstract:

Non-timber forest products are plants, mushrooms, and plant- or tree-derived goods like nuts, boughs, sap, and leaves that are harvested for use as food, medicine, cultural, artisan, and other purposes. Some gathering is planned and systematic, while much of it is informal, unplanned, opportunistic, or incidental to other outdoor recreation activities. For some people, harvested wild plants and mushrooms make up a substantial or nutritionally important part of their diet. In other cases, non-timber forest products are locally or regionally important products for businesses.

Many opportunities exist to manage forests and other natural areas to enhance the supply of non-timber forest products. This increases the benefits they provide to society, individuals, and cultures and helps maintain populations of important non-timber forest products in the face of changes like invasive species and climate impacts. Potential public benefits include improved public health outcomes from outdoor activity and access to socially, culturally, and economically significant products. Harvesting and consuming non-timber

forest products also may help supplement food sources for people with limited access to fresh, affordable food.

Many laws and policies direct the Forest Service to consider and manage for non-timber forest products for the benefit of the public and to meet trust responsibilities to American Indians and Alaskan Natives on federal and Tribal lands, *e.g.*, Forest and Rangeland Renewable Resources Planning Act (RPA) of 1974, Forest and Rangeland Renewable Resources Research Act of 1978. Managing forests and other natural areas to provide non-timber forest products in a sustainable way requires detailed, science-based information. Gaining new information can help us understand how uses of non-timber forest products have changed over time in response to management, socio-cultural circumstances, the economic conditions of Tribes, and environmental forces of change.

The Forest Service seeks to obtain OMB approval for extension with revision to a currently approved information collection to collect information from who manage, make policies for, or otherwise have a stake in the management of lands where non-timber forest products may be harvested.

Estimated Annual Burden per Response: 25 minutes for survey; 60 minutes for interview; 90 minutes for focus group.

Types of Respondents: Individuals and households, businesses and non-profit organizations, and state, local or Tribal Government.

Estimated Annual Number of Respondents: 1,300.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 276 hours.

Comment is invited on: (1) whether this collection of information is necessary for the stated purposes and

the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request for Office of Management and Budget for reapproval of the ICR as revised.

JoLynn Anderson,
Liason.

[FR Doc. 2024-31346 Filed 12-27-24; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S-224-2024]

Foreign-Trade Zone 247; Application for Subzone; Cummins Inc.; Irvine, Pennsylvania

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Erie-Western Pennsylvania Port Authority, grantee of FTZ 247, requesting subzone status for the facility of Cummins Inc., located in Irvine, Pennsylvania. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on December 20, 2024.

The proposed subzone (5.87 acres) is located at 200 Murray Drive, Irvine, Pennsylvania. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 247.

In accordance with the FTZ Board's regulations, Juanita Chen of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be

addressed to the FTZ Board's Executive Secretary and sent to: ftz@trade.gov. The closing period for their receipt is February 10, 2025. Rebuttal comments in response to material submitted during the foregoing period may be submitted through February 24, 2025.

A copy of the application will be available for public inspection in the "Online FTZ Information Section" section of the FTZ Board's website, which is accessible via www.trade.gov/ftz.

For further information, contact Juanita Chen at juanita.chen@trade.gov.

Dated: December 20, 2024.

Elizabeth Whiteman,
Executive Secretary.

[FR Doc. 2024-31247 Filed 12-27-24; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-520-804]

Certain Steel Nails From the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2022-2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that sales of certain steel nails from the United Arab Emirates were not made at less than normal value during the period of review (POR) May 1, 2022, through April 30, 2023.

DATES: Applicable December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Olivia Woolverton or Brittany Bauer, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-7452 or (202) 482-3860, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 11, 2024, Commerce published the *Preliminary Results* and invited interested parties to comment.¹ This review covers two respondents: Master Nails and Pins Manufacturing, LLC/Middle East Manufacturing Steel

LLC (collectively, Master) and Rich Well Steel Industries LLC (Rich Well).

On July 11, 2024, the petitioner² submitted two case briefs (one for issues related to Master and another for issues related to Rich Well),³ and on July 23, 2024, Master⁴ and Rich Well⁵ submitted rebuttal briefs. On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.⁶ On September 27, 2024, we extended the deadline for these final results to December 13, 2024.⁷ Additionally, on December 9, 2024, Commerce tolled the deadline to issue the final results in this administrative review by 90 days.⁸ Accordingly, the deadline for these final results is now March 13, 2025. For a complete description of the events that occurred since the *Preliminary Results*, see the Issues and Decision Memorandum.⁹ Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order¹⁰

The products covered by this *Order* are certain steel nails from the United Arab Emirates. For a full description of the scope, see the Issues and Decision Memorandum.

Analysis of Comments Received

We addressed the issues raised in the case and rebuttal briefs in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is included in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically

² The petitioner is Mid Continent Steel & Wire, Inc.

³ See Petitioner's Letters, "Case Brief {Master}," and "Case Brief {Richwell}," both dated July 11, 2024.

⁴ See Master's Letter, "Rebuttal Brief of Master," dated July 23, 2024.

⁵ See Rich Well's Letter, "Rich Well Steel Industries LLC Rebuttal to the Petitioner's Case Brief," dated July 23, 2024.

⁶ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

⁷ See Memorandum, "Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated September 27, 2024.

⁸ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated December 9, 2024.

⁹ See Memorandum, "Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Certain Steel Nails from the United Arab Emirates; 2022-2023," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

¹⁰ See *Certain Steel Nails from the United Arab Emirates: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 77 FR 27421 (May 10, 2012) (*Order*).

¹ See *Certain Steel Nails from the United Arab Emirates: Preliminary Results of Antidumping Duty Administrative Review, and Partial Recission; 2022-2023*, 89 FR 49150 (June 11, 2024) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Changes Since the Preliminary Results

Based on our review of the record and comments received from interested parties, we have made changes to the *Preliminary Results* margin calculation for Master.¹¹ However, Master's margin remains unchanged from the *Preliminary Results*.

Final Results of Review

Commerce determines that the following estimated weighted-average dumping margins exist for the period May 1, 2022, through April 30, 2023:

Exporter/producer	Weighted average dumping margin (percent)
Master Nails and Pins Manufacturing, LLC/Middle East Manufacturing Steel, LLC	0.00
Rich Well Steel Industries LLC	0.00

Disclosure

Commerce intends to disclose the calculations performed in connection with these final results of review (with respect to Master's revised dumping margin calculation) to interested parties within five days after public announcement of the final results or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Consistent with section 751(a)(2) of the Act and 19 CFR 351.212(b)(1), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by an administrative review. Because the weighted-average dumping margins for Master and Rich Well are zero, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Consistent with Commerce's assessment practice, for entries of subject merchandise during the POR produced by Master or Rich Well for which they did not know their merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.¹²

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2) of the Act: (1) the cash deposit rates for Master and Rich Well will be the weighted-average dumping margins established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the producer has been covered in a prior completed segment of this proceeding, the cash deposit rate will be the company-specific rate established for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 4.30 percent.¹³ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a

¹² For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

¹³ See *Order*, 77 FR at 27422.

certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: December 19, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Changes Since the *Preliminary Results*
- V. Discussion of the Issues

Comment 1: Whether Commerce Should Apply Adverse Facts Available (AFA) with Respect to Master's General and Administrative (G&A) and Interest Expense Ratios

Comment 2: Whether Commerce Should Adjust Master's G&A Expenses

Comment 3: Whether Commerce Should Correct a Ministerial Error in Master's Margin Calculation

Comment 4: Whether Commerce Should Apply AFA to Rich Well Due to its Cost Reporting

VI. Recommendation

[FR Doc. 2024–31081 Filed 12–27–24; 8:45 am]

BILLING CODE 3510–DS–P

¹¹ See Issues and Decision Memorandum at Comment 3.

DEPARTMENT OF COMMERCE**International Trade Administration****[A-337-808]****Certain Glass Wine Bottles From Chile: Termination of Less-Than-Fair-Value Investigation**

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on a withdrawal of the antidumping duty (AD) petition on certain glass wine bottles from Chile by the U.S. Glass Producers Coalition (the petitioner), we are terminating this less than-fair-value (LTFV) investigation.

DATES: Applicable December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Dusten Hom or Joshua Weiner, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-5075 or (202) 482-3902, respectively.

SUPPLEMENTARY INFORMATION:**Background**

On December 29, 2023, the U.S. Department of Commerce (Commerce) received an AD petition concerning imports of certain glass wine bottles from Chile, filed in proper form by the petitioner.¹ On January 25, 2024, Commerce published the notice of initiation of this LTFV investigation.² On August 9, 2024, Commerce published its preliminary determination in the LTFV investigation of certain glass wine bottles from Chile.³ On December 10, 2024, the petitioner submitted a letter withdrawing the AD Petition with respect to Chile.⁴ On December 16, 2024, Saverglass, Inc.; Saverglass S. de R.L. de C.V.; Fevisa Comercial S.A. de C.V.; Fevisa Industrial S.A. de C.V.; Encore Glass; and TricorBraun Inc. (collectively, the interested parties) filed opposition to

the petitioner's withdrawal of the AD Petition with respect to Chile.⁵ On December 18, 2024, the petitioner filed a response to the interested parties' opposition.⁶ On December 20, 2024, interested parties filed additional comments opposing termination of the investigation.⁷

Termination of the Investigation

Section 351.207(b)(1) of Commerce's regulations stipulates that the Secretary may terminate an investigation, provided it has concluded that termination of the investigation is in the public interest.⁸ After considering the information on the record of this proceeding, including the petitioner's withdrawal letter, and the comments received from interested parties, Commerce has concluded that termination of this investigation is in the public interest. Accordingly, pursuant to section 734(a)(1)(A) of the Tariff Act of 1930, as amended and 19 CFR 351.207(b)(1), we are terminating the LTFV investigation of certain glass wine bottles from Chile.

Suspension of Liquidation

In the *Preliminary Determination*, Commerce determined weighted-average dumping margins for exporters of certain glass wine bottles from Chile that were above *de minimis*. Therefore, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of certain glass wine bottles from Chile as of August 9, 2024, the date of publication of the *Preliminary Determination*.⁹ Because Commerce is terminating this LTFV investigation, we will instruct U.S. Customs and Border Protection to terminate suspension of

⁵ See Interested Parties' Letter, "Response to Petitioner's Request to Terminate Investigation," dated December 16, 2024.

⁶ See Petitioner's Letter, "Petitioner's Reply to Response to Petitioner's Request to Terminate the Investigation," dated December 18, 2024.

⁷ See Interested Parties' Letter, "Response to Petitioner's December 18, 2024 Letter," dated December 20, 2024.

⁸ See *GPX Intern. Tire Corp. v. United States*, 893 F. Supp. 2d 1296, 1311 (CIT 2013) ("the trade remedy laws are designed to buffer domestic industries from the harm caused by competing with . . . subsidized or dumped foreign products . . . This purpose is supported by the floor statements that focused on leveling the competitive playing field to protect domestic industries, rather than the general public" (citing 158 Cong. Rec. H1166-73 (daily ed. Mar. 6, 2012)); see also *Federal-Mogul Corp. v. United States*, 63 F.3d 1572, 1575 (Fed. Cir. 1995) ("To protect domestic industries from unfair competition by imported products, United States law imposes a duty on dumped goods, that is, goods sold in this country at a price lower than they sell for in their home market"); and *Smith-Corona Group v. United States*, 713 F.2d 1568, 1576 (Fed. Cir. 1983) ("Congress sought to afford the domestic manufacturer strong protection against dumping").

⁹ See *Preliminary Determination*, 89 FR 65326.

liquidation and refund any cash deposits of estimated antidumping duties for entries of certain glass wine bottles from Chile.

Administrative Protective Order

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibilities concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation that is subject to sanction.

Dated: December 20, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024-31349 Filed 12-27-24; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**International Trade Administration****Notice of Scope Ruling Applications Filed in Antidumping and Countervailing Duty Proceedings**

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) received scope ruling applications, requesting that scope inquiries be conducted to determine whether identified products are covered by the scope of antidumping duty (AD) and/or countervailing duty (CVD) orders and that Commerce issue scope rulings pursuant to those inquiries. In accordance with Commerce's regulations, we are notifying the public of the filing of the scope ruling applications listed below in the month of November 2024.

DATES: Applicable December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Terri Monroe, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482-1384.

SUPPLEMENTARY INFORMATION:**Notice of Scope Ruling Applications**

In accordance with 19 CFR 351.225(d)(3), we are notifying the public of the following scope ruling

¹ See Petitioner's Letter, "Certain Glass Wine Bottles from the People's Republic of China, the United Mexican States, and Chile: Petitions for the Imposition of Antidumping and Countervailing Duties," dated December 29, 2023 (AD Petition).

² See *Certain Glass Wine Bottles from Chile, the People's Republic of China, and Mexico: Initiation of Less-Than-Fair-Value Investigations*, 89 FR 4911 (January 25, 2024).

³ See *Certain Glass Wine Bottles from Chile: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 89 FR 65325 (August 9, 2024) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

⁴ See Petitioner's Letter, "Withdrawal of Petition," dated December 10, 2024.

applications related to AD and CVD orders and findings filed in or around the month of November 2024. This notification includes, for each scope application: (1) identification of the AD and/or CVD orders at issue (19 CFR 351.225(c)(1)); (2) concise public descriptions of the products at issue, including the physical characteristics (including chemical, dimensional and technical characteristics) of the products (19 CFR 351.225(c)(2)(ii)); (3) the countries where the products are produced and the countries from where the products are exported (19 CFR 351.225(c)(2)(i)(B)); (4) the full names of the applicants; and (5) the dates that the scope applications were filed with Commerce and the name of the ACCESS scope segment where the scope applications can be found.¹ This notice does not include applications which have been rejected and not properly resubmitted. The scope ruling applications listed below are available on Commerce's online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS), at <https://access.trade.gov>.

Scope Ruling Applications

Wood Mouldings and Millwork Products from the People's Republic of China (China) (A–570–117/C–570–118); Feedstock for wooden slats for window blinds; feedstock for wooden bottom rails for window blinds; feedstock for wooden valances for window;

¹ See *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 FR 52300, 52316 (September 20, 2021) (*Final Rule*) (“It is our expectation that the Federal Register list will include, where appropriate, for each scope application the following data: (1) identification of the AD and/or CVD orders at issue; (2) a concise public summary of the product's description, including the physical characteristics (including chemical, dimensional and technical characteristics) of the product; (3) the country(ies) where the product is produced and the country from where the product is exported; (4) the full name of the applicant; and (5) the date that the scope application was filed with Commerce.”)

² The products are basswood slat stock, basswood bottom rail stock, and basswood valance stock for use in the production of wooden slats for blinds, wooden bottom rails for blinds, and wooden valances for blinds (collectively, feedstock). Slat stock made from basswood that is cut to specific widths (nominally 1 inch or 2 inches, with actual widths being within tolerances) and specific thicknesses (nominally 0.110 inches, with actual widths being within tolerances). Bottom rail stock is cut to specific widths (nominally 1 inch or 2 inches, with actual widths being within tolerances) and specific thicknesses (nominally 0.590 inches, with actual widths being within tolerances). Valance stock is cut to specific widths (nominally 2.5 inches or 3.25 inches, with actual widths being within tolerances) and specific thicknesses (nominally 0.315 inches or 0.590 inches, with actual thicknesses being within tolerances). The feedstock stock lengths are between 20 inches and 96 inches. The feedstock is covered with a UV

produced in and exported from China; submitted by Blinds to Go (US), Inc.; November 15, 2024; ACCESS scope segment “Blinds to Go Feedstock.”

Aluminum Extrusions from China (A–570–967/C–570–968); Cable Display Kits;³ produced in and exported from China; submitted by MBS Cable Display Systems (MBS Cable); November 25, 2024; ACCESS scope segment “MBS Cable Display Systems.”

Notification to Interested Parties

This list of scope ruling applications is not an identification of scope inquiries that have been initiated. In accordance with 19 CFR 351.225(d)(1), if Commerce has not rejected a scope ruling application nor initiated the scope inquiry within 30 days after the filing of the application, the application will be deemed accepted and a scope inquiry will be deemed initiated the following day—day 31.⁴ Commerce's practice generally dictates that where a deadline falls on a weekend, Federal holiday, or other non-business day, the appropriate deadline is the next business day.⁵ Accordingly, if the 30th day after the filing of the application falls on a non-business day, the next business day will be considered the “updated” 30th day, and if the application is not rejected or a scope inquiry initiated by or on that particular

protected finish on all surfaces except the ends. The feedstock is not finger-jointed.

³ The products are cable display systems used to support and display visual media (photographs, artworks, etc.) and are composed of a steel cable that is anchored to a wall, ceiling, or floor, and the media is hung from the cable. Cable display systems can be categorized as: (a) suspended cable display kits, and (b) mounted cable display kits. Suspended cable display kits are cable display systems where one end of the steel cable is anchored onto the ceiling (or wall), and the other end of the cable is attached to the visual media on display. Mounted cable display kits are cable display systems where the steel cable is anchored at both ends, either onto the wall, ceiling, floor, and any combination thereof. Cable display systems are sold as complete kits, ready to be assembled and installed as imported, including all necessary components: steel cables, fittings milled from extruded aluminum, screws, anchors, and Allen wrenches. The products may have clear anodized or matte black for certain finishings, and may have different steel cable diameters, between 1/16” and 1/8”. The products may have different steel cable lengths, including 1.14 inches, 36 inches and 78 inches.

⁴ In accordance with 19 CFR 351.225(d)(2), within 30 days after the filing of a scope ruling application, if Commerce determines that it intends to address the scope issue raised in the application in another segment of the proceeding (such as a circumvention inquiry under 19 CFR 351.226 or a covered merchandise inquiry under 19 CFR 351.227), it will notify the applicant that it will not initiate a scope inquiry, but will instead determine if the product is covered by the scope at issue in that alternative segment.

⁵ See *Notice of Clarification: Application of “Next Business Day” Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

business day, the application will be deemed accepted and a scope inquiry will be deemed initiated on the next business day which follows the “updated” 30th day.⁶

In accordance with 19 CFR 351.225(m)(2), if there are companion AD and CVD orders covering the same merchandise from the same country of origin, the scope inquiry will be conducted on the record of the AD proceeding. Further, please note that pursuant to 19 CFR 351.225(m)(1), Commerce may either apply a scope ruling to all products from the same country with the same relevant physical characteristics, (including chemical, dimensional, and technical characteristics) as the product at issue, on a country-wide basis, regardless of the producer, exporter, or importer of those products, or on a company-specific basis.

For further information on procedures for filing information with Commerce through ACCESS and participating in scope inquiries, please refer to the Filing Instructions section of the Scope Ruling Application Guide, at https://access.trade.gov/help/Scope_Ruling_Guidance.pdf. Interested parties, apart from the scope ruling applicant, who wish to participate in a scope inquiry and be added to the public service list for that segment of the proceeding must file an entry of appearance in accordance with 19 CFR 351.103(d)(1) and 19 CFR 351.225(n)(4). Interested parties are advised to refer to the case segment in ACCESS as well as 19 CFR 351.225(f) for further information on the scope inquiry procedures, including the timelines for the submission of comments.

Please note that this notice of scope ruling applications filed in AD and CVD proceedings may be published before any potential initiation, or after the initiation, of a given scope inquiry based on a scope ruling application identified in this notice. Therefore, please refer to the case segment on ACCESS to determine whether a scope ruling application has been accepted or rejected and whether a scope inquiry has been initiated.

Interested parties who wish to be served scope ruling applications for a particular AD or CVD order may file a request to be included on the annual inquiry service list during the anniversary month of the publication of the AD or CVD order in accordance with

⁶ This structure maintains the intent of the applicable regulation, 19 CFR 351.225(d)(1), to allow day 30 and day 31 to be separate business days.

19 CFR 351.225(n) and Commerce's procedures.⁷

Interested parties are invited to comment on the completeness of this monthly list of scope ruling applications received by Commerce. Any comments should be submitted to Scot Fullerton, Acting Deputy Assistant Secretary for AD/CVD Operations, Enforcement and Compliance, International Trade Administration, via email to CommerceCLU@trade.gov.

This notice of scope ruling applications filed in AD and CVD proceedings is published in accordance with 19 CFR 351.225(d)(3).

Dated: December 20, 2024.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024–31246 Filed 12–27–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–820]

Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes From Mexico: Final Results of the 2021–2022 Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that the respondents selected for individual examination, respectively, Ceuta Produce S.A. DE C.V. (Ceuta) and Valores Horticolas Del Pacifico S.A. De C.V. (VALHPAC) (collectively, respondents), were in compliance with the terms of the 2019 Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes from Mexico (2019 Agreement) during the period of review (POR) from September 1, 2021, through August 31, 2022, except for certain instances of inadvertent or inconsequential noncompliance. Commerce also determines that the 2019 Agreement met the applicable statutory requirements during the POR.

DATES: Applicable December 30, 2024.

FOR FURTHER INFORMATION CONTACT:

Sally C. Gannon or David Cordell, Enforcement and Compliance, International Trade Administration,

U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0162 or (202) 482–0408, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 10, 2023, Commerce published the preliminary results of this administrative review, and we invited interested parties to comment.¹ On November 9, 2023, the Florida Tomato Exchange (FTE), a member of the U.S. petitioning industry, filed a case brief.² On November 16, 2023, Ceuta and VALHPAC filed a joint rebuttal brief.³ Commerce extended the date for the publication of the final results until December 16, 2024.⁴ On December 9, 2024, Commerce tolled the deadlines for all preliminary and final determinations by 90 days.⁵

Scope of 2019 Agreement

The merchandise subject to this 2019 Agreement is all fresh or chilled tomatoes (fresh tomatoes) which have Mexico as their origin, except for those tomatoes which are for processing. For purposes of this 2019 Agreement, processing is defined to include preserving by any commercial process, such as canning, dehydrating, drying, or the addition of chemical substances, or converting the tomato product into juices, sauces, or purees. In Appendix F of this 2019 Agreement, Commerce has outlined the procedure that Signatories must follow for selling subject merchandise for processing. Fresh tomatoes that are imported for cutting up, not further processing (e.g., tomatoes used in the preparation of fresh salsa or salad bars), are covered by this 2019 Agreement. Commercially grown tomatoes, both for the fresh market and for processing, are classified as *Lycopersicon esculentum*. Important commercial varieties of fresh tomatoes include common round, cherry, grape,

plum, greenhouse, and pear tomatoes, all of which are covered by this 2019 Agreement. Tomatoes imported from Mexico covered by this 2019 Agreement are classified under the following subheading of the Harmonized Tariff Schedules of the United States (HTSUS), according to the season of importation: 0702. Although this HTSUS number is provided for convenience and customs purposes, the written description of the scope of this Agreement is dispositive.

A full description of the scope of the 2019 Agreement is also contained in the Issues and Decision Memorandum.

Analysis

Commerce continues to find, based on record evidence, that the selected respondents, Ceuta and VALHPAC, were in compliance with the terms of the 2019 Agreement during the POR, with the exception of certain inconsequential or inadvertent non-compliance. Overall, Commerce finds that there have been no material or consequential violations of the 2019 Agreement by the selected respondents during the POR. We also determine that the 2019 Agreement is meeting the applicable statutory requirements for a suspension agreement, e.g., preventing price suppression or undercutting, and effective monitoring is practicable.

The issues raised in the case and rebuttal briefs are addressed in the accompanying Issues and Decision Memorandum. The issues are identified in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

⁷ See *Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*, 86 FR 53205 (September 27, 2021).

¹ See *Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes from Mexico; Preliminary Results of 2021–2022 Administrative Review*, 88 FR 69899 (October 10, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

² See FTE's Letter, "Case Brief on Behalf of the Florida Tomato Exchange," dated November 9, 2023.

³ See Ceuta and VALHPAC's Letter, "Rebuttal Brief of Ceuta Produce, S. de R.L. de C.V. and Valores Horticolas del Pacifico, S.A. de C.V.," dated November 16, 2023.

⁴ See Memorandum, "Decision Memorandum for the Final Results of the 2021–2022 Administrative Review: Fresh Tomatoes from Mexico," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

⁵ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated December 9, 2024.

Notification to Interested Parties

We are issuing and publishing these results of review in accordance with sections 751(a)(l) and 777(i)(l) of the Tariff Act of 1930, as amended, and 19 CFR 351.213 and 19 CFR 351.221(b)(5).

Dated: December 20, 2024.

Abdelali Elouaradia,
Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Agreement
- IV. Discussion of the Issues
 - 1. Instances of Noncompliance During the POR
 - 2. Whether the 2019 Suspension Agreement is Effectively Monitorable and Enforceable
 - 3. Whether Commerce Should Take Additional Enforcement Action
- V. Recommendation

[FR Doc. 2024–31084 Filed 12–27–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–523–808]

Certain Steel Nails From the Sultanate of Oman: Final Results of Antidumping Duty Administrative Review; 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Oman Fasteners, LLC (Oman Fasteners), the sole producer and exporter subject to this administrative review, did not make sales of certain steel nails (steel nails) from the Sultanate of Oman (Oman) in the United States at prices below normal value (NV) during the period of review (POR), July 1, 2022, through June 30, 2023.

DATES: Applicable December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Dakota Potts, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0223.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 2024, Commerce published the *Preliminary Results* of this administrative review and we

invited interested parties to comment.¹ On December 6, 2024, we extended the deadline for these final results by 60 days, until no later than February 10, 2025.² On December 9, 2024, Commerce tolled the deadline to issue the final results in this administrative review by 90 days.³ A summary of the events that occurred since Commerce published the *Preliminary Results*, as well as a full discussion of the issues raised by parties for these final results, are discussed in the Issues and Decision Memorandum.⁴

Scope of the Order⁵

The product covered by this *Order* is steel nails from Oman. For a complete description of the scope of the *Order*, see the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the parties’ case and rebuttal briefs are addressed in the Issues and Decision Memorandum and are listed in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on-file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Changes Since the Preliminary Results

Based on comments received from interested parties regarding our *Preliminary Results* and our review of

¹ See *Certain Steel Nails from the Sultanate of Oman: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review; 2022–2003*, 89 FR 65593 (August 12, 2024) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

² Because the current deadline for these final results falls on the weekend (i.e., February 8, 2025), the deadline became the next business day (i.e., February 10, 2025). See *Notice of Clarification: Application of “Next Business Day” Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005); see also Memorandum, “Extension of Deadline for Final Results of Antidumping Duty Administrative Review,” dated December 6, 2024.

³ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated December 9, 2024.

⁴ See Memorandum, “Issues and Decision Memorandum for the Final Results of the 2022–2023 Administrative Review of the Antidumping Duty Order on Certain Steel Nails from the Sultanate of Oman,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

⁵ See *Certain Steel Nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Antidumping Duty Orders*, 80 FR 39994 (July 13, 2015) (*Order*).

the record to address those comments, we made changes to the preliminary weighted-average dumping margin calculations for Oman Fasteners, as detailed in the Issues and Decision Memorandum.⁶

Final Results of Review

As a result of this review, we determine the following weighted-average dumping margin exists for the POR:

Exporter or producer	Weighted-average dumping margin (percent)
Oman Fasteners, LLC	0.00

Disclosure

Commerce intends to disclose the calculations performed for these final results within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with these final results of review.⁷ Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where the respondent’s weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce’s “automatic assessment” practice will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise it sold to the intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.⁸

⁶ See Issues and Decision Memorandum at 3–4.
⁷ See 19 CFR 351.212(b).
⁸ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed above will be equal to the weighted-average dumping margin that is established in the “Final Results of Review”; (2) for previously investigated or reviewed companies not subject to this review, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of the proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers and exporters will continue to be 9.10 percent *ad valorem*, the all-others rate established in the LTFV investigation.⁹ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce’s presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

⁹ See Order.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5) and 19 CFR 351.213(h)(1).

Dated: December 19, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Changes Since the *Preliminary Results*
- V. Discussion of the Issues
 - Comment 1: The Appropriate Source for Construction Value Profit and Indirect Selling Expenses
 - Comment 2: Whether to Revise Amatei’s Profit and Indirect Selling Expense Ratios
 - Comment 3: Whether to Deduct All Section 232 Duties
- VI. Recommendation

[FR Doc. 2024–31080 Filed 12–27–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–980]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Notice of Court Decision Not in Harmony with the Results of Countervailing Duty Administrative Review; Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On December 18, 2024, the U.S. Court of International Trade (CIT)

issued its final judgment in *Risen Energy Co., Ltd., v. United States*, Court No. 23–00153, sustaining the U.S. Department of Commerce’s (Commerce) remand results pertaining to the administrative review of the countervailing duty (CVD) order on crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), from the People’s Republic of China (China) covering the period January 1, 2020 through December 31, 2020. Commerce is notifying the public that the CIT’s final judgment is not in harmony with Commerce’s final results of the administrative review, and that Commerce is amending the final results with respect to the countervailable subsidy rate assigned to producer and/or exporter Risen Energy Co., Ltd. (Risen).

DATES: Applicable December 28, 2024.

FOR FURTHER INFORMATION CONTACT: Lingjun Wang, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2316.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 2023, Commerce published its Final Results in the 2020 CVD administrative review of solar cells from China. Commerce found that the Government of China failed to cooperate to the best of its ability and, as adverse facts available, found that Risen used and benefited from the Export Buyer’s Credit Program (EBCP).¹

After correcting ministerial errors contained in the Final Results, on August 11, 2023, Commerce published the Amended Final Results, where we corrected the calculation of the countervailable subsidy rate for Risen from 14.27 percent to 18.95 percent.²

Risen appealed Commerce’s Final Results/Amended Final Results to the CIT. On August 16, 2024, the CIT remanded the Final Results/Amended Final Results to Commerce. The CIT directed Commerce on remand to either attempt verification of the non-use certifications to determine more accurately what proportion of the sales

¹ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2020*, 88 FR 44108 (July 11, 2023) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

² See *Notice of Correction to the Final Results, and Amended Final Results of Countervailing Duty Administrative Review; 2020* (August 11, 2023) (*Amended Final Results*).

Risen is able to account for, or to remove at least the portion of the EBCP rate attributable to the customers demonstrating non-use from the calculation of Risen's overall subsidy rate.³

In its final Remand Redetermination,⁴ issued in November 2024, Commerce found that pro-rating Risen's subsidy rate to account for the number of non-use certifications provided by its U.S. customers is inconsistent with Commerce's practice and the AFA hierarchy. Commerce removed the 5.46 percent EBCP AFA rate from Risen's total countervailable subsidy rate.⁵ The CIT sustained Commerce's Remand Redetermination.⁶

Timken Notice

In its decision in Timken,⁷ as clarified by Diamond Sawblades,⁸ the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not "in harmony" with a Commerce determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's December 18, 2024, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's Final Results/Amended Final Results. Thus, this notice is published in fulfillment of the publication requirements of Timken.

Amended Final Results

Because there is now a final court judgment, Commerce is amending its Final Results and Amended Final Results with respect to producer and/or exporter Risen's countervailable subsidy rate for the period of January 1, 2020, through December 31, 2020, as follows:

Producer/ exporter	Subsidy rate (percent ad valorem)
Risen Energy Co., Ltd. ⁹	13.49

Cash Deposit Requirements

Because Risen does not have a superseding cash deposit rate, Commerce will issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP).

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by the CIT order from liquidating entries that: were produced and/or exported by Risen, and were entered, or withdrawn from warehouse, for consumption during the period January 1, 2020 through December 31, 2020. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess countervailing duties on unliquidated entries of subject merchandise produced and/or exported by Risen in accordance with 19 CFR 351.212(b). We will instruct CBP to assess countervailing duties on all appropriate entries covered by this review when the ad valorem rate is not zero or de minimis. Where an ad valorem subsidy rate is zero or de minimis,¹⁰ we will instruct CBP to liquidate the appropriate entries without regard to countervailing duties.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: December 20, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024-31190 Filed 12-27-24; 8:45 am]

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Photovoltaic New Material Co., Ltd. (including Changzhou Sveck Photovoltaic New Material Co., Ltd. Jintan Danfeng Road Branch); Changzhou Sveck New Material Technology Co., Ltd.; Ninghai Risen Energy Power Development Co., Ltd.; Risen (Ningbo) Electric Power Development Co., Ltd.; Changzhou Jintan Ningsheng Electricity Power Co., Ltd.; and Risen (Changzhou) Import and Export Co., Ltd.

¹⁰ See 19 CFR 351.106(c)(2).

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-823]

Silicomanganese From India: Final Results and Partial Rescission of Antidumping Duty Administrative Review; 2022-2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) finds that Maithan Alloys Limited (MAL) made sales of subject merchandise at less than normal value during the period of review (POR) May 1, 2022, through April 30, 2023. Additionally, we are rescinding the review with respect to Rajadhiraj Tirupani Vinayak Natraj Pvt. Ltd. (RTVN), because we find that it had no shipments of subject merchandise during the POR.

DATES: Applicable December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sarah Keith, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-0264.

SUPPLEMENTARY INFORMATION:

Background

On June 11, 2024, Commerce published the preliminary results of the 2022-2023 administrative review of the antidumping duty order on silicomanganese from India.¹ We invited interested parties to comment on the *Preliminary Results*.² No interested parties submitted comments; thus, no decision memoranda accompany this notice. The *Preliminary Results* are hereby adopted as the final results of this review. Commerce conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). On October 16, 2024, in accordance with section 751(a)(3)(A) of the Act, Commerce extended the deadline for the final results of this review by 60 days, until December 16, 2024.³ On December 9,

¹ See *Silicomanganese from India: Preliminary Results, Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind, in Part; 2022-2023*, 89 FR 49152 (June 11, 2024) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

² See *Preliminary Results*, 89 FR at 49153.

³ See Memorandum, "Extension of Deadline for Final Results of Countervailing [sic] Duty Administrative Review," dated October 16, 2024. The memorandum title should read, "Extension of Deadline for Final Results of Antidumping Duty Administrative Review."

³ See *Risen Energy Co., Ltd., v. United States*, 724 F.Supp.3d 1356 (CIT 2024).

⁴ See *Final Results of Redetermination Pursuant to Court Remand, Risen Energy Co., Ltd., v. United States* Court No. 23-00153, Slip Op. 2-94 (CIT August 16, 2024), dated November 13, 2024 (Remand Redetermination), available at <https://access.trade.gov/public/FinalRemandRedetermination.aspx>.

⁵ *Id.*

⁶ See *Risen Energy Co., Ltd., v. United States*, Slip Op. 24-144 (CIT 2024).

⁷ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (Timken).

⁸ See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (Diamond Sawblades).

⁹ This rate applies Risen Energy Co., Ltd. and its cross-owned companies: Risen Energy (Luoyang) Co., Ltd.; Risen Energy (Wuhai) Co., Ltd.; Risen Energy (Changzhou) Co., Ltd.; Risen Energy (Ningbo) Co., Ltd.; Risen Energy (Yiwu) Co., Ltd.; Zhejiang Boxin Investment Co., Ltd.; Zhejiang Twinsele Electronic Technology Co., Ltd.; Jiangsu Sveck New Material Co., Ltd.; Changzhou Sveck

2024, Commerce tolled the deadlines to issue the preliminary or final results in all ongoing administrative reviews by 90 days.⁴ Accordingly, the deadline for Commerce to issue the final results in this administrative review is now March 17, 2025.

Scope of the Order⁵

The merchandise covered by the scope of the *Order* is silicomanganese from India. A full description of the scope of the *Order* is provided in the *Preliminary Results*.⁶

Rescission of Administrative Review, in Part

In the *Preliminary Results*, we stated that we intended to rescind this review with respect to RTVN, which we preliminarily found had no shipments of subject merchandise during the POR, pursuant to 19 CFR 351.213(d)(3).⁷ No party filed comments with respect to our preliminary finding and intent to rescind the review. Therefore, we are rescinding the administrative review with respect to RTVN.

Final Results of the Review

We determine the following estimated weighted-average dumping margin for the period May 1, 2022, through April 30, 2023.

Exporter/producer	Weight-average dumping margin (percent)
Maithan Alloys Limited	1.71

Disclosure

Because Commerce received no comments on the *Preliminary Results*, we have not modified our analysis. Consequently, there are no calculations to disclose in accordance with 19 CFR 351.224(b) for these final results.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. If the

weighted-average dumping margin is not zero or *de minimis* (i.e., less than 0.50 percent), upon completion of the final results, Commerce intends to calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales to the total entered value of those sales. Where we do not have entered values for all U.S. sales to a particular importer, we will calculate an importer-specific, per-unit assessment rate on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales to the total quantity of those sales.⁸ To determine whether an importer-specific, per-unit assessment rate is *de minimis*, in accordance with 19 CFR 351.106(c)(2), we also will calculate an importer-specific *ad valorem* ratio based on estimated entered values. Where the weighted-average dumping margin is zero or *de minimis*, or an importer-specific *ad valorem* assessment rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.⁹

For entries of subject merchandise during the POR produced by MAL for which it did not know that the merchandise it sold to the intermediary (e.g., reseller, trading company, or exporter) was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.¹⁰

For the company for which we are rescinding this review, we will instruct CBP to assess antidumping duties on all appropriate entries at a rate equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue these rescission instructions to CBP no earlier than 35 days after the publication of this notice in the **Federal Register**.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of these final results in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant

entries until the time for parties to file a request for a statutory injunction has expired (i.e., within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies under review will equal to the dumping margin established in the final results of this review for each respondent (except, if that rate is *de minimis*, then the cash deposit rate will be zero); (2) for producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which they were reviewed; (3) if the exporter is not a firm covered in this review or a prior segment of the proceeding but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 17.74 percent, the all-others rate established in the less-than-fair-value investigation.¹¹ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information

⁴ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated December 9, 2024.

⁵ See *Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Orders: Silicomanganese from India, Kazakhstan, and Venezuela*, 67 FR 36149 (May 23, 2002) (*Order*).

⁶ See *Preliminary Results PDM* at 2.

⁷ *Id.* at 3.

⁸ See 19 CFR 351.212(b)(1).

⁹ See 19 CFR 352.106(c)(2); see also *Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012).

¹⁰ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

¹¹ See *Order*.

disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

Commerce is issuing and publishing the final results of this review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: December 18, 2024.
Abdelali Elouaradia,
Deputy Assistant Secretary for Enforcement and Compliance.
[FR Doc. 2024–30929 Filed 12–27–24; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE
International Trade Administration
[C–533–825]

Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Countervailing Duty Administrative Review; 2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.
SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain producers and exporters of polyethylene terephthalate film, sheet, and strip (PET film) from India received countervailable subsidies during the period of review (POR) January 1, 2022, through December 31, 2022.
DATES: Applicable December 30, 2024.
FOR FURTHER INFORMATION CONTACT: Stefan Smith, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4342.
SUPPLEMENTARY INFORMATION:

Background

On August 12, 2024, Commerce published the *Preliminary Results* of this administrative review in the *Federal Register* and invited comments from interested parties.¹ On December

2, 2024, we extended the deadline for the final results of this review to no later than January 15, 2025.² Additionally, on December 9, 2024, Commerce tolled the deadline to issue the final results in this administrative review by 90 days.³ Accordingly, the deadline for the final results is now April 15, 2025.
For a complete description of the events that occurred since the *Preliminary Results*, see the Issues and Decision Memorandum.⁴ Commerce conducted this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order⁵

The merchandise covered by the Order is PET film from India. For a complete description of the scope of the Order, see the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case brief submitted by interested parties in this review are addressed in the Issues and Decision Memorandum. The topics discussed and the issues raised by parties to which we responded in the Issues and Decision Memorandum are listed in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Changes Since the Preliminary Results

Based on our analysis of comments received from interested parties, we made changes to the net countervailable subsidy rates for Jindal Poly Films Limited (Jindal). For a discussion of these changes, see the Issues and Decision Memorandum.

(August 12, 2024) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.
² See Memorandum, “Extension of Deadline for Final Results of Countervailing Duty Administrative Review,” dated December 2, 2024.
³ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated December 9, 2024.
⁴ See Memorandum, “Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from India; 2022,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).
⁵ See *Countervailing Duty Order; Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India*, 67 FR 44179 (July 1, 2002) (*Order*).

Methodology

Commerce conducted this administrative review in accordance with section 751(a)(1)(A) of the Act. For each of the subsidy programs found to be countervailable, we find that there is a subsidy, *i.e.*, a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.⁶ In making this final determination, Commerce relied, in part, on facts otherwise available, including with an adverse inference, pursuant to sections 776(a) and (b) of the Act. For a complete description of the methodology underlying all of Commerce’s conclusions, see the Issues and Decision Memorandum.

Final Results of the Administrative Review

Commerce determines that the following net countervailable subsidy rates exist for the period January 1, 2022, through December 31, 2022:

Producer/exporter	Subsidy rate (percent <i>ad valorem</i>)
Jindal Poly Films Limited	* 122.75
Garware Hi-Tech Films Limited	4.96

* Rate is based on facts available with adverse inferences.

Disclosure

Commerce intends to disclose to interested parties the calculations performed in connection with these final results within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final results in the *Federal Register*, in accordance with 19 CFR 351.224(b). However, we did not make any changes from the preliminary subsidy rates calculated for Garware Hi-Tech Films Limited (Garware); therefore, we will not disclose any calculation documents for Garware for these final results of review.

Assessment

In accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after publication of the final results

¹ See *Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results of Countervailing Duty Administrative Review and Rescission of Review, in Part; 2022*, 89 FR 65591
⁶ See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for the companies listed above for shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of this administrative review. For all non-reviewed firms subject to the *Order*, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific rate or the all-others rate (*i.e.*, 20.40 percent), as appropriate.⁷ These cash deposit requirements, effective upon publication of these final results, shall remain in effect until further notice.

Administrative Protective Order (APO)

This notice also serves as a final reminder to parties subject to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

These final results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: December 19, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. Garware Corporate Name Change
- V. Subsidies Valuation
- VI. Use of Facts Otherwise Available and Adverse Inferences
- VII. Analysis of Programs

⁷ See *Order*, 67 FR at 44180.

VIII. Discussion of the Issues

Comment 1: Whether Commerce Erred in Excluding Certain Programs in its Adverse Facts Available (AFA) Calculations for Jindal

Comment 2: Whether Commerce Erred in Selecting AFA Rates Lower than the Highest Non-*De Minimis* Rate for Certain Programs in its AFA Calculation for Jindal

IX. Recommendation

[FR Doc. 2024–31083 Filed 12–27–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–170]

Disposable Aluminum Containers, Pans, Trays, and Lids From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, and Preliminary Affirmative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that disposable aluminum containers, pans, trays, and lids (aluminum containers) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is October 1, 2023, through March 31, 2024. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Matthew Palmer or Kate Fracke, 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) 482–1678 or (202) 482–3299, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on June 12, 2024.¹ On July 22, 2024, Commerce tolled certain deadlines in

¹ See *Disposable Aluminum Containers, Pans, Trays, and Lids from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 89 FR 49837 (June 12, 2024) (*Initiation Notice*).

this administrative proceeding by seven days.² On October 8, 2024, Commerce postponed the preliminary determination.³ The deadline for the preliminary determination is now December 19, 2024.

For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum.⁴ A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be found at <https://access.trade.gov/public/FRNotices/ListLayout.aspx>.

Scope of the Investigation

The products covered by this investigation are aluminum containers from China. For a complete description of the scope of this investigation, see Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,⁵ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁶ No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice*. As a result, Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice*. See the scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Pursuant to sections 776(a) and (b) of the Act, we have

² See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

³ See *Aluminum Containers, Pans, Trays, and Lids from the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation*, 89 FR 81425 (October 8, 2024).

⁴ See Memorandum, "Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Disposable Aluminum Containers, Pans, Trays, and Lids from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁵ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

⁶ See *Initiation Notice*, 89 FR at 49838.

preliminarily relied upon facts otherwise available with adverse inferences (AFA) for the China-wide entity, including each of the companies selected for individual examination that later withdrew their participation: Ungar Automation Technology Co., Ltd.; Able Packaging Jiangsu Co., Ltd.; and Henan Aluminium Corporation (Henan Aluminum). For a full description of the methodology underlying Commerce's preliminary determination, see the Preliminary Decision Memorandum.

Preliminary Affirmative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily determines that critical circumstances exist with respect to imports of aluminum containers from China for the separate-rate companies and the China-wide entity. For a full description of the methodology and results of Commerce's critical circumstances analysis, see the Preliminary Decision Memorandum.

Combination Rates

In the *Initiation Notice*,⁷ Commerce stated that it would calculate producer/

exporter combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.⁸ In this investigation, we calculated producer/exporter combination rates for respondents eligible for separate rates.

Separate Rates

We have preliminarily granted a separate rate to certain separate rate respondents that we did not select for individual examination.⁹ In calculating the rate for non-individually examined separate rate respondents in a non-market economy LTFV investigation, Commerce normally looks to section 735(c)(5)(A) of the Act, which pertains to the calculation of the all-others rate in a market economy LTFV investigation, for guidance. Pursuant to section 735(c)(5)(A) of the Act, normally this rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for those companies individually-examined, excluding any dumping margins that are zero, *de minimis*, or based entirely under section 776 of the Act.

Because each company selected for individual examination in this investigation subsequently notified Commerce of its withdrawal from participation, the estimated weighted-average dumping margins in this preliminary determination are based entirely under section 776 of the Act. In investigations where no estimated weighted-average dumping margins other than zero, *de minimis*, or those determined entirely under section 776 of the Act have been established for individually-examined entities, in accordance with section 735(c)(5)(B) of the Act, Commerce typically calculates a simple average of the margins alleged in the petition and applies the results to the entities not individually examined but found eligible for a separate rate.¹⁰ In this investigation, the simple average of the rates in the Petition is 193.90 percent.¹¹ See the table below in the "Preliminary Determination" section of this notice.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Producer	Exporter	Estimated weighted-average dumping margin (percent)
Foshan Bossfoil Aluminum Products Co., Ltd	Aikou Packaging Co., Ltd	193.90
Guangzhou Huafeng Aluminum Foil Technologies Co. Ltd	Guangzhou Huafeng Aluminum Foil Technologies Co. Ltd	193.90
Guangzhou Vanzhen Aluminum Foil Products Co., Ltd	Guangzhou Vanzhen Aluminum Foil Products Co., Ltd	193.90
Henan Mingwei Aluminum Products Co., Ltd	Henan Mingwei Aluminum Products Co., Ltd	193.90
Jinhua Majestic Aluminum Packing Co., Ltd	Jinhua Majestic Aluminum Packing Co., Ltd	193.90
Ningbo Laxwell Aluminum Foil Technology Co., Ltd	Ningbo Laxwell Aluminum Foil Technology Co., Ltd	193.90
Ningbo Mylife Aluminium Foil Products Co., Ltd	Ningbo Mylife Aluminium Foil Products Co., Ltd	193.90
Ningbo Reco Packing Technology Co., Ltd	Ningbo Reco Packing Technology Co., Ltd	193.90
Ningbo Times Aluminium Foil Technology Corp., Ltd	Ningbo Times Aluminium Foil Technology Corp., Ltd	193.90
Ningbo Uber Aluminum Foil Products Co., Ltd	Ningbo Uber Aluminum Foil Products Co., Ltd	193.90
Ningbo Wonderfoil Aluminium Foil Technology Co., Ltd	Ningbo Wonderfoil Aluminium Foil Technology Co., Ltd	193.90
Ningbo Wonderfoil Aluminium Foil Technology Co., Ltd	Qingdao Honsun Packaging Technology Co., Ltd	193.90
Qingdao Wohler Aluminium Environmental Technology Co, Ltd ..	Qingdao Wohler Aluminium Environmental Technology Co, Ltd ..	193.90
DongTai Subcompany of Shanghai Dragon Aluminium Foil Products Co., Ltd.	DongTai Subcompany of Shanghai Dragon Aluminium Foil Products Co., Ltd.	193.90
Suzhou Spk Aluminium Foil Co., Ltd	Suzhou Spk Aluminium Foil Co., Ltd	193.90
Nantong Hongtu Health Technology Co., Ltd	Uniriver Industries Co., Ltd	193.90
Wohler (Qingdao) Co., Ltd	Wohler (Qingdao) Co., Ltd	193.90
Yuyao Rhea Alumium Foil Products Co., Ltd	Yuyao Rhea Alumium Foil Products Co., Ltd	193.90
Yuyao Smallcap Household Products Co., Ltd	Yuyao Smallcap Household Products Co., Ltd	193.90
Zhangjiagang Auto Well Co., Ltd	Zhangjiagang Kangyuan International Trading Co., Ltd	193.90
Jiangsu Greensource Health Aluminum Foil Technology Co., Ltd	Zhangjiagang Kangyuan International Trading Co., Ltd	193.90
Zhejiang Zhongjin Aluminum Industry Co., Ltd	Zhejiang Zhongjin Aluminum Industry Co., Ltd	193.90
Henan Vino Aluminium Foil Co., Ltd	Zhengzhou Eming Aluminium Industry Co., Ltd	193.90
China-wide Entity *		287.80

* Rate based on facts available with adverse inferences.

⁷ See *Initiation Notice*, 89 FR at 49841.

⁸ See Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, "Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries," (April 5, 2005) (Policy

Bulletin 05.1), available on Commerce's website at enforcement.trade.gov/policy/bull05-1.pdf.

⁹ See the Preliminary Decision Memorandum for additional details.

¹⁰ See *Certain Pea Protein from the People's Republic of China: Final Affirmative Determination*

of Sales at Less Than Fair Value and Final Affirmative Critical Circumstances Determination, 89 FR 55559 (July 5, 2024).

¹¹ See Petitioners' Letter, "Antidumping Duty Petition Volume II China," dated May 16, 2024 (Petition), at Exhibit AD-CN-5.

Suspension of Liquidation

In accordance with section 733(d)(2) and (e)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the dates discussed below. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the weighted average amount by which normal value exceeds U.S. price, as indicated in the chart above as follows: (1) for the producer/exporter combinations listed in the table above, the cash deposit rate is equal to the estimated weighted-average dumping margin listed for that combination in the table; (2) for all combinations of China producers/exporters of merchandise under consideration that have not established eligibility for their own separate rates, the cash deposit rate will be equal to the estimated weighted-average dumping margin established for the China-wide entity; and (3) for all third-country exporters of merchandise under consideration not listed in the table above, the cash deposit rate is the cash deposit rate applicable to the China producer/exporter combination (or the China-wide entity) that supplied that third-country exporter.

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. Commerce preliminarily finds that critical circumstances exist for imports of subject merchandise from the non-selected companies eligible for a separate rate and the China-wide entity.¹² In accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to all unliquidated entries of merchandise from the non-selected companies eligible for a separate rate and the China-wide entity that were entered, or withdrawn from warehouse, for consumption on or after the date that is 90 days before the publication of this notice in the **Federal Register**.

To determine the cash deposit rate, Commerce normally adjusts the

estimated weighted-average dumping margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion countervailing duty (CVD) proceeding when CVD provisional measures are in effect. Commerce determined in the preliminary determination of the companion CVD investigation that the mandatory respondent (*i.e.*, Henan Aluminum) and the non-selected respondents (*i.e.*, the “All Others” companies) did not benefit from export subsidies.¹³ Thus, we have not adjusted the cash deposit rates to account for export subsidies. Furthermore, because no respondent cooperated in this proceeding, we do not have any information to conclude whether any respondent is entitled to an adjustment for domestic subsidies passed-through. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary determination within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily applied AFA to the mandatory respondents in this investigation in accordance with section 776 of the Act, and the applied AFA rate is based solely on the Petition, and the rate assigned to the separate rate companies was a simple average of the Petition rates, there are no calculations to disclose.

Verification

Because the mandatory respondents in this investigation did not provide information requested by Commerce and Commerce preliminarily determines each of the mandatory respondents to have been uncooperative, verification will not be conducted.

Public Comment

Pursuant to 19 CFR 351.309(c)(1)(i), interested parties may submit a case brief no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than

five days after the date for filing case briefs.¹⁴ Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹⁵

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁶ Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁷

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants and whether any participant is a foreign national; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective briefs. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.

U.S. International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, Commerce will notify the ITC

¹⁴ See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

¹⁵ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁶ We use the term “issue” here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁷ See *APO and Service Final Rule*.

¹² See Preliminary Decision Memorandum.

¹³ See *Disposable Aluminum Containers, Pans, Trays, and Lids from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Determination of Critical Circumstances, and Alignment of Final Determination With Final Antidumping Duty Determination*, 89 FR 85495–85497 (October 28, 2024).

of its preliminary determination of sales at LTFV. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of subject merchandise are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This preliminary determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: December 19, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is disposable aluminum containers, pans, trays, and lids produced primarily from flat-rolled aluminum. The subject merchandise includes disposable aluminum containers, pans, trays, and lids regardless of shape or size and whether or not wrinkled or smooth.

The term “disposable” is used to identify an aluminum article that is designed to be used once, or for a limited number of times, and then recycled or otherwise disposed.

“Containers, pans, and trays” are receptacles for holding goods.

The subject disposable aluminum lids are intended to be used in combination with disposable containers produced from aluminum or other materials (e.g., paper or plastic). Where a disposable aluminum lid is imported with a non-aluminum container, only the disposable aluminum lid is included in the scope.

Disposable aluminum containers, pans, trays, and lids are also included within the scope regardless of whether the surface has been embossed, printed, coated (including with a non-stick substance), or decorated, and regardless of the style of the edges. The inclusion of a non-aluminum lid or dome sold or packaged with an otherwise in-scope article does not remove the article from the scope, however, only the disposable aluminum container, pan, tray, and lid is covered by the scope definition.

Disposable aluminum containers, pans, trays, and lids are typically used in food-related applications, including but not limited to food preparation, packaging, baking, barbecuing, reheating, takeout, or storage, but also have other uses. Regardless of end use, disposable aluminum containers, pans, trays, and lids that meet the scope definition and are not otherwise excluded are subject merchandise.

Excluded from the scope are disposable aluminum casks, drums, cans, boxes and similar containers (including disposable aluminum cups and bottles) properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 7612.90. However, aluminum containers,

pans, trays, and lids that would otherwise be covered by the scope are not excluded based solely on the fact that they are being classified under HTSUS subheading 7612.90.5000 due to the thickness of aluminum being less than 0.04 mm or greater than 0.22 mm.

The flat-rolled aluminum used to produce the subject articles may be made to ASTM specifications ASTM B479 or ASTM B209–14, but can also be made to other specifications. Regardless of the specification, however, all disposable aluminum containers, pans, trays, and lids meeting the scope description are included in the scope.

Disposable aluminum containers, pans, trays, and lids are currently classifiable under HTSUS subheading 7615.10.7125. Further, merchandise that falls within the scope of this proceeding may also be entered into the United States under HTSUS subheadings 7612.90.1090, 7615.10.3015, 7615.10.3025, 7615.10.7130, 7615.10.7155, 7615.10.7180, 7615.10.9100, and 8309.90.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Single Entity Analysis
- V. Discussion of the Methodology
- VI. Critical Circumstances
- VII. Adjustment Under Section 777(A)(f) of the Act
- VIII. Adjustment to Cash Deposit Rates for Export Subsidies
- IX. Recommendation

[FR Doc. 2024–31082 Filed 12–27–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Establishment of the Methane Plume Remote Sensing Measurements Consortium

AGENCY: National Institute of Standards and Technology (NIST).

ACTION: Notice of Research Consortium.

SUMMARY: NIST is establishing the Methane Plume Remote Sensing Measurements Consortium (“Consortium”) to support the rapidly growing field of remote sensing for the detection and quantification of methane emissions, primarily from point sources. This Consortium aims to unite Federal and State agencies, academia, business, and industry to enhance robust transparency, accuracy, reliability, and interoperability of methane plume detection and quantification data products. In this evolving field of

measurement and analysis, consistency across products and results, an understanding of the drivers of error, and a well-constructed validation strategy, are important to increase trust in the data products. To achieve this, the Consortium is focused on identifying the strengths and limitations of current methodologies and analysis approaches. The Consortium seeks to foster transparency through improved documentation, consensus building around best practices and the development of documentary consensus standards. In addition, the Consortium seeks to support the coordination and standardization of validation approaches for these measurements and the utilization of controlled releases. By fostering collaboration among business, Federal agencies, local governmental stakeholders, and researchers, the Consortium aims to drive advancements in methane plume detection and quantification and the analysis supported by them.

Participants will be required to sign a Cooperative Research and Development Agreement (CRADA).

DATES: The Consortium’s activities will commence on January 15, 2024 (“Commencement Date”). NIST will accept letters of interest to participate in this Consortium on an ongoing basis.

ADDRESSES: Completed letters of interest or requests for additional information about the Consortium can be directed via mail to the Consortium Manager, Dr. Annmarie Eldering, Greenhouse Gas Measurements Program of NIST’s Special Programs Office, 100 Bureau Drive, Mail Stop 2100, Gaithersburg, Maryland 20899, or via electronic mail annmarie.eldering@nist.gov, or by telephone at (301) 975–5558.

FOR FURTHER INFORMATION CONTACT: Dr. Saikat Ghosh, Partnership Officer, National Institute of Standards and Technology’s Technology Partnerships Office, by mail to 100 Bureau Drive, Mail Stop 2200, Gaithersburg, Maryland 20899, by electronic mail to Saikatghosh@nist.gov or by telephone at (301) 975–3084.

SUPPLEMENTARY INFORMATION: NIST is establishing the Methane Plume Remote Sensing Measurements Consortium (“Consortium”) to support the rapidly growing field of remote sensing for the detection and quantification of methane emissions, primarily from point sources. This Consortium aims to unite Federal and State agencies, academia, business, and industry to enhance robust transparency, accuracy, reliability, and interoperability of methane plume detection and quantification data products. In this rapidly growing and

evolving field of measurement and analysis, consistency across products and results, an understanding of the drivers of error, and a well-constructed validation strategy are important to increase trust in the data products. To achieve this, the Consortium is focused on identifying strengths and limitations current methodologies and analysis approaches. The Consortium seeks to foster transparency through improved documentation, consensus building around best practices and the development of documentary consensus standards. In addition, the Consortium seeks to support the coordination and standardization of validation approaches for these measurements and the utilization of controlled releases. By fostering collaboration among business, Federal agencies, local governmental stakeholders, and researchers, the Consortium aims to drive advancements in methane plume detection and quantification and the analysis supported by them.

Consortium Goals

The Consortium brings together NIST, state and local governments, academia, businesses, and other stakeholders to collaborate on analysis, documentation, and consensus building that will improve transparency, trust, and usability of remote sensing methane plume detections and quantification. The Consortium will also develop a tiered validation framework and assist in efficient deployment of controlled release experiments. Collaborative work across the wide range of measurement and analysis teams will be the most efficient approach to achieve our goals.

This initiative aims to achieve the following goals, with work in two task groups:

Task Group 1

- Develop consensus terminology and a taxonomy of terminology. Publish a NIST report or other document with these definitions.
- Develop a set of written consensus standards that capture the best practices, recommendations for data product formats, and methodology documentation. This will be achieved through collaborative evaluation of intercomparison exercises and common datasets analyzed by multiple teams.
- Implement and analyze alternative validation strategies, incorporating information from simulations, cross-team analysis, controlled releases, and well characterized industrial emission sources.
- All of these activities will support the goals of developing standards for detection and quantification of methane

plumes with remote sensing data to ensure consistency, reliability, and trust in the data used by all stakeholders.

Task Group 2

- Develop definitions for a tiered validation framework, allowing for approaches such as algorithm validation (with data from other measurement systems), algorithm assessment with simulated data, performance assessment with well-characterized industrial emissions, and controlled release experiments
 - Consensus validation strategies will be developed and documented, incorporating information from simulations, cross-team analysis, controlled releases, and well characterized industrial emission sources.
 - Document consensus standards for analysis and reporting of results of controlled release experiments
 - Develop platforms for improved communication and utilization of controlled release experiments, maximizing participation by measurement teams and opportunities for cross comparison of results
 - Create a repository of controlled release measurement datasets for easy access by new participants and for community analysis.
- Sharing of proprietary information developed by the Consortium will be subject to that detailed in the CRADA. Participants will not be required to contribute any funds or pay any fee. Contributions of data and/or methodologies is highly encouraged.

Participation Process

Eligibility will be determined by NIST based on information provided by prospective participants in response to this notice. Submitted responses from prospective participants will be evaluated by NIST to determine eligibility to participate in this Consortium. Prospective participants should provide a letter of interest with the following information to NIST's Consortium Manager:

- (1) A description of their interest and experience in methane plume detection and quantification from remote sensing measurements and/or experience conducting and analyzing data from controlled release experiment for methane plume validation and/or related expertise necessary to contribute to Consortium activities.
- (2) List of interested party's anticipated participants.

Letters of interest must not include business proprietary information. NIST will not treat any information provided in response to this notice as proprietary

information. Following review, each organization will be notified of its eligibility. In order to participate in this Consortium, each eligible organization must sign a CRADA for this Consortium. All participants in this Consortium will be bound by the same terms and conditions. NIST does not guarantee participation in the Consortium to any organization submitting a letter of interest.

Authority: 15 U.S.C. 3710a.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2024–30952 Filed 12–27–24; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE574]

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a joint meeting of its Archipelagic Plan Team (APT) and Pelagic Plan Team (PPT) to discuss fishery management issues and develop recommendations for future management of fisheries in the Western Pacific Region.

DATES: The APT and PPT will meet jointly from Tuesday to Thursday, January 21–23, 2025, between 12 p.m. and 5 p.m. Hawaii Standard Time (HST). For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held virtually with remote participation (Webex) options available for the members, and public attendance limited to web conference via Webex. Specific information on joining the meeting, connecting to the web conference and making oral public comments will be posted on the Council website at www.wpcouncil.org. For assistance with the web conference connection, contact the Council office at (808) 522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, (808) 522–8220 (voice) or (808) 522–8226 (fax).

SUPPLEMENTARY INFORMATION: The APT and PPT meeting will be held Tuesday to Thursday, January 21–23, 2025, between 12 p.m. and 5 p.m. Hawaii

Standard Time (HST) (11 a.m. to 4 p.m. Samoa Standard Time (SST); 8 a.m. to 1 p.m. on January 22–24, 2025, Chamorro Standard Time (ChST)). Opportunities to present oral public comment will be provided on the agenda. The order of the agenda may change, and will be announced in advance at the meeting. The meeting may run past the scheduled times noted above to complete scheduled business.

Agenda for the Archipelagic Plan Team Meeting

Tuesday, January 21, 2025, 12 Noon to 5 p.m. Hawaii Standard Time (HST) (11 a.m. to 4 p.m. Samoa Standard Time (SST); 8 a.m. to 1 p.m. on January 22–24, 2025, Chamorro Standard Time (ChST)).

1. Welcome and Introductions
2. Report on 2024 Plan Team Recommendations and Work Items
- A. Fishery Performance Work Items
 - i. American Samoa
 - a. Creel Survey Data Evaluation
 - b. Species-Specific Catch Reporting and Annual Catch Limit Tracking
 - c. Available Fish Aggregating Device Program Data
 - ii. Commonwealth of the Northern Mariana Islands (CNMI)
 - a. Commercial Data Update
 - iii. Guam
 - a. Impact of Weather and Military Closures on Fishing Effort
 - iv. Hawaii
 - a. Bottomfish Management Unit Species (MUS) Aggregation
 - b. Bottomfish Prevalence at United Fishing Agency
 - v. Pelagics
 - a. Socioeconomic Observer Data Collection
 - b. Life History Module
 - vi. Commercial Fishery Data
 - a. Low Territorial Commercial Reporting
 - b. Discrepancies in Commercial Data Streams
 - vii. Oceanic and Ecosystem Indicators
 - a. Brainstorm of New Recruitment Indices
 - b. Tula Observatory Data
 - c. Data Integration/Fishery-Ecosystem Relationships
 - viii. Online Portal Review
 - B. Public Comment on Day 1 Agenda Items

Wednesday, January 22, 2025, 12 p.m. to 5 p.m. Hawaii Standard Time (HST) (11 a.m. to 4 p.m. Samoa Standard Time (SST); 8 a.m. to 1 p.m. on January 22–24, 2025, Chamorro Standard Time (ChST)).

C. Ecosystem Component Species (ECS) Management

- i. Presentation on How to Manage ECS

- ii. Examples from other Councils
- iii. Ecosystem Objectives
- iv. How to promote back an MUS
- v. General Council Pacific Islands Perspective
3. Non-Commercial Fishery Performance
 - a. Pelagic Territorial Non-commercial Module
 - b. Marine Recreational Information Program (MRIP) Presentation on Nature of MRIP Surveys and Hawaii Marine Recreational Fisheries Survey
 - c. A new Approach to the Hawaii MUS Non-commercial Module
 - d. Discussion on Hawaii Non-Commercial Module stemming from December Scientific and Statistical Committee Meeting
 - e. Including Uku Non-Commercial Catch
4. Public Comment on Day 2 Agenda Items

Thursday, January 23, 2025, 12 p.m. to 5 p.m. Hawaii Standard Time (HST) (11 a.m. to 4 p.m. Samoa Standard Time (SST); 8 a.m. to 1 p.m. on January 22–24, 2025, Chamorro Standard Time (ChST)).

5. Annual Stock Assessment and Fishery Evaluation Report Revamp Status Update
6. Council Actions
 - a. Tier 6 Acceptable Biological Catch Control Rule
 - b. American Samoa Bottomfish MUS Revision Updates
 - c. ACL Specifications
1. CNMI Bottomfish
2. Main Hawaiian Islands (MHI) Uku
3. MHI Kona Crab
4. MHI Deepwater Shrimp and Precious Corals
 - d. Pelagic Action Updates and Discussion
1. Electronic Monitoring
2. Crew Training
3. North Pacific Striped Marlin
7. Other Business
8. Public Comment on Day 3 Agenda Items
9. Discussion and Recommendations

Special Accommodations

These meetings are accessible to people with disabilities. Please direct requests for sign language interpretation or other auxiliary aids to Kitty M. Simonds (see **FOR FURTHER INFORMATION CONTACT** section above) at least 5 days prior to the meeting date.

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

Dated: December 23, 2024.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–31347 Filed 12–27–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE557]

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 98 Post-Data Workshop Webinar for Gulf of Mexico Red Snapper.

SUMMARY: The SEDAR 98 assessment process of Gulf of Mexico red snapper will consist of a Data Workshop, and a series of assessment webinars, and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 98 Post-Data Workshop webinar will be held Tuesday, January 14, 2025, from 1 p.m. to 4 p.m., Eastern Time.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: Julie.neer@safmc.net.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop, (2) a series of assessment webinars, and (3) A Review Workshop. The product of the Data Workshop is a report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The assessment webinars produce a report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions,

and recommends research and monitoring needs. The product of the Review Workshop is an Assessment Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion during the Post-Data Workshop webinar are as follows:

Participants will review additional information and data analysis on outstanding data issues and make final recommendations.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: December 20, 2024.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024-31038 Filed 12-27-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE556]

Notice of Availability of Draft Environmental Assessment on the Effects of NOAA's National Marine Fisheries Service, Office of Protected Resources Coordination and Continued Operation of the Sea Turtle Stranding and Salvage Network

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

ACTION: Notice; availability of a draft environmental assessment; request for comments.

SUMMARY: NMFS announces the availability of the draft Environmental Assessment (EA) on NMFS Office of Protected Resources' (OPR) role coordinating the Sea Turtle Stranding and Salvage Network (STSSN). The STSSN responds to and documents sick, injured, and dead sea turtles that are found in coastal areas under U.S. jurisdiction along the Atlantic Ocean and Gulf of Mexico, and U.S. Caribbean Territories. Although the STSSN has been in operation for several decades, the National Coordination role formally shifted to the OPR in 2022, which prompted an evaluation of STSSN operations and development of a formal Operating Procedures Handbook, which are subject to National Environmental Policy Act (NEPA) review. NMFS is requesting comments on the draft EA.

DATES: Written comments must be received (see **ADDRESSES**) on or before January 29, 2025.

ADDRESSES: The EA is available for download and review at <https://www.fisheries.noaa.gov/national/marine-life-distress/sea-turtle-stranding-and-salvage-network> under the section heading Sea Turtle Stranding and Salvage Network Operations. The draft EA is also available upon written request (see **FOR FURTHER INFORMATION CONTACT**).

You may submit comments on this document, identified by NOAA-NMFS-2024-0148, by the following method:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2024-0148 in the Search box. Click on the "Comment" icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or

individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Sara Wissmann, NMFS, Office of Protected Resources at sara.wissmann@noaa.gov, 301-427-8402; Wendy Piniak, NMFS, Office of Protected Resources at wendy.piniak@noaa.gov, 301-427-8402.

SUPPLEMENTARY INFORMATION:

Publication of this notice begins the official public comment period for this draft EA. Per the NEPA, the purpose of the draft EA is to evaluate the potential direct, indirect, and cumulative impacts caused by continued operation of the STSSN under the coordination of the NMFS, OPR using the 2024 STSSN Operating Procedures Handbook.

Section 9 of the Endangered Species Act (ESA) and Federal regulations prohibit the 'taking' of a species listed as endangered or threatened. The ESA defines "take" to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Section 4(f) of the ESA (16 U.S.C. 1531-1544) provides for the creation of Recovery Plans for endangered and threatened species and provides NMFS and US Fish and Wildlife Service (USFWS) with authority "to procure the services of appropriate public and private agencies and institutions and other qualified persons" in order to implement those plans. To advance the conservation and recovery of listed sea turtles, each recovery plan developed jointly by the NMFS and USFWS identifies and highlights the need to maintain an active stranding network.

Species Covered in This Notice

The following species are included in the EA: North Atlantic and South Atlantic Distinct Population Segments of green (*Chelonia mydas*), Kemp's ridley (*Lepidochelys kempii*), hawksbill (*Eretmochelys imbricata*), leatherback (*Dermochelys coriacea*), and Northwest Atlantic Ocean DPS of loggerhead (*Caretta caretta*) sea turtles.

Background

The draft EA analyzes the continued operation of the STSSN under the

coordination of NMFS OPR. NMFS has conducted an environmental review of OPR's coordination role related to the STSSN and the formalization of their program protocols and roles described in the Draft 2024 STSSN Operating Procedures Handbook.

The STSSN is a cooperative effort to reduce causes of morbidity and mortality in sea turtles by responding to and documenting sea turtles, found either dead or alive (but compromised), in a manner sufficient to inform conservation management and recovery. The proposed activities considered in the draft EA are limited to the coordination role that OPR holds, activities NMFS staff will conduct in the field related to stranding coordination, response, and mortality investigation, and direct takes of sea turtles while responding to stranding incidents that have occurred because of human activity or natural causes of illness, injury, or mortality.

National Environmental Policy Act

This notice is provided pursuant to section 10(c) of the ESA and the NEPA (42 U.S.C. 4321, *et seq.*). This draft EA was prepared in accordance with NEPA (42 U.S.C. 4321, *et seq.*) and NOAA policy and procedures (NOAA Administrative Order [NAO] 216–6A and the Companion Manual [CM] for the NAO 216–6A).

Alternatives Considered

NMFS' proposed action is the continued coordination of the STSSN by NMFS OPR and the review of program protocols and best practices, which have been consolidated and updated in the Draft 2024 STSSN Operating Procedures Handbook. In preparing the draft EA, NMFS considered the following two alternatives for the proposed action.

Alternative 1: No Action. In accordance with the NOAA CM for NAO 216–6A, section 6.B.i, Under the No Action Alternative, NMFS OPR would absolve its role coordinating the STSSN. Under this alternative, the STSSN would continue to operate as prescribed in the species Recovery Plans, but only under existing state programs that are permitted through the USFWS permit authority, or through direct permits to stranding response organizations and rehabilitation facilities. Stranding response activities would be maintained, but without NMFS OPR involvement. The Council on Environmental Quality Regulations and the CM for NAO 216–6A require consideration and analysis of a no action alternative for the purposes of presenting a comparative analysis to the action alternatives. The no action

alternative, serves as a baseline against which the impacts of the action alternatives will be compared and contrasted.

Alternative 2: Continued Operation of the STSSN under NMFS Coordination, Guided by the Draft 2024 STSSN Operating Procedures Handbook. Under Alternative 2, NMFS OPR would continue to coordinate the STSSN and would finalize the Draft 2024 STSSN Operating Procedures Handbook as a guide for the continued operation of the STSSN. The STSSN has been in operation for decades, and the Operating Procedures seeks to consolidate various guidance documents and clearly outline the roles and responsibilities of STSSN participants.

Final determinations will not be completed until after the end of the 30-day comment period and NMFS will fully consider all public comments received during the comment period. If finalized and adopted, NMFS will publish the Final STSSN Operating Procedures Handbook to its website.

Dated: December 20, 2024.

Caroline Good,

Acting Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–31126 Filed 12–27–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE568]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of hybrid meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Crab Plan Team will meet January 14, 2025 to January 15, 2025.

DATES: The meeting will be held on Tuesday, January 14, 2025, through Wednesday, January 15, 2025, from 9 a.m. to 5 p.m., AK time.

ADDRESSES: The meeting will be a hybrid meeting. Attend in-person at the North Pacific Fishery Management Council office, 1007 West Third Ave., Suite 400, Anchorage, AK 99501, or join the meeting online through the link at <https://meetings.npfmc.org/Meeting/Details/3072>.

Council address: North Pacific Fishery Management Council, 1007 West Third Ave., Suite 400, Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting via video conference are given under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT:

Anita Kroska, Council staff; phone: (907) 271–2809; email: anita.kroska@noaa.gov. For technical support, please contact our admin Council staff, email: npfmc.admin@noaa.gov.

SUPPLEMENTARY INFORMATION:

Agenda

Tuesday, January 14, 2025 Through Wednesday, January 15, 2025

The agenda will include (a) tools for constructing model-based indices of survey data, (b) GMACS coding updates, stock assessment model developments, simulations, and (c) other business. The agenda is subject to change, and the latest version will be posted at <https://meetings.npfmc.org/Meeting/Details/3072>, prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone, or by phone only. Connection information will be posted online at: <https://meetings.npfmc.org/Meeting/Details/3072>.

Public Comment

Public comment letters will be accepted and should be submitted electronically to <https://meetings.npfmc.org/Meeting/Details/3072>.

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

Dated: December 20, 2024.

Key Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–31232 Filed 12–27–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE569]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public hybrid meeting of its Groundfish Recreational Advisory Panel Meeting to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). This meeting will be held in-person with a webinar option. 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 Tuesday, January 21, 2025 at 12:30 p.m.

ADDRESSES:

Meeting address: This meeting will be held at the 9Four Points by Sheraton, One Audubon Road, Wakefield, MA, 01880; telephone: (781) 245-9300.

Webinar registration URL information: https://nefmc-org.zoom.us/j/9tJpD06uqjgiHNI_hrYl-4FKkLnONGRO7HY8.

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 Groundfish Recreational Advisory Panel will meet to discuss and develop recommendations to the Groundfish Committee on fishing year 2025 recreational measures for Western Gulf of Maine cod and Gulf of Maine haddock. They will also receive an overview of the Council's groundfish priorities for 2025. Discuss other businesses, as 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: December 20, 2024.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024-31040 Filed 12-27-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE560]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public online meeting.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) and the NMFS Northwest Fisheries Science Center will convene an online pre-assessment workshop to review proposed data and modeling approaches to inform a groundfish stock assessment for yellowtail rockfish in the area north of 40°10' N. latitude, scheduled for assessment during 2025. The workshop is open to the public.

DATES: The pre-assessment workshop will be held Thursday, January 30, 2025, from 9 a.m. until 12 p.m. (Pacific Standard Time) or until business for the day has been completed.

ADDRESSES: The pre-assessment workshop will be conducted as an online meeting. Specific meeting information, including the agenda and directions on how to join the meeting and system requirements, will be provided in the workshop announcement on the Pacific Council's website (see www.pcouncil.org). You may send an email to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov) or contact him at (503) 820-2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT:

Marlene A. Bellman, Staff Officer, Pacific Council; telephone: (503) 820-2414; email: marlene.bellman@noaa.gov.

SUPPLEMENTARY INFORMATION: The purpose of the pre-assessment workshop is to review proposed data inputs, modeling approaches, and any other pertinent information to inform the 2025 stock assessment for yellowtail rockfish in the area north of 40°10' N. latitude. The goal of the pre-assessment workshop is to promote dialogue and a common understanding between assessment teams and data providers of the best data and analytical and modeling approaches applicable to these assessments. Stock assessment

teams will solicit advice from data stewards, stakeholders, and fishery managers knowledgeable about these species.

No management actions will be decided by the workshop participants. The participants' role will be development of recommendations for consideration by the stock assessment teams assigned to conduct these assessments. The assessment for this stock is tentatively scheduled for peer review during a Stock Assessment Review (STAR) panel on May 19-23, 2025. The Pacific Council and the Pacific Council's Scientific and Statistical Committee are scheduled to consider this draft assessment for use in informing management decisions at their September 2025 meeting in Spokane, WA.

Although nonemergency issues not contained in the workshops' agendas may be discussed, those issues may not be the subject of formal action during these workshops. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent of the workshop participants to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov; (503) 820-2412) at least 10 days prior to the meeting date.

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

Dated: December 20, 2024.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024-31035 Filed 12-27-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE559]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Highly Migratory Species Management Team (HMSMT) will hold a webinar, which is open to the public.

DATES: The online meeting will be held on portions of 3 consecutive days: Monday, January 13, 2025, from 12 p.m. to 4 p.m.; Tuesday, January 14, 2025, from 12 p.m. to 3 p.m.; and Wednesday, January 15, 2025, from 8 a.m. to 11 a.m. All times are Pacific Standard Time.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements, will be provided in the meeting announcement on the Pacific Council's website (see www.pcouncil.org). You may send an email to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov) or contact him at (503) 820-2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384.

FOR FURTHER INFORMATION CONTACT: Kerry Griffin, Staff Officer, Pacific Council; telephone: (503) 820-2409.

SUPPLEMENTARY INFORMATION: The purpose of this webinar is to continue development of the HMS Roadmap, in preparation for consideration at the March 2025 Pacific Council meeting. The HMS Advisory Subpanel is expected to attend the Tuesday, January 14 meeting to provide input related to the Roadmap. The HMSMT may consider other issues as appropriate.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (kris.kleinschmidt@noaa.gov; (503) 820-2412) at least 10 days prior to the meeting date.

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

Dated: December 19, 2024.

Alyssa Weigers,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024-30788 Filed 12-27-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XE558]

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 91 Assessment Webinar I for U.S. Caribbean Spiny Lobster.

SUMMARY: The SEDAR 91 assessment of the U.S. Caribbean stock of Spiny Lobster will consist of a data scoping webinar, a workshop, a series of assessment webinars, and a review workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 91 Assessment Webinar I will be held Wednesday, January 29, 2025, from 1 p.m. until 4 p.m., EST. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice. Additional SEDAR 91 workshops and webinar dates and times will publish in a subsequent issue in the **Federal Register**.

ADDRESSES:

Meeting address: The SEDAR 91 Assessment Webinar 1 will be held via webinar. The webinar is open to members of the public. Registration is available by contacting the SEDAR coordinator via email at Emily.Ott@safmc.net.

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; www.sedarweb.org.

FOR FURTHER INFORMATION CONTACT: Emily Ott, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571-4373; email: Emily.Ott@safmc.net.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management

Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the workshop are as follows:

- Finalize any data decisions remaining
- Continue discussion on modelling issues and decisions.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: December 20, 2024.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–31037 Filed 12–27–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648–XE573]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold three port meetings via webinar gathering input on Atlantic king mackerel and Atlantic Spanish mackerel as managed by the Fishery Management Plan for Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region.

DATES: The port meetings will take place January 21, 2025, January 23, 2025, and January 29, 2025. The port meetings will begin at 6 p.m., local time. For additional information, including webinar registration, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: *Council address:* South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Christina Wiegand, Fishery Social Scientist, SAFMC; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: christina.wiegand@safmc.net.

SUPPLEMENTARY INFORMATION: The Council hosted a series of port meetings along the Atlantic coast throughout 2024 in order to take a focused look at the Atlantic king mackerel and Atlantic Spanish mackerel fisheries. They are now hosting a webinar version of these port meetings to gather input from

members of the public that may have been unable to attend one of the previously held in-person port meetings.

The agenda for the port meetings is as follows: Council staff will briefly introduce port meetings and the Council's goals and objectives. Attendees will then have the opportunity to provide input on a variety of issues related to the Atlantic king mackerel and Spanish mackerel fisheries including changing environmental conditions, needed management changes, commercial and recreational fishery dynamics, and the goals and objectives of the Coastal Migratory Pelagics Fishery Management Plan. Information provided during port meetings will be summarized and presented to the Council for use in management decision-making.

Webinar Information

These port meetings will be conducted via webinar. The port meetings will begin at 6 p.m. Registration for the webinars is required. Registration information will be posted on the Council's website at <https://safmc.net/king-and-spanish-mackerel-port-meetings/> as it becomes available.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aid should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: December 23, 2024.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–31345 Filed 12–27–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648–XE565]

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 Groundfish 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 Wednesday, January 22, 2025 at 9 a.m.

ADDRESSES:

Council address: This meeting will be held at Four Points by Sheraton, One Audubon Road, Wakefield, MA 01880; telephone: (781) 245–9300.

Webinar registration URL information: <https://nefmc-org.zoom.us/j/jpn558lz4VRuly4rn3>.

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 Groundfish Committee will meet to discuss Fishing Year 2025 Recreational Measures and the recommendations from the Recreational Advisory Panel and discuss and develop recommendations to the Council on fishing year 2025 recreational measures for Western Gulf of Maine cod and Gulf of Maine haddock. They will also receive an overview of the Council's groundfish priorities for 2025, and discuss other business, 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: December 20, 2024.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024-31034 Filed 12-27-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Innovation Fund Advisory Committee

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice; reopening of application window for advisory committee nominations.

SUMMARY: On November 15, 2024, the National Telecommunications and Information Administration (NTIA) published a notice seeking applications from persons interested in serving on the Public Wireless Supply Chain Innovation Fund Advisory Committee (hereinafter “the IFAC” or “the Committee”) for a two-year term. The notice established a deadline of December 16, 2024, for the transmittal of applications. This notice reopens the application window until January 15, 2025.

DATES: The application window for the notice published November 15, 2024 at 89 FR 90267 is reopened. To be considered for calendar year 2025 appointments, applications must be postmarked or electronically transmitted on or before January 15, 2025.

ADDRESSES: Persons may submit applications to Richard Upchurch, Designated Federal Officer, by email to IFAC@ntia.gov or by U.S. mail or commercial delivery service to Office of Public Safety Communications, National Telecommunications and Information Administration, 1401 Constitution Ave. NW, Room 73022, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard Upchurch, Designated Federal Officer, at (202) 617-6592 or rupchurch@ntia.gov. Please direct media inquiries to NTIA’s Office of Public Affairs at (202) 482-7002 or press@ntia.gov.

SUPPLEMENTARY INFORMATION: On November 15, 2024, NTIA published a Notice in the **Federal Register** seeking applications from persons interested in serving on the IFAC. See Innovation Fund Advisory Committee; Call for applications to serve on the Innovation

Fund Advisory Committee, 89 FR 90267 (Nov. 15, 2024), available at <https://www.federalregister.gov/documents/2024/11/15/2024-26635/innovation-fund-advisory-committee>. The Notice established a deadline of December 16, 2024, for the transmittal of applications. Through this Notice, NTIA is reopening the application window until January 15, 2025 to ensure that all interested parties have an opportunity to submit applications.

Persons interested in applying to serve on the IFAC are reminded that members *may not* apply for Innovation Fund grants, hold a financial interest in applicants, or be employed by applicants of the Innovation Fund grant program during their tenure on the IFAC. As such, individuals with or affiliated with an outstanding application to the Innovation Fund’s third Notice of Funding Opportunity (NOFO 3), released on December 17, 2024, will not be appointed if their application is pending at the time of appointment. Appointments are expected to occur after the NOFO 3 application deadline.

Likewise, IFAC members and their affiliated organizations will not be permitted to apply to any ongoing or future funding opportunities during their service on the committee. However, individuals who are current recipients of an Innovation Fund grant, employed by a grant recipient, or hold a financial interest in a recipient of an Innovation Fund grant are eligible to apply for IFAC membership and serve on the committee, provided no new grant applications are submitted during their tenure.

Dated: December 20, 2024.

Stephanie Weiner,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2024-31236 Filed 12-27-24; 8:45 am]

BILLING CODE 3510-60-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: Deletions from the Procurement List.

SUMMARY: This action deletes product(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Date added to and deleted from the Procurement List: January 26, 2025.

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:

Deletions

On November 15, 2024 (89 FR 90270) and 11/22/2024 (89 FR 92657), 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):

8415-01-546-0124—Shirt, Underwear, Midweight Cold Weather Gen III, ECWCS, Army, Desert Sand, X-Small/Short

8415-01-546-0128—Shirt, Underwear, Midweight Cold Weather Gen III, ECWCS, Army, Desert Sand, X-Small/Regular

8415-01-546-0160—Shirt, Underwear, Midweight Cold Weather Gen III, ECWCS, Army, Desert Sand, Small/Short

8415-01-538-8598—Shirt, Underwear, Midweight Cold Weather Gen III, ECWCS, Army, Desert Sand, Small/Regular

8415-01-546-0166—Shirt, Underwear, Midweight Cold Weather Gen III, ECWCS, Army, Desert Sand, Small/Long

8415-01-538-8614—Shirt, Underwear, Midweight Cold Weather Gen III, ECWCS, Army, Desert Sand, Medium/Regular

8415-01-546-0305—Shirt, Underwear, Midweight Cold Weather Gen III, ECWCS, Army, Desert Sand, Medium/Long

8415-01-538-8621—Shirt, Underwear, Midweight Cold Weather Gen III, ECWCS, Army, Desert Sand, Large/Regular

8415-01-538-8701—Shirt, Underwear, Midweight Cold Weather Gen III, ECWCS, Army, Desert Sand, Large/Long

8415-01-538-8705—Shirt, Underwear, Midweight Cold Weather Gen III, ECWCS, Army, Desert Sand, X-Large/Regular

8415-01-538-8711—Shirt, Underwear, Midweight Cold Weather Gen III, ECWCS, Army, Desert Sand, X-Large/Long

8415-01-546-0362—Shirt, Underwear, Midweight Cold Weather Gen III, ECWCS, Army, Desert Sand, X-Large/X-Long

8415-01-546-0369—Shirt, Underwear, Midweight Cold Weather Gen III, ECWCS, Army, Desert Sand, XX-Large/Regular

8415-01-546-0370—Shirt, Underwear, Midweight Cold Weather Gen III, ECWCS, Army, Desert Sand, XX-Large/Long

8415-01-546-0374—Shirt, Underwear, Midweight Cold Weather Gen III, ECWCS, Army, Desert Sand, XX-Large/X-Long

Authorized Source of Supply: Peckham Vocational Industries, Inc., Lansing, MI

Authorized Source of Supply: Knox County Association for Remarkable Citizens, Inc., Vincennes, IN

Authorized Source of Supply: TradeWinds Services, Inc., Merrillville, IN

Authorized Source of Supply: BESTWORK INDUSTRIES FOR THE BLIND, INC., Cherry Hill, NJ

Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

Contracting Activity: W6QK ACC-APG NATICK, NATICK, MA

NSN(s)—Product Name(s):

8415-01-576-9915—Undershirt, FREE, Army, Unisex, Foliage Green, Size XS

8415-01-576-9930—Undershirt, FREE, Army, Unisex, Foliage Green, Size S

8415-01-577-0407—Undershirt, FREE, Army, Unisex, Foliage Green, Size M

8415-01-577-0408—Undershirt, FREE, Army, Unisex, Foliage Green, Size L

8415-01-577-0409—Undershirt, FREE, Army, Unisex, Foliage Green, Size XL

8415-01-577-0410—Undershirt, FREE, Army, Unisex, Foliage Green, Size XXL

8415-01-588-0506—Undershirt, FREE, Army, Unisex, Desert Sand, Size XS

8415-01-588-0740—Undershirt, FREE, Army, Unisex, Desert Sand, Size S

8415-01-588-0746—Undershirt, FREE, Army, Unisex, Desert Sand, Size M

8415-01-588-0772—Undershirt, FREE, Army, Unisex, Desert Sand, Size L

8415-01-588-0774—Undershirt, FREE, Army, Unisex, Desert Sand, Size XL

8415-01-588-0794—Undershirt, FREE, Army, Unisex, Desert Sand, Size XXL

Mandatory Source of Supply: BESTWORK INDUSTRIES FOR THE BLIND, INC., Cherry Hill, NJ

Contracting Activity: W6QK ACC-APG NATICK, NATICK, MA

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2024-31243 Filed 12-27-24; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from the Procurement List.

SUMMARY: The Committee is proposing to add 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) previously furnished by such agencies.

DATES: Comments must be received on or before: January 26, 2025.

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.

Additions

In accordance with 41 CFR 51-5.3(b), the Committee intends to add this services requirement to the Procurement List as a mandatory purchase only for the contracting activity listed at the location listed with the proposed qualified nonprofit agency as the authorized source of supply. Prior to adding the service to the Procurement List, the Committee will consider other pertinent information, including

information from Government personnel and relevant comments from interested parties regarding the Committee's intent to geographically limit this services requirement.

The following service(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Service(s)

Service Type: Operation of Postal Service Center

Mandatory for: US Air Force, Postal Service Center, Joint Base Andrews, MD

Authorized Source of Supply: VersAbility Resources, Inc., Hampton, VA

Contracting Activity: DEPT OF THE AIR FORCE, FA2860 11 CONS LGC

Deletions

The following product(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):

6645-01-491-9825—Clock, Wall, Mahogany, Octagon, 12" Quartz

6645-01-491-9835—Clock, Wall, Mahogany Octagon, Custom Logo 12" Quartz

6645-01-557-4607—Clock, Wall, Self-Set, Custom Logo, Mahogany, Octagon, 12" Diameter Frame

6645-01-557-4608—Clock, Wall, Self-Set, Mahogany, Octagon, 12" Diameter Frame

Mandatory Source of Supply: Chicago Lighthouse Industries, Chicago, IL

Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSN(s)—Product Name(s):

7520-01-357-6839—Pen, Ballpoint, Stick, Refillable, Rubberized Barrel, Red, Fine Point

Mandatory Source of Supply: Alphapointe, Kansas City, MO

Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2024-31244 Filed 12-27-24; 8:45 am]

BILLING CODE 6353-01-P

CONSUMER FINANCIAL PROTECTION BUREAU

Open Call for Credit Card Price and Availability Data From Credit Card Issuers

AGENCY: Consumer Financial Protection Bureau.

ACTION: Open call for credit card price and availability data from credit card issuers.

SUMMARY: The Consumer Financial Protection Bureau (CFPB) is publishing this notice to advise credit card issuers

that they may voluntarily submit credit card price and availability data through the CFPB's Terms of Credit Card Plans (TCCP) Survey.

FOR FURTHER INFORMATION CONTACT:

Sarah Schwartzberg, Office of Markets, at 202-435-7000 or CFPB_collect_support@cfpb.gov. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION: When shopping online or in a brick-and-mortar store, people like to weigh the costs and benefits of different products before they make a purchase, but this can be a challenge for consumers seeking to compare interest rates across credit cards.¹ The lack of transparency in credit card terms and conditions is not new. In 1988, Congress passed the Fair Credit and Charge Card Disclosure Act to provide for a more detailed and uniform disclosure of credit card rates and fees by issuers.

Twice per year, at least 150 credit card issuers submit information to the CFPB on their largest credit card plans, including interest rates and fees, through our TCCP Survey.² This notice is part of our efforts to invite a broader range of credit card issuers to contribute information on their credit card offerings to this data set. Our goal is to spur competition and give Americans the power to shop around and choose the best credit card for their needs. This open call is just one step in our plan to update the TCCP Survey to make it a more useful resource on credit card price and availability for consumers.

Credit card issuers are invited to voluntarily contribute credit card price and availability data. Get started now: <https://www.consumerfinance.gov/data-research/credit-card-data/terms-credit-card-plans-survey/>.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2024-31229 Filed 12-27-24; 8:45 am]

BILLING CODE 4810-AM-P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Comment Request; AmeriCorps Member Application, Enrollment, and Exit Forms

AGENCY: Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Corporation for National and Community Service, operating as AmeriCorps (AmeriCorps) is proposing to revise the information collection for its application, enrollment, and exit forms. The revisions add an option for members to share their information with other entities for additional service opportunities.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by February 28, 2025.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) Electronically through www.regulations.gov (preferred method).

(2) *By mail sent to:* AmeriCorps, Attention: Sharron Tendai, 250 E Street SW, Washington, DC 20525.

(3) By hand delivery or by courier to the AmeriCorps mailroom at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Comments submitted in response to this notice may be made available to the public through [regulations.gov](http://www.regulations.gov). For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comment that may be made available to the public, notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom 202-422-2781 or by email at aborgstrom@americorps.gov.
SUPPLEMENTARY INFORMATION:

Title of Collection: Enrollment, Exit, and Member Application Form.

OMB Control Number: 3054-0054.

Type of Review: Revision.

Respondents/Affected Public: Individuals.

Total Estimated Number of Annual Responses: 225,000.

Total Estimated Number of Annual Burden Hours: 168,750.

Abstract: This collection of information includes AmeriCorps' member application, enrollment, and exit forms. The application form is used by applicants interested in serving as AmeriCorps members. The enrollment form is used by AmeriCorps members to enroll in the National Service Trust to earn Eli Segal Education Awards. The exit form is used to document the completion of a member's term of service with AmeriCorps. AmeriCorps seeks to revise the exit form to add options for granting AmeriCorps permission to share the outgoing member's name and email address with other Federal partners to help the outgoing member stay engaged in service. AmeriCorps also seeks to continue using the currently approved information collection until the revised information collection is approved by OMB. The currently approved information collection is due to expire on April 30, 2025.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. 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. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. 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

¹ Consumer Fin. Prot. Bureau, *Examining the factors driving high credit card interest rates* (Aug. 12, 2022), <https://www.consumerfinance.gov/about-us/blog/examining-the-factors-driving-high-credit-card-interest-rates/>.

² Consumer Fin. Prot. Bureau, *Terms of Credit Card Plans (TCCP) survey*, <https://www.consumerfinance.gov/data-research/credit-card-data/terms-credit-card-plans-survey/>.

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. All written comments will be available for public inspection on [regulations.gov](https://www.regulations.gov).

Carly Bruder,

Acting Chief Program Officer.

[FR Doc. 2024–31193 Filed 12–27–24; 8:45 am]

BILLING CODE 6050–28–P

COUNCIL ON ENVIRONMENTAL QUALITY

Emergencies and the National Environmental Policy Act Guidance

AGENCY: Council on Environmental Quality.

ACTION: Notice.

SUMMARY: On December 18, 2024, the Council on Environmental Quality (CEQ) issued guidance in a memorandum to the heads of Federal departments and agencies (agencies) to assist agencies with compliance with the National Environmental Policy Act (NEPA) during emergencies. The CEQ regulations implementing NEPA provide for alternative arrangements during emergencies when an agency's action is likely to have significant effects and would require preparation of an environmental impact statement. This guidance also addresses compliance with NEPA when the action is unlikely to have significant effects and might require preparation of an environmental assessment or application of a categorical exclusion.

DATES: This guidance was issued on December 18, 2024.

FOR FURTHER INFORMATION CONTACT: Jomar Maldonado, Director for NEPA, 202–395–5750, Jomar.MaldonadoVazquez@ceq.eop.gov.

SUPPLEMENTARY INFORMATION:

Memorandum for Heads of Federal Departments and Agencies

FROM: Brenda Mallory, Chair

SUBJECT: Emergencies and the National Environmental Policy Act Guidance

This guidance¹ updates and replaces previous guidance from the Council on Environmental Quality (CEQ) on the environmental review of proposed

emergency response actions under the National Environmental Policy Act, 42 U.S.C. 4321–4347 (NEPA).² Federal departments and agencies (agencies) should distribute this guidance as part of their general guidance on emergency actions to agency offices that are or may become involved in developing and taking actions in response to emergencies.

As agencies respond to situations involving immediate threats to human health or safety, or immediate threats to valuable natural resources, they must consider whether there is sufficient time to follow the procedures for environmental review established in CEQ's National Environmental Policy Act Implementing Regulations, 40 CFR parts 1500 through 1508 (CEQ NEPA regulations),³ and their agency NEPA procedures.

CEQ established the regulation addressing alternative arrangements in emergency circumstances in 1978⁴ and amended it in 2020 and 2024⁵ to clarify that it provides for alternative arrangements for agencies to comply with section 102(2)(C) of NEPA (42 U.S.C. 4332(C)). See 40 CFR 1506.11. Alternative arrangements do not waive the requirement to comply with NEPA. Rather, they establish an alternative means for NEPA compliance. CEQ has approved, and agencies have applied successfully, numerous alternative arrangements to allow a wide range of proposed actions in emergency circumstances including natural disasters, catastrophic wildfires, threats to species and their habitat, economic crises, infectious disease outbreaks, potential dam failures, and insect infestations.⁶

This guidance includes two attachments with step-by-step guides to help agencies when planning for and responding to emergencies. Attachment 1 provides agencies with a process for determining the appropriate path forward for the NEPA environmental review of all actions proposed in response to an emergency situation and what steps to take depending on the appropriate level of NEPA review. Attachment 2 provides guidance for preparing a concise and focused EA for emergency actions.

² This guidance replaces guidance issued by CEQ on September 14, 2020 (85 FR 60137 (Sept. 29, 2020)), September 29, 2016, May 12, 2010, and September 8, 2005. CEQ rescinds the prior guidance.

³ See <https://www.ecfr.gov/current/title-40/chapter-V/subchapter-A>.

⁴ 43 FR 55977 (Nov. 29, 1978).

⁵ 85 FR 43304 (July 16, 2020); 89 FR 35442 (May 1, 2024).

⁶ A synopsis of previous alternative arrangements is available at www.NEPA.gov.

Environmental Impact Statements

The CEQ regulations, at 40 CFR 1506.11, provide for alternative arrangements for NEPA compliance in emergency situations when the agency proposal has the potential for significant environmental effects and would require an environmental impact statement (EIS) if the situation were not an emergency:

Where emergency circumstances make it necessary to take an action with significant effects without observing the provisions of the regulations in [40 CFR parts 1500 through 1508], the Federal agency taking the action shall consult with the Council about alternative arrangements for compliance with section 102(2)(C) of NEPA. Agencies and the Council shall limit such arrangements to actions necessary to control the immediate impacts of the emergency; other actions remain subject to NEPA review consistent with [40 CFR parts 1500 through 1508]. Alternative arrangements do not waive the requirement to comply with the statute, but establish an alternative means for NEPA compliance.

Agencies develop these alternative arrangements, based on emergency-specific facts and circumstances, during consultation with CEQ. The alternative arrangements developed by an agency address the actions necessary to control the immediate impacts of an emergency. The long-term response to the emergency, including recovery actions, remains subject to the regular NEPA process set forth in the statute and the CEQ NEPA regulations.

Here again, alternative arrangements do not waive the requirement to comply with the statute, but establish an alternative means for NEPA compliance from the process set forth in the CEQ NEPA regulations. Alternative arrangements for NEPA compliance do not satisfy or alter other legal requirements, including other environmental legal requirements (except as provided by other applicable statutes or regulations); however, engaging other resource and regulatory agencies about other environmental requirements during development and implementation of alternative arrangements for NEPA compliance can potentially facilitate meeting other environmental compliance requirements. Final agency action taken pursuant to alternative arrangements for compliance with NEPA under 40 CFR 1506.11 may be subject to judicial review if a statute, such as the Administrative Procedure Act, provides for such review.

¹ The contents of this guidance do not have the force and effect of law and are not meant to bind the public in any way. This guidance does not establish new requirements. This memorandum is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

Attachment 1 describes the factors for an agency to address when requesting and designing alternative arrangements. Once the agency and CEQ develop the alternative arrangements, CEQ will provide documentation detailing the alternative arrangements and the considerations on which they are based.

Environmental Assessments

When agencies are considering proposed actions that are not likely to have significant effects or the significance of the effects are unknown, the agency can prepare a concise, focused environmental assessment (EA). Attachment 2 of this memorandum provides guidance for preparing an EA. Some agency NEPA procedures provide processes for preparing EAs for emergency actions,⁷ which the CEQ NEPA Regulations encourage agencies to include in their procedures. For emergency actions that require preparation of an EA, agencies should not delay taking action necessary to address immediate threats to human health or safety, or immediate threats to valuable natural resources. Agencies should follow any agency-specific direction regarding preparation of an EA for emergency actions, which may include preparing an EA before, during, or after the emergency. Agencies must continue their efforts to notify, inform, and engage with the affected public and relevant Federal, State, Tribal, and local governments and agency representatives of the Federal agency activities and proposed actions. Agencies must comply with the CEQ NEPA regulatory requirements implementing the statute for content, interagency coordination, and public engagement to the extent practicable.⁸

Attachment 1

Process for Emergency Actions Under the National Environmental Policy Act (NEPA)

This attachment provides a step-by-step process for managing the NEPA review of all actions proposed in response to an emergency situation, consistent with the Emergencies and the National Environmental

Policy Act Guidance. In the case of an emergency:

1. Do not delay immediate actions necessary to secure lives and safety of citizens or to protect valuable resources. Consult with CEQ as soon as feasible. Please coordinate any communications with your Federal agency NEPA contacts.

2. Determine if NEPA applies and the appropriate level of NEPA analysis:

■ Determine if a Federal agency is taking the proposed action (e.g., city or State action does not trigger NEPA; Federal decisions to fund city or State action may trigger NEPA, depending on the nature of the funding arrangements) or is exempt from NEPA (e.g., certain Federal Emergency Management Agency response actions under the Stafford Act are statutorily excluded from NEPA; additional information is available at <https://www.fema.gov/emergency-managers/practitioners/environmental-historic/laws/NEPA/statutory-exclusions>).

■ If the Federal agency's proposed emergency action is not statutorily exempt from NEPA, and the agency has a categorical exclusion (CE) that covers the type of activity, then apply the CE unless there are extraordinary circumstances that indicate using the CE in this particular case is not appropriate. Agency NEPA personnel can assist in identifying agency-specific actions that are categorically excluded. Additionally, the agency should review CEs established in other agencies' NEPA procedures to determine whether there is a CE that would cover the agency's proposed emergency action. If so, the agency may adopt and apply the CE consistent with 40 CFR 1501.4(e) and Section 109 of NEPA (42 U.S.C. 4336c).

■ If the proposed Federal agency emergency action is not statutorily exempt from NEPA, a CE is not available, and the agency does not expect the potential environmental effects of the proposed response activity to be significant, then an environmental assessment (EA) is appropriate. Where applicable, follow the agency's emergency procedures as set forth in the agency's NEPA implementing procedures, or prepare a focused, concise EA as described in Attachment 2. Alternative arrangements, as outlined at 40 CFR 1506.11, do not apply because the environmental effects are not expected to be significant. Agency NEPA personnel can assist in identifying agency-specific actions that typically require an EA.

■ If the proposed Federal emergency action is not statutorily exempt from NEPA, and the agency expects it would have significant environmental effects, the agency should determine whether an existing NEPA analysis covers the action (e.g., implementing pre-existing spill response plans). If so, the agency may rely upon its existing analysis or adopt the analysis of another agency consistent with 40 CFR 1506.3.

■ If the proposed Federal emergency action is not statutorily exempt from NEPA, the agency expects it to have significant environmental effects, and an existing NEPA analysis does not cover the action, then the agency should consult with CEQ to determine whether alternative arrangements can take the place of an EIS. Contact CEQ to develop alternative arrangements under 40

CFR 1506.11. CEQ encourages agencies to submit inquiries via email at NEPA@ceq.eop.gov. Agencies may also contact CEQ at (202) 395-5750.

3. Factors to address when requesting and designing alternative arrangements include the:

- Nature and scope of the emergency;
- Actions necessary to control the immediate impacts of the emergency;
- Potential adverse effects of the proposed action;
- Components of the NEPA process that the agency can follow and provide value to decision making (e.g., coordination with Tribal Nations, affected agencies, and the public);
- Duration of the emergency; and
- Potential mitigation measures.

Attachment 2

Preparing Focused, Concise, and Timely Environmental Assessments

An agency can prepare a concise and focused EA in a short time in those situations where:

- There is no statutory exemption from NEPA requirements;
- There is no CE that covers the action, or there are extraordinary circumstances requiring the preparation of an EA or EIS;
- An existing NEPA analysis (EA or EIS) does not cover the proposed action; and
- The environmental effects of the proposed actions are not likely to be significant.

The following outline with notations addresses the core elements of an EA as required by 40 CFR 1501.5:

- The purpose and need for the proposed action;
- Alternatives, as required by NEPA section 102(2)(H);
- The description of environmental effects of the proposed action and the alternatives;
- The list of agencies and persons consulted;
- The unique identification number of the EA.

Purpose and Need for the Proposed Action

The agency should briefly describe information that substantiates the purpose and need for the action and incorporate by reference information that is reasonably available to the public. For example, "This agency is preparing to erect a temporary emergency response facility to replace facilities disrupted or destroyed by the [hurricane/flooding/contamination/etc.] to facilitate rescue or relief efforts in an effort to [minimize further adverse health conditions/restore communications/restore power]."

The agency should briefly describe the existing conditions and the projected future conditions of the area impacted by the action. For example, "The area(s) in which the temporary facility will be located or relocated is identified in the attached map. This area consists of [add brief description of the environmental state of the area that will be affected by the location and operation of the facility, focusing on those areas that are potentially sensitive. The goal is to show that environmental effects have been considered

⁷ See Agency NEPA procedures, for example: Department of Homeland Security Instruction Manual 023-01-001-01, Revision 01 at VI-1, https://www.dhs.gov/sites/default/files/publications/DHS_Instruction%20Manual%20023-01-001-01%20Rev%2001_508%20Admin%20Rev.pdf; U.S. Forest Service, 36 CFR 220.4(b), <https://www.ecfr.gov/current/title-36/chapter-II/part-220/section-220.4>; and Department of the Interior, 43 CFR 46.150, https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=2a2ce144c79da6f3e773bfa9cdf17bcf&mc=true&n=sp43.1.46.b&r=SUBPART&ty=HTML#se43.1.46_1150.

⁸ 40 CFR 1501.5, 1501.6, and 1501.9 (these regulations address required content and public and governmental engagement for preparing EAs and findings of no significant impact).

and the facts found indicate no significant impact (for example, refueling sites are not on top of aquifers, nesting areas, graves, sacred sites, etc.). These are examples to show the utility of and need to identify actual place-based environmental issues rather than compiling lists of environmental resources not at issue].”

Proposed Action and Alternatives

The agency should list and briefly describe its proposed action and reasonable alternatives that meet the purpose and need. The agency must use its discretion to ensure the number and reasonable range of alternatives is reasoned and not arbitrary or capricious. The purpose and need for the proposed action and its environmental effects should focus the alternatives. For example, the need to use existing infrastructure necessary to support the facility is a reasoned basis for focusing on a discrete number of alternatives.

When there is no unresolved conflict concerning alternative uses of available resources with respect to the proposed action based on input from interested parties, the agency can consider the proposed action and proceed without consideration of additional alternatives. Otherwise, the agency must identify reasonable alternatives that meet the action’s purpose and need, consistent with section 102(2)(H) of NEPA.

Environmental Effects of the Proposed Action and Alternatives

The agency must describe the environmental effects of its proposed action and each alternative. 40 CFR 1501.5(c)(2)(iii). The description should provide enough information to support a determination to either prepare an EIS or a finding of no significant impact.

The agency should focus on whether the action would significantly affect the quality of the human environment. The agency should follow the CEQ NEPA regulations in considering whether the effects of a proposed action are significant. See 40 CFR 1501.3(d). Agency NEPA contacts and contacts at resource agencies can assist in this effort.

Tailor the length of the discussion to the complexity of each issue. Focus on those human and natural environment issues where effects are a concern. Telephone or email discussions with State, Tribal, and local governments and agencies and other Federal agencies that operate in the area will help focus those issues.

The agency must discuss the effects of each alternative and may discuss those effects together in a comparative description or discuss each alternative separately. The agency should use the approach that will be most effective in the time available. The agency may contrast the effects of the proposed action and alternatives with the current condition and expected future condition in the absence of the action. This constitutes consideration of a no action alternative as well as demonstrating the need for the action.

The agency should incorporate by reference data, inventories, other information, and analyses relied on in the EA. See 40 CFR 1501.12. CEQ encourages the

use of digital references, such as hyperlinks. This information must be reasonably available for review by potentially interested persons. For example, include relevant existing programmatic agreements and generally accepted best management practices.

The agency should be clear and concise about its conclusions and their bases.

List of Agencies and Persons Consulted

The agency must involve the public, State, Tribal, and local governments, relevant agencies, and any applicants, to the extent practicable in preparing EAs, and list the agencies and persons consulted. 40 CFR 1501.5(c)(3) and 1501.5(f). For example, include the people, offices, and agencies that the agency coordinated with to ensure that the location of the action did not cause unintentionally an adverse effect. Also include information about individuals consulted to comply with substantive environmental requirements and regulations, for example: the Clean Water Act, the National Historic Preservation Act, and the Endangered Species Act (ESA). Note that the ESA emergency provisions at 50 CFR 402.05 may be applicable to the proposed action.

Authority: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375.

Brenda Mallory,
Chair.

[FR Doc. 2024–30675 Filed 12–27–24; 8:45 am]

BILLING CODE 3325–FC–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2024–0038]

Department of Defense Progress Payment Incentive Pilot

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Request for information.

SUMMARY: DoD is seeking public input to inform the implementation of a section of the National Defense Authorization Act for Fiscal Year 2024 that authorizes DoD to establish a pilot program to incentivize performance for specific, measurable criteria under approved contracts by increasing the customary progress payment rate.

DATES: DoD will consider all comments received by January 29, 2025.

ADDRESSES: Submit comments to the questions provided below, using either of the following methods:

○ *Federal eRulemaking Portal:* <https://www.regulations.gov>. Search for “Docket Number DARS–2024–0038.” Select “Comment” and follow the instructions to submit a comment.

Please include your name, company name (if any), and “Docket Number DARS–2024–0038” on any attached document(s).

○ *Email:* osd.pentagon.ousd-a-s.mbx.dpc-pcf@mail.mil. Include “DoD Progress Payment Incentive Pilot” in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Sara Higgins, telephone 937–200–4020.

SUPPLEMENTARY INFORMATION:

A. Background

Section 874 of the National Defense Authorization Act for Fiscal Year 2024 authorizes the Under Secretary of Defense for Acquisition and Sustainment to establish and implement a progress payment pilot program to incentivize contractor performance on a contract-by-contract basis. By statute, the incentive criteria must be clear and measurable, and contractor participation must be voluntary.

This notice requests comments and information from the public on DoD’s possible implementation of the pilot program, in accordance with section 874. DoD is particularly interested in comments and information from companies currently in the Defense Industrial Base.

B. Possible Implementation

DoD is planning to focus the Progress Payment Incentive Pilot (PPIP) on payment time to subcontractors in order to improve cash flow throughout the supply base. This is a key interest area highlighted in the 2023 Defense Contract Finance Study, available at <https://www.acq.osd.mil/asda/dpc/pcf/finance-study.html>.

DoD is particularly interested in comments and information from all business sizes with regard to DoD’s notional eligibility and incentive criteria, and supporting documentation concept, especially the following:

1. Eligibility Criteria

Section 874 authorizes an increase of up to 10 percentage points higher than the current customary progress payment rate (80 percent for large businesses) for contractor performance against clear, measurable criteria on a contract-by-contract basis. To be eligible for the PPIP, a participant must be eligible for customary progress payments, and their

participation must be voluntary. Notionally, the participant must be performing under a new sole-source, noncommercial, definitized contract or order. The progress payment rate for small entities has been temporarily increased to 95 percent, which is 5 percentage points higher than the maximum incentive rate eligible to be earned under the authority of section 874. Therefore, the pilot program will be open only to other than small entities.

For inclusion in the pilot program, DoD is planning to require contract actions to be nominated by the cognizant contracting officer and approved by the Director, Price, Cost and Finance, Defense Pricing, Contracting, and Acquisition Policy during the preaward phase of the acquisition, since the extent of contract financing provided by the Government is required to be a consideration in price negotiations after contract award. It is also anticipated that the nominated contract or order must have a performance period of no more than three years to ensure that all performance, including options and potential new work, will be completed before the pilot program's sunset date.

DoD anticipates requiring that the bill of material, excluding material from affiliated concerns and indirect costs, will constitute at least 25 percent of the nominated contract or order's estimated value to ensure the incentive benefits the supply chain and to assess the efficacy of using an increased progress payment rate as an incentive.

To optimize pilot program participation and to collect insights from multiple sources, DoD plans to approve only one contract per parent entity (including all divisions, business segments, subsidiaries, etc.).

2. Incentive Criteria

DoD anticipates structuring the progress payment incentive as follows, with a focus on incentivizing payment time to the supply base:

a. The maximum incentive (a progress payment rate of 90 percent in lieu of the customary 80 percent rate for large businesses) may be earned if more than 95 percent of the cumulative invoice dollars have been or will be paid within 20 calendar days of receipt of subcontract invoices.

b. A progress payment rate of 85 percent may be earned if more than 85 percent but less than or equal to 95 percent of the cumulative invoice dollars have been or will be paid within 20 calendar days of receipt of subcontract invoices.

c. If 85 percent or less of the cumulative invoice dollars have been or

will be paid within 20 calendar days of receipt of subcontract invoices, no incentive is earned, and the customary large business progress payment rate of 80 percent will be used.

d. DoD plans to reassess the progress payment rate with each contractor request for progress payment, based on the reported payment time for cumulative subcontract invoice dollars. If the contractor's performance against the incentive criterion merits an increase or decrease to the progress payment rate currently on contract, it is anticipated that the rate will be changed by a unilateral contract modification.

e. If the progress payment rate on the contract is decreased based on the contractor's cumulative performance against the incentive criterion, this may result in an overpayment status. For purposes of overpayments arising in this manner, the expectation is not to issue a demand for repayment, but to withhold additional progress payments until either—

(1) The progress payment rate is increased as a result of the contractor's performance against the incentive criterion; or

(2) The incurred cost increases to the point that the total incurred cost multiplied by the current progress payment rate is greater than the amount of progress payments already paid to the contractor.

3. Supporting Documentation Concept

DoD plans to measure contractor performance against incentive criteria through the use of a Government-provided spreadsheet, which the PPIP participant will submit as an attachment to each SF 1443, Contractor's Request for Progress Payment. It is envisioned that the completed spreadsheet will list each subcontract delivery invoice reflected in the incurred cost claimed in the progress payment request and include the following information at a minimum:

- Subcontractor, supplier, or vendor name;
 - Subcontract or purchase order number; part number; description of part or service;
 - Subcontract invoice number and any tracking number affixed by the prime;
 - Subcontract invoice date;
 - Subcontract invoice amount;
 - Actual or anticipated date of invoice payment;
 - Amount of payment;
 - Calculated payment time (date of payment minus date of invoice) for the invoice; and
 - Any unpaid amount on the invoice.
- The spreadsheet will calculate the percentage of cumulative subcontract

invoice dollars paid within the established payment time criterion. It is planned that the PPIP participant will update and mark new and actual payment data with each progress payment request.

It is anticipated that the PPIP participant will be required to provide any additional documentation required by the contracting officer to support its claimed progress against incentive criteria. DoD plans for the Defense Contract Audit Agency to audit PPIP participants' claimed subcontract payment timing semi-annually.

Authority: DoD Instruction 5000.35, Defense Acquisition Regulations (DAR) System.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2024-30947 Filed 12-27-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD-2024-OS-0023]

Submission for OMB Review; Comment Request

AGENCY: The Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by January 29, 2025.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Reginald Lucas, (571) 372-7574 or whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: User Testing of the Financial Readiness Website; OMB Control Number 0704-0657.

Type of Request: Revision.

FINRED User Testing Usability Screener

Number of Respondents: 142.
Responses per Respondent: 1.
Annual Responses: 142.
Average Burden per Response: 15 minutes.
Annual Burden Hours: 36.

FINRED User Testing Usability Guide

Number of Respondents: 18.
Responses per Respondent: 1.
Annual Responses: 18.
Average Burden per Response: 90 minutes.
Annual Burden Hours: 27.

FINRED Card Sort/Navigation Screener

Number of Respondents: 200.
Responses per Respondent: 1.
Annual Responses: 200.
Average Burden per Response: 7.5 minutes.
Annual Burden Hours: 25.

FINRED Card Sort Study

Number of Respondents: 120.
Responses per Respondent: 1.
Annual Responses: 120.
Average Burden per Response: 15 minutes.
Annual Burden Hours: 30.

Total

Annual Burden Hours: 118.
Number of Respondents: 480.
Annual Responses: 480.
Needs and Uses: The DoD Office of Financial Readiness Information (FINRED) is sponsoring a website usability study to collect opinions, ideas, and concerns from members of the military community on their level of satisfaction with the FINRED website content, layout, and navigation of financial resources. This study will be used only for research purposes and the results and recommendations will be anonymous when shared with government officials. The feedback and insights will be used to drive future improvements to the FINRED website. The purpose of the FINRED Card Sorting User Testing of the Financial Readiness website (User Testing/ Usability Study) is to provide key metrics to the Office of Financial Readiness to support DoD Instruction (DoDI) 1322.34 "Financial Readiness of Service Members". The User Testing/ Card Sorting Usability Study will provide results from the collection of opinions, ideas, and concerns from members of the military community on their level of satisfaction with the taxonomy and navigation of the FINRED website. Results will also provide a new taxonomy of the FINRED website, that will allow the Office of Financial

Readiness to adjust the layout and organization of the website to meet the needs and layout of what the users intend to find when on the website.

Affected Public: Individuals or households.
Frequency: On occasion.
Respondent's Obligation: Voluntary.
DOD Clearance Officer: Mr. Reginald Lucas.

Dated: December 18, 2024.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024-30886 Filed 12-27-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE**Office of the Secretary**

[Docket ID: DoD-2024-OS-0098]

Submission for OMB Review; Comment Request

AGENCY: Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency (ATSD(PCLT)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by January 29, 2025.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Reginald Lucas, (571) 372-7574, whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Request for Individual Access and Consent for Disclosure to Records Protected Under the Privacy Act; DD Forms 3213 and 3214; OMB Control Number 0704-CASE.

Type of Request: New.
Number of Respondents: 30,000.
Responses per Respondent: 1.
Annual Responses: 30,000.
Average Burden per Response: 45 minutes.

Annual Burden Hours: 22,500.

Needs and Uses: This information collection requirement is necessary to allow an individual to request access to their records or to provide prior written consent authorizing disclosure of such records. The Creating Advanced Streamlined Electronic Services for Constituents Act of 2019 (CASES Act) was enacted to modernize and simplify the process by which individuals can request access to and consent to the disclosure of their personal records held by Federal agencies. This Act addresses the inefficiencies and inconsistencies that previously existed in obtaining written consent for information disclosure. Under the Privacy Act of 1974, individuals have the right to access their records and control the disclosure of their personal information. However, the traditional process of obtaining written consent was often cumbersome, requiring physical signatures and manual transmission of forms. This not only delayed the resolution of constituent inquiries but also created variability in how different Components within DoD handled these requests. The CASES Act mandates the use of electronic access and consent forms, which can be submitted digitally. By allowing digital submissions, the Act aims to streamline the process, reduce delays, and enhance the efficiency of government services.

Affected Public: Current and former DoD employees and their authorized dependents.

Frequency: On occasion.

Respondent's Obligation: Voluntary.
DOD Clearance Officer: Mr. Reginald Lucas.

Dated: December 18, 2024.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024-30887 Filed 12-27-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE**Department of the Navy**

[Docket ID: USN-2024-HQ-0018]

Proposed Collection; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the United States Marine Corps announces a proposed public information collection and seeks public comment on

the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 28, 2025.

ADDRESSES:

You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24 Suite 05F16, Alexandria, VA 22350-1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Headquarters Marine Corps Records, Reports, Directives, and Forms Management Section, 3000 Marine Corps, Pentagon Rm. 2B253, Mr. Mark Kazzi, (571) 256-8883.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB No.: Non-appropriated Fund Human Resource Management System (NAF HRMS); NAVMC Form 12000/499; OMB Control No. 0712-0007.

Needs and Uses: The information collection is necessary for Marine Corps Community Service (MCCS) to successfully manage and administer an effective and efficient recruiting and hiring process. MCCS's use of

innovative technologies in the Non-Appropriated Fund Human Resource Management System (NAF HRMS) enables MCCS to streamline the employment application process, reduce processing and recruiter response times, and decrease the need for applicant calls and inquiries; therefore, improving the applicant's experience. The information collection is also necessary to allow MCCS retirees receiving an annuity to request changes to their current NAF Group medical, dental, or life insurance plans; their NAF Group Retirement plan; and/or their beneficiary information. Retirees request these changes via NAVMC Form 12000/499.

Affected Public: Business or other for-profit; individuals or households.

Annual Burden Hours: 35,002.

Number of Respondents: 70,003.

Responses per Respondent: 1.

Annual Responses: 70,003.

Average Burden per Response: 30 minutes.

Frequency: On occasion.

Dated: December 18, 2024.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024-30895 Filed 12-27-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD-2024-OS-0106]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Intelligence and Security (OUSD(I&S)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by January 29, 2025.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Reginald Lucas, (571) 372-7574, whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Personnel Security System Access Request (PSSAR) Form; DD Form 2962, Volume 2; OMB Control Number 0705-0009.

Type of Request: Extension.

Number of Respondents: 22,225.

Responses per Respondent: 1.

Annual Responses: 22,225.

Average Burden per Response: 10 minutes.

Annual Burden Hours: 3,704.2.

Needs and Uses: The DD Form 2962, Volume 2, Personnel Security System Access Request (PSSAR) is used to collect the necessary information to vet and establish accounts for persons wishing to become users and gain access to personnel systems across the DoD, including National Background Investigation Services, the Defense Information System for Security, the Defense Central Index of Investigations, the Secure Web Fingerprint Transmission. These systems facilitate the initiation, investigation, and adjudication of information relevant to DoD security clearances and employment suitability determinations for active-duty military, civilian employees and contractors seeking such credentials. These personnel security systems are the authoritative source for clearance information resulting in accesses determinations to sensitive/classified information and facilities. The PSSAR Form is solely used for the purpose of requesting an account for these systems, and this information collection request is not intended to cover any information collected within those systems. Each respondent is required to always have a completed form on file to remain compliant with the account request procedures for all systems.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

DOD Clearance Officer: Mr. Reginald Lucas.

Dated: December 18, 2024.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024-30888 Filed 12-27-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE**Office of the Secretary****[Docket ID: DoD–2024–OS–0141]****Proposed Collection; Comment Request**

AGENCY: The Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Deputy Assistant Secretary of Defense for Housing announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 28, 2025.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 05F16, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and

associated collection instruments, please write to Office of the Deputy Assistant Secretary of Defense (Housing), 3400 Defense Pentagon, Room 5C756, Washington, DC 20301–3400; ATTN: Ms. Megan Purkey, or call 703–614–0867.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Application for Homeowners Assistance; DD Form 1607; OMB Control Number 0704–0463.

Needs and Uses: In accordance with section 3374 of United States Code Title 42; the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5); 32 CFR part 239; and DoD Directive 4165.50E, “Homeowners Assistance Program (HAP),” the DoD provides funds to financially compensate eligible members of the Armed Forces who incur a wound, injury, or illness in the line of duty during a deployment in support of the Armed Forces on or after September 11, 2001; wounded DoD and Coast Guard civilian homeowners reassigned in furtherance of medical treatment or rehabilitation or due to medical retirement in connection with a disability incurred in the performance of his or her duties during a forward deployment occurring on or after September 11, 2001 in support of the Armed Forces; and surviving spouses of fallen warriors who move within two years of the death of such employee or member. Additionally, during times of Base Realignment and Closure, the HAP program can be authorized to assist civilian and active-duty homeowners who are impacted by the closure or realignment of their job duties. Priority access to the funds goes to surviving spouses of those killed during deployment and those who were wounded, injured, or ill during deployment on or after September 11, 2001. HAP applicants use DD Form 1607, “Application for Homeowner’s Assistance Program (HAP),” to apply for HAP benefits.

Affected Public: Individuals or households.

Annual Burden Hours: 15.

Number of Respondents: 15.

Responses per Respondent: 1.

Annual Responses: 15.

Average Burden per Response: 1 hour.

Frequency: On occasion.

Applicants most often complete the form with the assistance of a representative of the Family Housing Office. After it has been filled out, the form is then emailed, faxed, hand-carried, or—in rare cases—mailed to the district HAP office for processing. An action officer in the district HAP office processes the form to ensure all the

necessary information has been provided. If necessary, the applicant is provided with the appropriate instructions for the necessary supplemental information. When the case file is deemed complete by the action officer, it is provided to a counselor for approval or rejection recommendation based on program criteria related to economic impact, service requirements, the applicant’s homeowner status, the applicant’s primary residence status, and other assistance received by the homeowner. A formal response regarding eligibility or appeal status is provided to the applicant via mail.

Dated: December 18, 2024.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–30891 Filed 12–27–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE**Office of the Secretary****[Docket ID: DoD–2024–OS–0142]****Proposed Collection; Comment Request**

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Office of the Under Secretary of Defense for Personnel and Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 28, 2025.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 05F16, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to M&RA (MPP/Accession Policy), 4000 Defense Pentagon, 3D1066, Washington, DC 20301, LTC Charles Manning, 703–695–5527.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Police Records Check; DD Form 369; OMB Control Number 0704–0007.

Needs and Uses: Title 10, United States Code, Sections 504, 505, and 12102 establish minimal standards for enlistment into the Armed Forces. Among other items, these sections specifically prohibit the enlistment of those convicted of a felony. The Services have therefore developed standards which address the acceptability for Service persons with police records, adverse juvenile adjudications, or court convictions. The standards are designed to screen out categories of persons who have probability of either having serious disciplinary problems or may not be able to adjust to the disciplinary demands of the Armed Forces. This information collection is needed to identify persons who may be undesirable for military service. The existence of a police record is one of the factors considered in establishing eligibility for enlistment or entry into highly sensitive career fields. Therefore, verification data from the individual and law enforcement agencies must be obtained before enlistment can occur. The form associated with this information collection is DD Form 369, “Police Record Check.” It is used by recruiters to inquire on applicants’

backgrounds prior to acceptance to the Armed Forces, when, in the judgment of the recruiter, an applicant may be withholding information of prior offense history.

Affected Public: Individuals or households.

Annual Burden Hours: 78,750.

Number of Respondents: 175,000.

Responses per Respondent: 1.

Annual Responses: 175,000.

Average Burden per Response: 27 minutes.

Frequency: On occasion.

Dated: December 18, 2024.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–30890 Filed 12–27–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Federal Advisory Committee Meeting—Defense Policy Board

AGENCY: Department of Defense (DoD).

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The DoD is publishing this notice to announce the following Federal advisory committee meeting of the Defense Policy Board (DPB) will take place.

DATES: Closed to the public; Tuesday, January 7, 2025, from 10:45 a.m. to 5:00 p.m.

ADDRESSES: The closed meeting will be held in the Rodman Conference Room, 3D852, at The Pentagon, 2000 Defense Pentagon, Washington, DC 20301–2000.

FOR FURTHER INFORMATION CONTACT:

James E. Benkowski, DPB Designated Federal Officer (DFO), 703–697–4758 (Voice), james.e.benkowski2.civ@mail.mil (Email). Mailing address is 2000 Defense Pentagon, Attn: 5E420, Washington, DC 20301–2000.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of title 5, United States Code (U.S.C.) (commonly known as the “Federal Advisory Committee Act” or “FACA”); 5 U.S.C. 552b (commonly known as the “Government in the Sunshine Act”); and sections 102–3.140 and 102–3.150 of title 41 Code of Federal Regulations (CFR). Due to circumstances beyond the control of the DFO and the DoD, the DPB was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its January 7, 2025 meeting. Accordingly, the Advisory

Committee Management Officer for the DoD, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Purpose of the Meeting: To obtain, review, and evaluate classified information related to the DPB’s mission to advise on: (a) issues central to strategic DoD planning; (b) policy implications of U.S. force structure and modernization on DoD’s ability to execute U.S. defense strategy; (c) U.S. regional defense policies; and (d) other defense policy topics of special interest to the DoD, as determined by the Secretary of Defense, the Deputy Secretary of Defense, or the Under Secretary of Defense for Policy.

Agenda: On January 7, 2025 the DPB will receive classified briefings to evaluate key trends, assumptions, and uncertainties associated with the future security environment.

- James Benkowski, DPB DFO, will provide opening remarks; Ms. Amanda Dory, Acting Under Secretary of Defense for Policy, Ms. Madeline Mortelmans, Performing the Duties of Assistant Secretary of Defense for Strategy, Plans, and Capabilities, and Dr. Janine Davidson, DPB Chair, will welcome the DPB and provide an overview of the meeting’s purpose and its key objectives focused on a high-level evaluation of key trends, assumptions, and uncertainties associated with the future security environment;

- Representatives from the Strategic Futures Group of the National Intelligence Council will discuss major structural trends and sources of uncertainty in the international system, their potential impacts on the future security environment, and help identify plausible alternative future scenarios against which DoD should plan;

- DPB will discuss key medium-to-long term risks and opportunities facing the DoD, including the most significant trends that are guiding DoD planning;

- Representatives from the Defense Intelligence Agency will discuss major trends in the Indo-Pacific, Europe, and the Middle East, including the interaction of geopolitical dynamics, transboundary challenges, and technological change;

- Dr. Janine Davidson will lead the DPB in drawing on its own expertise and experience to discuss key trends, challenges, and opportunities in the future security environment and to develop recommendations to out brief the Secretary of Defense.

- The DPB will then provide advice and recommendations to Hon. Lloyd Austin, Secretary of Defense.

Meeting Accessibility: In accordance with 5 U.S.C. 1009(d) and 41 CFR 102–

3.155 the DoD has determined that this meeting shall be closed to the public. The Acting Under Secretary of Defense (Policy), in consultation with the DoD FACA Attorney, has determined in writing that this meeting is closed to the public because the discussions fall under the purview of 5 U.S.C. 552b(c)(1) and are so inextricably intertwined with unclassified material that they cannot reasonably be segregated into separate discussions without disclosing classified material.

Written Statements: In accordance with 5 U.S.C. 1009(a)(3) and 41 CFR 102–3.140(c) and 102–3.150(6) the public or interested organizations may submit written statements to the membership of the DPB at any time regarding its mission or in response to the stated agenda of a planned meeting. Written statements should be submitted to the DPB's DFO, who's information is listed above in this notice in the **FOR FURTHER INFORMATION CONTACT** section or can be obtained from the GSA's FACA Database—<http://www.facadatabase.gov/>. Written statements that do not pertain to a scheduled meeting of the DPB may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than one business day prior to the meeting in question. The DFO will review all submitted written statements and provide copies to all members.

Dated: December 20, 2024.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–30975 Filed 12–27–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–OS–0140]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Defense Logistics Agency (DLA) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the

proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 28, 2025.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 05F16, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Logistics Agency, 4800 Mark Center Drive, Suite 14G07–01, Alexandria, VA 22350, ATTN: Carla Smith, (804) 279–1340.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Defense Logistics Agency Child and Youth Program Forms; DLA Forms 1849, 1849–1, 1849–2, 1849–3, 1849–4, 1855, 1855–1, 1855–1A, 1855–1B, 1855–1C, 1855–1D (Parts I and II), 1855–1E, 1855–1F; OMB Control Number 0704–0582.

Needs and Uses: The DoD requires the information in the proposed collection in support of the DLA Child and Youth Programs (CYPs). This collection includes fourteen DLA forms, some of which are used by all the collection respondents and some of which are

used under specific circumstances. The information collected is used for program planning, management, and health and safety purposes. More specifically, the information in the proposed collection allows CYP staff to provide safe, developmentally appropriate day care services and to ensure proper, effective response in the event of an emergency. Respondents include patrons enrolling their children in a CYP; these patrons may include active-duty military, DoD civilian employees, and DoD contractors.

Affected Public: Individuals or households.

Annual Burden Hours: 1,004.6.

Number of Respondents: 828.

Responses per Respondent: 14.56.

Annual Responses: 12,056.

Average Burden per Response: 5 minutes.

Frequency: On occasion.

Dated: December 18, 2024.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–30892 Filed 12–27–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Adoption of Categorical Exclusion From the Department of the Navy Under the National Environmental Policy Act

AGENCY: Office of Local Defense Community Cooperation (OLDCC), Department of Defense (DoD).

ACTION: Notice of adoption of the Department of Navy's (DoN) Categorical Exclusion for facility renovation pursuant to section 109 of the National Environmental Policy Act (NEPA).

SUMMARY: OLDCC is adopting the DoN's Categorical Exclusion 14 for the alteration of an existing building. This notice describes the proposed action for which OLDCC intends to use the DoN Categorical Exclusion and details the consultation between the agencies.

FOR FURTHER INFORMATION CONTACT: Patrick J. O'Brien, Director, Office of Local Defense Community Cooperation, Office of the Secretary of Defense, 2231 Crystal Drive, Suite 520, Arlington VA 22202–4704, (703) 697–2130.

SUPPLEMENTARY INFORMATION:

I. NEPA and Categorical Exclusions

NEPA and Categorical Exclusions, 42 United States Code (U.S.C.) 4321–4347, requires all Federal agencies to assess the environmental impacts of their

actions. Congress enacted NEPA to encourage productive and enjoyable harmony between humans and the environment, recognizing the profound impact of human activity and the critical importance of restoring and maintaining environmental quality to the overall welfare of humankind. NEPA seeks to ensure agencies consider the environmental effects of their proposed actions in their decision-making processes and inform and involve the public in that process. NEPA created the Council on Environmental Quality (CEQ), which based on 42 U.S.C. 4336c, promulgated NEPA implementing guidance at 40 Code of Federal Regulations (CFR) parts 1500 through 1508 (CEQ regulations).

To comply with NEPA, agencies determine the appropriate level of review—an Environmental Impact Statement (EIS), Environmental Assessment (EA), or categorical exclusion (42 U.S.C. 4336). If a proposed action is likely to have significant environmental effects, the agency must prepare an EIS and document its decision in a record of decision. *Id.* If the proposed action is not likely to have significant environmental effects or the effects are unknown, the agency may instead prepare an EA, which involves a more concise analysis and process than an EIS. *Id.* Following the EA, the agency may conclude the process with a finding of no significant impact if the analysis shows that the action will have no significant effects. If the analysis in the EA finds that the action is likely to have significant effects, however, then an EIS is required. Under NEPA and the CEQ regulations, a Federal agency may establish in its NEPA implementing procedures categorical exclusions, which are categories of actions the agency has determined normally do not significantly affect the quality of the human environment (40 CFR 1501.4, 1507.3(e)(2)(ii), 1508.1(d)). If an agency determines that a categorical exclusion covers a proposed action, it then evaluates the proposed action for extraordinary circumstances in which a normally excluded action may have a significant effect (40 CFR 1501.4(b)). If no extraordinary circumstances are present, or if further analysis determines that the extraordinary circumstances do not involve the potential for significant environmental impacts, the agency may apply the categorical exclusion to the proposed action without preparing an EA or EIS (40 CFR 1501.4). If the extraordinary circumstances have the potential to result in significant effects,

the agency is required to prepare an EA or EIS.

Section 109 of NEPA, enacted as part of the Fiscal Responsibility Act of 2023, allows a Federal agency to adopt a categorical exclusion listed in another agency's NEPA procedures for a category of proposed agency actions for which the categorical exclusion was established (42 U.S.C. 4336(c)). To adopt another agency's categorical exclusion under section 109, an agency must identify the relevant categorical exclusion listed in that agency's ("establishing agency") NEPA procedures that cover its category of proposed actions or related actions; consult with the establishing agency to ensure that the proposed adoption of the categorical exclusion to a category of actions is appropriate; identify to the public the categorical exclusion that the agency plans to use for its proposed actions; and document adoption of the categorical exclusion. *Id.* This notice documents OLDCC's adoption of DoN's categorical exclusion under Section 109 of NEPA.

II. Identification of the Categorical Exclusion

DoN's categorical exclusion for the alteration to an existing building when the environmental effects will remain substantially the same and the use is consistent with applicable regulations is codified in DoN's NEPA procedures as categorical exclusion 14 in 32 CFR 775.6(f)(14).

Proposed Action

The Manufacturers' Association of South-Central Pennsylvania (Association) proposes to renovate their existing facility at 3405 Board Road, York, Pennsylvania to simulate a manufacturing environment as part of the association's scope of work undertaken as part of an OLDCC Defense Manufacturing Community Support Program funded grant.

III. Rationale for the Categorical Exclusion

The proposed renovation will take place within the existing envelope of the facility by expanding training and classroom space. All proposed renovation activities will not require any ground disturbance or external changes. The proposed renovation will alter 6,000 square feet of the existing interior warehouse space, adjacent to the Association's currently occupied space of 12,000 square feet.

IV. Consideration of Extraordinary Circumstances

If an agency determines that a categorical exclusion covers a proposed action, the agency must evaluate the proposed action for extraordinary circumstances in which a normally excluded action may have a significant effect (40 CFR 1501.4(b)). OLDCC does not currently have its own NEPA implementing procedures to guide its application of extraordinary circumstances. Until OLDCC establishes NEPA implementing procedures, for purposes of considering extraordinary circumstances in connection with the DoN categorical exclusion discussed in this notice, OLDCC has considered whether the proposed action has the potential to result in significant effects, including by considering the factors listed in DoN's definition of extraordinary circumstances (32 CFR 775.6(e)(1)).

OLDCC has assessed the proposed action and determined that none of the extraordinary circumstances listed in 32 CFR 775.6(e)(1) that preclude the use of categorical exclusion 14 are applicable to the proposed action.

V. Consultation With DoN and Determination of Appropriateness

OLDCC and DoN consulted on the appropriateness of OLDCC's adoption of the categorical exclusion from July to September 2024. DoN has provided OLDCC with a "no objection concurrence" for OLDCC's proposed adoption of the categorical exclusion. This consultation included a review of DoN's experience applying the categorical exclusion and the proposed action for which OLDCC plans to utilize it. Following this consultation and review, OLDCC has determined that the impacts of the proposed action to renovate the Association's facility is similar to the impacts, which are not significant, of projects for which DoN may apply the categorical exclusion. Additionally, OLDCC determined that there are no extraordinary circumstances. Therefore, OLDCC has determined that its proposed use of DoN's categorical exclusion 14, as described within this notice, would be appropriate.

Notice to the Public and Documentation of Adoption

This notice documents adoption of the DoN categorical exclusion listed above in accordance with 42 U.S.C. 4336(c) and 32 CFR 775.6(e)(1) and is available for use by OLDCC, effective immediately.

Dated: December 19, 2024.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison
Officer, Department of Defense.

[FR Doc. 2024-30972 Filed 12-27-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF ENERGY

[EERE-2024-BT-DET-0007]

RIN 1904-AF66

Determination Regarding Energy Efficiency Improvements in the 2024 International Energy Conservation Code

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notification of determination.

SUMMARY: The U.S. Department of Energy (DOE) has reviewed the 2024 International Energy Conservation Code (IECC) and determined the updated edition would improve energy efficiency in residential buildings. DOE analysis indicates that buildings meeting the 2024 IECC, as compared with buildings meeting the 2021 IECC, would result in national site energy savings of 7.80 percent, source energy savings of 6.80 percent, and energy cost savings of approximately 6.60 percent of residential building energy consumption. Under the Energy Conservation and Production Act, as amended (ECPA), upon publication of an affirmative determination, each State must review the energy efficiency provisions of its residential building code and determine whether it is appropriate for such state to revise its building code to meet or exceed the 2024 IECC. Additionally, this notification provides guidance on state code review processes and associated certifications.

DATES: Certification statements provided by States shall be submitted by December 30, 2026.

ADDRESSES: A copy of the supporting analysis and a link to the Federal docket are available at <https://www.energycodes.gov/determinations>.

Certification Statements must be addressed to the Building Technologies Office—Building Energy Codes Program Manager, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW, EE-5B, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremiah Williams; U.S. Department of Energy, Office of Energy Efficiency and

Renewable Energy, 1000 Independence Avenue SW, EE-5B, Washington, DC 20585; (202) 441-1288; Jeremiah.Williams@ee.doe.gov.

For legal issues, please contact: Ms. Laura Zuber; U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue SW, GC-33, Washington, DC 20585; (202) 586-4798; Laura.Zuber@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Determination Statement
- III. State Certification

I. Background

Title III of the Energy Conservation and Production Act, as amended (ECPA), establishes requirements for DOE to review consensus-based building energy conservation standards. 42 U.S.C. 6831 *et seq.* Section 304(a) of ECPA, as amended, provides that whenever the 1992 Council of American Building Officials (CABO) Model Energy Code, or any successor to that code, is revised, the Secretary of Energy (Secretary) must make a determination, no later than 12 months after such revision, whether the revised code would improve energy efficiency in residential buildings, and must publish notice of such determination in the **Federal Register**. 42 U.S.C. 6833(a)(5)(A). If the Secretary makes an affirmative determination, within two years of the publication of the determination, each State is required to certify that it has reviewed the provisions of its residential building code regarding energy efficiency and made a determination as to whether it is appropriate to revise its code to meet or exceed the provisions of the successor code. 42 U.S.C. 6833(a)(5)(B).

The International Energy Conservation Code (IECC) is the contemporary successor to the CABO Model Energy Code specified in ECPA. The IECC is revised every three years through an established code development and consensus process administered by the International Code Council (ICC). The ICC published the most recent edition of the IECC in August 2024 (the 2024 IECC) and triggered the statutorily required DOE review process. As part of the ICC process, any interested party may submit proposals, as well as written comments or suggested changes to any proposal, and make arguments before a committee of experts assembled by the ICC. The collection of accepted proposals forms the revised edition of the IECC. More information on the ICC code development process is available at <https://www.iccsafe.org/products->

[and-services/i-codes/code-development/cs/iecc-residential-consensus-committee](https://www.iccsafe.org/products-and-services/i-codes/code-development/cs/iecc-residential-consensus-committee).

As required by ECPA, DOE conducts a technical analysis to assess the energy savings impacts associated with the updated code, the 2024 IECC. DOE's review under ECPA is technical in nature and helps to inform and advise interested industry stakeholders of the effects of the updated code, and informs states and local governments who ultimately adopt, implement, and enforce building codes. Although DOE is an active participant in the review and update process for the 2024 IECC, as directed under ECPA (42 U.S.C. 6836(b)), the Department neither administers nor publishes the model energy codes. Additionally, the directive for states to update their energy efficiency codes based on the updated edition of the 2024 IECC is required by ECPA. DOE's technical analysis serves as the basis for DOE's determination and helps inform states who seek to update their codes and comply with ECPA.

DOE's full technical analysis, including assumptions and parameters applied in the analysis, is published as a separate technical support document (TSD) and available for review at <https://www.energycodes.gov/determinations>.

DOE publishes a wide range of technical assistance resources supporting building energy codes. These include additional technical analyses evaluating the impacts of updated building energy codes, such as quantifying the energy and environmental benefits, as well as additional resources supporting the adoption and successful implementation of energy codes across states and local governments. New Federal assistance is also available to support state and local adoption and implementation of building energy codes through the Bipartisan Infrastructure Law (Section 40511) and Inflation Reduction Act (Section 50131). Visit www.energycodes.gov to learn more about these initiatives and technical assistance resources.

II. Determination Statement

Residential buildings meeting the 2024 IECC are expected to experience the following savings on a weighted national average basis (compared to the previous 2021 edition):

- 7.80 percent *site* energy savings
- 6.80 percent *source* energy savings
- 6.60 percent *energy cost* savings
- 6.51 percent *carbon emissions* savings

DOE concludes that the 2024 IECC will improve energy efficiency in residential buildings and, therefore, receives an affirmative determination under Section 304(a) of ECPA.

III. State Certification

Upon publication of this affirmative DOE determination, ECPA requires each State to certify that it has reviewed the provisions of its residential building code regarding energy efficiency and made a determination as to whether it is appropriate for such State to revise its residential building code to meet or exceed the 2024 IECC. 42 U.S.C. 6833(a)(5)(B). Each State must complete its certification not later than 2 years from the date this Notice of Determination is published in the **Federal Register**, unless an extension is provided.

In the 2024 IECC development cycle, the IECC-Residential technical development committee approved several proposals that were later appealed to the ICC Board of Directors. Per the Board's decision, several measures that increased building energy performance and reliance on nondepletable sources of energy were removed from the code prior to publication and were relegated to optional appendices within the 2024 IECC. These measures will provide substantial benefits for consumers, such as supporting grid integration and reliability, and enabling homes to more readily incorporate high-performance equipment and appliances, electric vehicle charging and renewable energy systems, as well as increase resilience against climate hazards. Consequently, DOE strongly encourages states and local governments to consider adopting these appendices and measures when updating and certifying their building energy codes in accordance with the 2024 IECC. The DOE technical assistance and funding opportunities described below are available to states and local governments for assessing and adopting these measures.

State Review & Update

The State certification must be: (1) made after public notice and hearing; (2) in writing; (3) based upon findings and the evidence presented at the hearing; and (4) made available to the public. 42 U.S.C. 6833(a)(2). States have discretion regarding the hearing procedures they use, as long as they provide an adequate opportunity for members of the public to be heard and present relevant information. The Department recommends publication of any notice of public hearing through appropriate and prominent media outlets, such as in

a newspaper of general circulation or electronic formats commonly relied upon for public announcements. States should also be aware that this DOE determination does not apply to IECC chapters specific to nonresidential buildings, as defined in the IECC. Therefore, States must certify their evaluations of their State building codes for residential buildings with respect to all provisions of the IECC, except for those chapters not affecting residential buildings. DOE determinations regarding earlier editions of the IECC are available on the DOE Building Energy Codes Program website.¹ Further technical analysis is also available to help quantify the anticipated impacts of updated building energy codes for states, local governments and other stakeholders.²

State Certification Statements

Section 304(b) of ECPA, as amended, requires each State to certify to the Secretary of Energy that it has reviewed the energy efficiency provisions of its residential building code and made a determination whether it is appropriate to revise its code to meet or exceed the provisions of the successor code. 42 U.S.C. 6833(a)(4). If a State intends to certify that its residential building energy code already meets or exceeds the requirements of the 2024 IECC, the State should provide an explanation of the basis for this certification (e.g., the 2024 IECC is incorporated by reference in the State's building code regulations). The chief executive of the State (e.g., the governor), or a designated State official (e.g., director of the State energy office, State code commission, utility commission, or equivalent State agency having primary responsibility for residential building energy codes), must provide the certification to the Secretary. For states that do not have a statewide building energy code, the designated state official must compile and submit a list of building energy codes in place across units of local governments as part of the state certification.

State and Local Technical Assistance

The DOE Building Energy Codes Program tracks and reports State code adoption and certification.³ DOE provides technical assistance to states, as well as units of local government with authority to adopt building energy codes, to assist them in evaluating building energy code updates. This

assistance is available by request and may include technical analysis of expected energy code impacts, such as energy and cost savings or environmental impacts, as well as evaluation of proposed amendments, market trends, or other design and construction data, as available. Following the adoption of an updated energy code, DOE strives to provide technical assistance supporting the successful implementation of such codes, including compliance tools, education and training, and support for the updated code. DOE has issued previous guidance on how it intends to respond to technical assistance requests related to implementation resources, such as building energy code compliance software. 79 FR 15112. The Bipartisan Infrastructure Law (BIL)⁴ and Inflation Reduction Act (IRA)⁵ also provide substantial assistance—over \$1.2 billion in new Federal funding—supporting adoption and implementation of updated building energy codes. DOE does not prescribe how each State adopts and enforces its energy codes.

Requests for Extensions

Section 304(c) of ECPA requires the Secretary to extend the deadline for complying with the certification requirements described previously, if a State demonstrates that it has made a good faith effort to comply with such requirements and that it has made significant progress toward meeting its certification obligations. 42 U.S.C. 6833(c). Such demonstrations could include one or both of the following: (1) a plan to respond to the requirements in Section 304; or (2) a statement that the State has appropriated or requested funds (within State funding procedures) to implement a plan that would respond to the requirements of Section 304 of ECPA. This list is not exhaustive. States must send requests to the address provided in the **ADDRESSES** section or submit them to *BuildingEnergyCodes@ee.doe.gov*.

Signing Authority

This document of the Department of Energy was signed on December 20, 2024, by Jeffrey M. Marootian, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with

¹ <https://www.energycodes.gov/determinations>.

² <https://www.energycodes.gov/national-and-state-analysis>.

³ Available at <https://www.energycodes.gov/adoption/states>.

⁴ <https://www.energycodes.gov/RECI>.

⁵ <https://www.energy.gov/scep/technical-assistance-adoption-building-energy-codes>.

requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on December 20, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024–31024 Filed 12–27–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP25–35–000]

Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on December 17, 2024, Columbia Gas Transmission, LLC (Columbia), 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, filed in the above referenced docket, a prior notice request pursuant to sections 157.205 and 157.213 of the Commission's regulations under the Natural Gas Act (NGA), and Columbia's blanket certificate issued in Docket No. CP83–76–000, for authorization to install and operate one new injection/withdrawal well, connecting pipeline, and appurtenant facilities all located in its Donegal Storage Field in Washington County, Pennsylvania (Donegal New Drill 12653 Project). Columbia states that the project is designed to maintain services for its existing customers and will allow Columbia to operate the Donegal Storage Field more efficiently. Columbia does not propose to change the certificated parameters of the storage field as part of the project. The estimated cost for the project is \$10 million, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>). From the Commission's Home Page on the internet, this information is available on eLibrary.

The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

Any questions concerning this request should be directed to David A. Alonzo, Manager of Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, at (832) 320–5477, or david_alonzo@tcenergy.com.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on February 18, 2025. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,¹ any person² or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then

withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,³ and must be submitted by the protest deadline, which is February 18, 2025. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure⁴ and the regulations under the NGA⁵ by the intervention deadline for the project, which is February 18, 2025. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at <https://www.ferc.gov/resources/guides/how-to-intervene.asp>.

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by

¹ 18 CFR 157.205.

² Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

³ 18 CFR 157.205(e).

⁴ 18 CFR 385.214.

⁵ 18 CFR 157.10.

the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before February 18, 2025. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP25–35–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to Documents and Filings. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Protest", "Intervention", or "Comment on a Filing"; or⁶

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP25–35–000.

To file via USPS:

Debbie-Anne A. Reese, Secretary,
Federal Energy Regulatory Commission,
888 First Street NE, Washington, DC
20426.

To file via any other method: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or FercOnlineSupport@ferc.gov.

Protests and motions to intervene must be served on the applicant either by mail at: David A. Alonzo, Manager of Project Authorizations, Columbia Gas

Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, or by email (with a link to the document) at david_alonzo@tcenergy.com. Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at www.ferc.gov using the "eLibrary" link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to www.ferc.gov/docs-filing/esubscription.asp.

Dated: December 20, 2024.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2024–31335 Filed 12–27–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13318–018]

Swan Lake North Hydro LLC; Notice of Intent To Prepare an Environmental Assessment

On April 12, 2024, as supplemented on October 3, 2024, Swan Lake North Hydro LLC. filed an application for Non-Capacity Amendment of License for the Swan Lake North Pumped Storage Hydroelectric Project No. 13318. The unconstructed project will be located about 11 miles northeast of the city of Klamath Falls in Klamath County, Oregon. The project will occupy Federal land administered by the U.S. Bureau of Land Management and the U.S. Bureau of Reclamation.

The licensee proposes to amend project to replace the three authorized

131.1 megawatt (MW) turbine generating units with two 182.4 MW units; modify the location and size of the powerhouse; reduce the size of the spillways; lower the bottom elevation of the powerhouse, upper and lower reservoirs, and water conveyance structures; bury the authorized surface-mounted penstocks; realign a portion of the transmission line; modify the project boundary; and modify construction materials used for the reservoir embankments and liners, among other modifications.

On October 30, 2024, the Commission issued a public notice for the proposed amendment. On November 22 and November 25, 2024, the Oregon Department of Environmental Quality and Oregon Department of Fish and Wildlife, respectively, filed motions to intervene in the proceeding.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) for the project.¹ Commission staff plans to issue an EA by September 12, 2025. Revisions to the schedule may be made as appropriate. The EA will be issued for a 30-day comment period. All comments filed on the EA will be reviewed by staff and considered in the Commission's final decision on the proceeding.

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 to 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.

Any questions regarding this notice may be directed to Elizabeth Moats at 202–502–6632 or Elizabeth.OsierMoats@ferc.gov.

Dated: December 20, 2024.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2024–31332 Filed 12–27–24; 8:45 am]

BILLING CODE 6717–01–P

⁶ Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at www.ferc.gov under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

¹ In accordance with the Council on Environmental Quality's regulations, the unique identification number for documents relating to this environmental review is EAXX–019–20–000–1734453403. 40 CFR 1501.5(c)(4) (2024).

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: RP25–295–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: 4(d) Rate Filing; Negotiated Rate Agreements Update (Pioneer Jan-Mar 2025) to be effective 1/1/2025.

Filed Date: 12/19/24.

Accession Number: 20241219–5280.

Comment Date: 5 p.m. ET 12/31/24.

Docket Numbers: RP25–296–000.
Applicants: Florida Gas Transmission Company, LLC.

Description: 4(d) Rate Filing; Interim Fuel Adjustment on 12–20–2024 to be effective 1/1/2025.

Filed Date: 12/20/24.

Accession Number: 20241220–5010.

Comment Date: 5 p.m. ET 1/1/25.

Docket Numbers: RP25–297–000.

Applicants: Iroquois Gas

Transmission System, L.P.

Description: 4(d) Rate Filing; 12.20.24 Negotiated Rates—Twin Eagle Resource Management, LLC R–7300–31 to be effective 1/1/2025.

Filed Date: 12/20/24.

Accession Number: 20241220–5033.

Comment Date: 5 p.m. ET 1/1/25

Docket Numbers: RP25–298–000.

Applicants: Iroquois Gas

Transmission System, L.P.

Description: 4(d) Rate Filing; 12.20.24 Negotiated Rates—Twin Eagle Resource Management, LLC R–7300–32 to be effective 1/1/2025.

Filed Date: 12/20/24.

Accession Number: 20241220–5038.

Comment Date: 5 p.m. ET 1/1/25.

Docket Numbers: RP25–299–000.

Applicants: Southern Natural Gas Company, L.L.C.

Description: 4(d) Rate Filing; SNG CSS–ISS Transfer Tariff Modifications to be effective 1/1/2025.

Filed Date: 12/20/24.

Accession Number: 20241220–5075.

Comment Date: 5 p.m. ET 1/1/25.

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.

Filings in Existing Proceedings

Docket Numbers: PR25–15–001.

Applicants: Pelico Pipeline, LLC.

Description: Amendment Filing; Pelico Pipeline Amended Statement of Operating Conditions Filing to be effective 11/1/2024.

Filed Date: 12/18/24.

Accession Number: 20241218–5180.

Comment Date: 5 p.m. ET 1/8/25.

284.123(g) Protest: 5 p.m. ET 2/18/25.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <https://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: December 20, 2024.

Debbie-Anne A. Reese,

Secretary.

[FR Doc. 2024–31336 Filed 12–27–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. CP24–20–001]

**Wyoming Interstate Company, L.L.C.;
 Notice of Request for Extension of Time**

Take notice that on December 16, 2024, Wyoming Interstate Company,

L.L.C (WIC) requested that the Commission grant an extension of time, until June 1, 2025, to complete construction and place into service the Cheyenne to Piceance Expansion Project (Project) located in Sweetwater County, Wyoming. On December 6, 2023, the Commission issued a Notice of Request Under Blanket Authorization, which established a 60-day comment period, ending on February 5, 2024, to file protests. No protests were filed during the comment period, and accordingly the project self-implemented on February 5, 2024. By Rule, the Project should have been constructed and place into service by February 5, 2025.

WIC states that it has encountered delays due to contractor-related issues that pushed construction from the second quarter of 2024 to August 21, 2024, resulting in winter-related slowdowns, and industry-wide delivery delays for key equipment like axial check valves and valve actuators, with actuators not available until April 2025. These challenges have significantly impacted the construction timeline and required an updated schedule.

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on WIC's request for an extension of time may do so. No reply comments or answers will be considered. If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (NGA) (18 CFR 157.10).

As a matter of practice, the Commission itself generally acts on requests for extensions of time to complete construction for NGA facilities when such requests are contested before order issuance. For those extension requests that are contested,¹ the Commission will aim to issue an order acting on the request within 45 days.² The Commission will address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension.³ The Commission will not consider arguments that re-litigate the issuance of the certificate order, including whether the Commission properly found the project to be in the public convenience

¹ Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1).

² *Algonquin Gas Transmission, LLC*, 170 FERC ¶ 61,144, at P 40 (2020).

³ *Id.* at P 40.

and necessity and whether the Commission's environmental analysis for the certificate complied with the National Environmental Policy Act (NEPA).⁴ At the time a pipeline requests an extension of time, orders on certificates of public convenience and necessity are final and the Commission will not re-litigate their issuance.⁵ The Director of the Office of Energy Projects, or his or her designee, will act on all of those extension requests that are uncontested.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

The Commission strongly encourages electronic filings of comments in lieu of paper using the "eFile" link at <http://www.ferc.gov>. In lieu of electronic filing, you may submit a paper copy which must reference the Project docket number.

To file via USPS: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other courier: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help

members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Comment Date: 5:00 p.m. Eastern Time on January 3, 2024.

Dated: December 19, 2024.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2024-31052 Filed 12-27-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID-10232-000]

White, William T.; Notice of Filing

Take notice that on December 18, 2024, of William T. White, submitted for filing, application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d (b) and Part 45.8 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45.8.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and

Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Comment Date: 5:00 p.m. Eastern Time on January 8, 2025.

Dated: December 19, 2024.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2024-31051 Filed 12-27-24; 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: PR25-23-000.
Applicants: Black Hills/Kansas Gas Utility Company, LLC.

⁴ Similarly, the Commission will not re-litigate the issuance of an NGA section 3 authorization, including whether a proposed project is not inconsistent with the public interest and whether the Commission's environmental analysis for the permit order complied with NEPA.

⁵ *Algonquin Gas Transmission, LLC*, 170 FERC ¶ 61,144, at P 40 (2020).

Description: 284.123(g) Rate Filing: BHKG Revised SOC and Statement of Rates to be effective 11/1/2024.

Filed Date: 12/18/24.

Accession Number: 20241218–5267.

Comment Date: 5 p.m. ET 1/8/25.

284.123(g) Protest: 5 p.m. ET 2/17/25.

Docket Numbers: RP25–291–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: 4(d) Rate Filing: 12.18.24 Negotiated Rates—Mercury Energy America, LLC H–7540–89 to be effective 12/18/2024.

Filed Date: 12/18/24.

Accession Number: 20241218–5232.

Comment Date: 5 p.m. ET 12/30/24.

Docket Numbers: RP25–292–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: 4(d) Rate Filing: Negotiated Rate Agreement Update (NRG Feb 2025) to be effective 2/1/2025.

Filed Date: 12/18/24.

Accession Number: 20241218–5240.

Comment Date: 5 p.m. ET 12/30/24.

Docket Numbers: RP25–293–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: 4(d) Rate Filing: Negotiated Rate Agreement Update (Shell Feb 2025) to be effective 2/1/2025.

Filed Date: 12/19/24.

Accession Number: 20241219–5131.

Comment Date: 5 p.m. ET 12/31/24.

Docket Numbers: RP25–294–000.

Applicants: Midcontinent Express Pipeline LLC.

Description: 4(d) Rate Filing: MEP December 2024 NRA Filing to be effective 1/1/2025.

Filed Date: 12/19/24.

Accession Number: 20241219–5180.

Comment Date: 5 p.m. ET 12/31/24.

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.

Filings in Existing Proceedings

Docket Numbers: PR25–16–001.

Applicants: Black Hills Energy Arkansas, Inc.

Description: 284.123(g) Rate Filing: BHEA Amended SOC Filing to be effective 10/14/2024.

Filed Date: 12/19/24.

Accession Number: 20241219–5151.

Comment Date: 5 p.m. ET 1/9/25.

Any person desiring to protest in any of the above proceedings must file in

accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Dated: December 19, 2024.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2024–31070 Filed 12–27–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3240–000]

Briar Hydro Associates; Notice of Authorization for Continued Project Operation

The license for the Rolfe Canal Hydroelectric Project No. 3240 was issued for a period ending November 30, 2024.

Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee(s) under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the

licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 3240 is issued to Briar Hydro Associates for a period effective December 1, 2024, through November 30, 2025, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first.

If issuance of a new license (or other disposition) does not take place on or before November 30, 2025, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Briar Hydro Associates is authorized to continue operation of the Rolfe Canal Hydroelectric Project under the terms and conditions of the prior license until the issuance of a subsequent license for the project or other disposition under the FPA, whichever comes first.

Dated: December 19, 2024.

Carlos D. Clay,

Acting Deputy Secretary.

[FR Doc. 2024–31071 Filed 12–27–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC25–38–000]

Western Power Pool; Notice of Filing

Take notice that on December 13, 2024, Northwest Power Pool d/b/a Western Power Pool (WPP) submitted a request for waiver of the Federal Energy Regulatory Commission's (Commission) requirement to file a certified public accountant (CPA) certification on a calendar-year basis and for extensions of time to file certain CPA certifications.

Any person desiring to intervene or to protest this filing must file in

accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

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The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available

information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Comment Date: 5:00 p.m. Eastern Time on January 17, 2025.

Dated: December 18, 2024.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2024-30870 Filed 12-27-24; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IN24-2-000]

American Efficient, LLC; Modern Energy Group LLC; MIH LLC; Midcontinent Energy LLC; Wylan Energy, L.L.C.; Affirmed Energy LLC; Updated Notice of Designation of Commission Staff as Non-Decisional

With respect to an order issued by the Commission on December 16, 2024, in the above-captioned docket, with the exceptions noted below, the staff of the Office of Enforcement are designated as non-decisional in deliberations by the Commission in this docket.¹

Accordingly, pursuant to 18 CFR 385.2202 (2024), they will not serve as advisors to the Commission or take part in the Commission's review of any offer of settlement. Likewise, as non-decisional staff, pursuant to 18 CFR 385.2201 (2024), they are prohibited from communicating with advisory staff concerning any deliberations in this docket.

Exceptions to this designation as non-decisional are:

Nicholas Stavlas
Michael Raibman
Thomas Olson
Mark Maneche
Yvonne Yegge
Kevin Dinan
Charles Kitcher
Jennifer Gordon
Gareth Jones
Ian McDonald
Sam Malech
Erin Miller
Sara Brehm
Serrita Hill
Steven Bundick

¹ *American Efficient, LLC, Modern Energy Group LLC, MIH LLC, Midcontinent Energy LLC, Wylan Energy, L.L.C., Affirmed Energy LLC*, 189 FERC ¶ 61,196 (2024).

Dated: December 19, 2024.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2024-31050 Filed 12-27-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Institution of Section 206 Proceeding and Refund Effective Date

Date	Docket Nos.
Altavista Solar, LLC	EL25-24-000.
Great Bay Solar I, LLC	EL25-25-000.
GSG 6, LLC	EL25-26-000.
Minonk Wind, LLC	EL25-27-000.
Sandy Ridge Wind, LLC	EL25-28-000.
Sandy Ridge Wind 2, LLC	EL25-29-000.
Shady Oaks Wind 2, LLC	EL25-30-000.

On December 20, 2024, the Commission issued an order in Docket Nos. EL25-24-000, EL25-25-000, EL25-26-000, EL25-27-000, EL25-28-000, EL25-29-000, and EL25-30-000 pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation to determine whether Altavista Solar, LLC, Great Bay Solar I, LLC, GSG 6, LLC, Minonk Wind, LLC, Sandy Ridge Wind, LLC, Sandy Ridge Wind 2, LLC, and Shady Oaks Wind 2, LLC's Rate Schedules are unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *Altavista Solar et al.*, 189 FERC ¶ 61,222 (2024).

The refund effective date in Docket Nos. EL25-24-000, EL25-25-000, EL25-26-000, EL25-27-000, EL25-28-000, EL25-29-000, and EL25-30-000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket Nos. EL25-24-000, EL25-25-000, EL25-26-000, EL25-27-000, EL25-28-000, EL25-29-000, and EL25-30-000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2024), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number

field to access the document. From FERC's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFile" link at <http://www.ferc.gov>. 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 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: December 20, 2024.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2024-31333 Filed 12-27-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP25-36-000]

Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on December 17, 2024, Columbia Gas Transmission, LLC (Columbia), 700 Louisiana Street, Suite 1300, Houston, Texas 77002-2700, filed in the above referenced docket, a prior notice requests pursuant to sections 157.205 and 157.216 of the Commission's regulations under the Natural Gas Act (NGA) and Columbia's blanket certificate issued in Docket No. CP83-76-000 for authorization to abandon five injection/withdrawal wells, connecting pipeline, and appurtenant facilities located in the Lorain, Lucas, Pavonia, and Weaver Storage Fields (Project). All of the above facilities are located in Ashland, Lorain, and Richland Counties, Ohio. The Project is necessary to comply with the Pipeline and Hazardous Materials Safety Administration's (PHMSA) Storage Final Rule which requires operators to assess and minimize well integrity risks. The five wells proposed for abandonment, and associated facilities are no longer necessary due to their low performance and inability to contribute significantly to the total deliverability of the Lorain, Lucas, Pavonia, and Weaver Storage Fields. Columbia states that abandoning these facilities will eliminate routine maintenance requirements and the associated costs. The estimated cost for the Project is 3.4 million, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website

during normal business hours from FERC Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

Any questions concerning this request should be directed to David A. Alonzo, Manager of Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas 77002, at (832) 320-5477 or by email to David_alonzo@tcenergy.com.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on February 18, 2025. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,¹ any person² or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

¹ 18 CFR 157.205.

² Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,³ and must be submitted by the protest deadline, which is February 18, 2025. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure⁴ and the regulations under the NGA⁵ by the intervention deadline for the project, which is February 18, 2025. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at <https://www.ferc.gov/resources/guides/how-to-intervene.asp>.

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the

appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before February 18, 2025. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP25–36–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to Documents and Filings. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Protest", "Intervention", or "Comment on a Filing"; or⁶

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP25–36–000.

To file via USPS: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other method: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or FercOnlineSupport@ferc.gov.

Protests and motions to intervene must be served on the applicant either by mail at: David A. Alonzo, Manager of Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas 77002, or by email (with a link to the document) to David_alonzo@tcenergy.com. Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

⁶ Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at www.ferc.gov under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at www.ferc.gov using the "eLibrary" link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to www.ferc.gov/docs-filing/esubscription.asp.

Dated: December 20, 2024.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2024–31334 Filed 12–27–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2459–279]

Lake Lynn Generation, LLC; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2459–279.

c. *Date filed:* November 30, 2022.

d. *Applicant:* Lake Lynn Generation, LLC (Lake Lynn Generation).

e. *Name of Project:* Lake Lynn Hydroelectric Project (Lake Lynn Project, or project).

f. *Location:* The existing project is located on the Cheat River, near the city of Morgantown, in Monongalia County, West Virginia, and near the borough of Point Marion, in Fayette County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Jody Smet, Vice President, Engineering and Regulatory Affairs, Eagle Creek Renewable Energy, LLC, 7315 Wisconsin Avenue, Suite

³ 18 CFR 157.205(e).

⁴ 18 CFR 385.214.

⁵ 18 CFR 157.10.

1100W, Bethesda, MD 20814; Phone at (240) 482-2700; or email at jody.smet@eaglecreekre.com.

i. *FERC Contact*: Allan Creamer at (202) 502-8365, or email at allan.creamer@ferc.gov.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions*: 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at <https://ferconline.ferc.gov/FEROnline.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 at FEROnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, 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. All filings must clearly identify the project name and docket number on the first page: Lake Lynn Hydroelectric Project (P-2459-279).

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is now ready for environmental analysis.

l. *Project Description*: The Lake Lynn Project consists of: (1) a 13 mile-long, 1,729-acre impoundment (Cheat Lake; originally named Lake Lynn) with a maximum storage capacity of 72,300 acre-feet at a normal water surface elevation of 870 feet National Geodetic Vertical Datum of 1929 (NGVD 29) and a normal minimum storage capacity of 51,100 acre-feet at 857 feet NGVD 29; (2) a 1,000-foot-long, 125-foot-high, concrete gravity dam with a 624-foot-

long spillway section controlled by 26, 21-foot-wide by 17-foot-high, Tainter gates; (3) a concrete intake structure equipped with a log boom and eight trash racks with 4-inch clear bar spacing; (4) eight 12-foot-wide by 18-foot-deep gated reinforced concrete penstocks; (5) a 160-foot-long by 94.5-foot-wide powerhouse containing four Francis generating units with a combined capacity of 51.2 megawatts; and (6) two 800-foot-long transmission lines that run from the powerhouse to a substation within the project boundary.

The Lake Lynn Project is currently operated as a peaking facility with storage. Peaking hours and operations are dictated by market value. Seasonal peaking during winter typically occurs in the morning for 5 hours and in the afternoon for 5 hours to meet demand. During the summer, peaking occurs between 6:00 p.m.-11:00 p.m. in the evening. The maximum drawdown rate to meet peak demand is one-half a foot/hour. Typical drawdown is 0.2-0.4 feet/day, which can vary depending on environmental and economic considerations. The current license requires Lake Lynn Generation to maintain Cheat Lake between 868 feet and 870 feet NGVD 29 from May 1 through October 31, 857 feet and 870 feet NGVD 29 from November 1 through March 31, and 863 feet and 870 feet NGVD 29 from April 1 through April 30 each year. The current license also requires Lake Lynn Generation to release a downstream minimum flow of 212 cubic-feet-per-second (cfs), or inflow, from the dam when not generating, with an absolute minimum flow of 100 cfs regardless of inflow, when not generating. The project generates about 144,741 megawatt-hours annually.

Lake Lynn Generation does not propose any changes to existing project facilities. However, Lake Lynn Generation proposes to: (1) continue operating the project as a peaking facility with storage, maintain minimum flows and lake levels as required by the existing license, and maintain the existing recreation facilities; (2) develop a number of plans, including an operations plan, a water quality monitoring plan, a recreation management plan, a shoreline management plan, and a historic properties management plan, as well as bat protection measures; and (3) remove approximately 244 acres of land from the project boundary.

m. A copy of the application can be viewed on the Commission's website at <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.

All filings must: (1) bear in all capital letters the title "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

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 at OPP@ferc.gov.

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.

n. The applicant must file no later than 60 days from the issuance date of this notice: (1) a copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of a waiver of water quality certification.

o. *Procedural schedule*: The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Milestones	Target date
Deadline for filing comments, recommendations, terms and conditions, and pre-descriptions.	February 17, 2025.
Deadline for filing reply comments.	April 3, 2025.

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Dated: December 19, 2024.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2024–31049 Filed 12–27–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15292–001]

Dashiields Hydropower Corporation; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process (TLP).

b. *Project No.:* 15292–001.

c. *Date Filed:* October 31, 2024.

d. *Submitted By:* Dashiields Hydropower Corporation ¹ (Dashiields Hydropower).

e. *Name of Project:* Dashiields Locks and Dam Hydropower Project.

f. *Location:* The project would be located on the Ohio River, at the existing U.S. Army Corps of Engineers' (Corps) Dashiields Locks and Dam, in Moon Township, Allegheny County, Pennsylvania. The project would partially occupy federal land administered by the Corps.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Jeremy King, CEO; Current Hydro LLC; 3120 Southwest Freeway; Suite 101, PMB 50808; Houston, TX 77098. Email: jeremy@currenthydro.com; Phone: (706) 835–8516.

i. *FERC Contact:* Silvia Pineda-Munoz at (202) 502–8388; or email at silvia.pineda-munoz@ferc.gov.

j. Dashiields Hydropower filed its request to use the Traditional Licensing Process on October 31, 2024, and

provided public notice of its request on November 3, 2024. In a letter dated December 18, 2024, the Director of the Division of Hydropower Licensing approved Dashiields Hydropower's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the Pennsylvania State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Dashiields Hydropower, as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. Dashiields Hydropower filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD may be viewed on the Commission's website (<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, (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

You may register online at <https://ferconline.ferc.gov/FEROnline.aspx> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. The applicant states its unequivocal intent to submit an application for an original license for Project No. 15292.

p. 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: December 18, 2024.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2024–30866 Filed 12–27–24; 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 Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL25–43–000.

Applicants: *Allco Finance Limited v. ISO New England Inc.*

Description: Complaint of *Allco Finance Limited v. ISO New England Inc.*

Filed Date: 12/19/24.

Accession Number: 20241219–5193.

Comment Date: 5 p.m. ET 1/8/25.

Docket Numbers: EL25–44–000.

Applicants: *Industrial Energy Consumers of America, et al v. Avista Corporation, et al.*

Description: Complaint of *Industrial Energy Consumers of America, et al. v. Avista Corporation, et al.*

Filed Date: 12/19/24.

Accession Number: 20241219–5368.

Comment Date: 5 p.m. ET 2/3/25.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER24–2888–001.

Applicants: Atlantic City Electric Company, PJM Interconnection, L.L.C.

Description: Tariff Amendment: Atlantic City Electric Company submits tariff filing per 35.17(b): ACE Response to Deficiency Letter in ER24–2888 to be effective 2/24/2025.

Filed Date: 12/20/24.

Accession Number: 20241220–5274.

Comment Date: 5 p.m. ET 1/10/25.

Docket Numbers: ER24–2889–001.

Applicants: Baltimore Gas and Electric Company, PJM Interconnection, L.L.C.

Description: Tariff Amendment: Baltimore Gas and Electric Company submits tariff filing per 35.17(b): BGE Response to Deficiency Letter in ER24–2889 to be effective 2/24/2025.

Filed Date: 12/20/24.

Accession Number: 20241220–5287.

Comment Date: 5 p.m. ET 1/10/25.

¹Dashiields Hydropower Corporation is a wholly owned subsidiary of Current Hydro LLC, which acts as agent for the applicant.

Docket Numbers: ER24–2890–001.
Applicants: Commonwealth Edison Company, PJM Interconnection, L.L.C.
Description: Tariff Amendment: Commonwealth Edison Company submits tariff filing per 35.17(b); ComEd Response to Deficiency Letter in ER24–2890 to be effective 2/24/2025.

Filed Date: 12/20/24.

Accession Number: 20241220–5290.

Comment Date: 5 p.m. ET 1/10/25.

Docket Numbers: ER24–2891–001.

Applicants: Delmarva Power & Light Company, PJM Interconnection, L.L.C.

Description: Tariff Amendment: Delmarva Power & Light Company submits tariff filing per 35.17(b); DPL Response to Deficiency Letter in ER24–2891 to be effective 2/24/2025.

Filed Date: 12/20/24.

Accession Number: 20241220–5294

Comment Date: 5 p.m. ET 1/10/25.

Docket Numbers: ER24–2893–001.

Applicants: PECO Energy Company, PJM Interconnection, L.L.C.

Description: Tariff Amendment: PECO Energy Company submits tariff filing per 35.17(b); PECO Response to Deficiency Letter in ER24–2893 to be effective 2/24/2025.

Filed Date: 12/20/24

Accession Number: 20241220–5298

Comment Date: 5 p.m. ET 1/10/25.

Docket Numbers: ER24–2894–001.

Applicants: Potomac Electric Power Company, PJM Interconnection, L.L.C.

Description: Tariff Amendment: Potomac Electric Power Company submits tariff filing per 35.17(b); Pepco Response to Deficiency Letter in ER24–2894 to be effective 2/24/2025.

Filed Date: 12/20/24.

Accession Number: 20241220–5300.

Comment Date: 5 p.m. ET 1/10/25.

Docket Numbers: ER24–3107–001.

Applicants: Evergy Kansas Central, Inc.

Description: Compliance filing: Rate Schedule No. 336 Midwest Depr Compliance Filing to be effective 1/1/2024.

Filed Date: 12/20/24.

Accession Number: 20241220–5148.

Comment Date: 5 p.m. ET 1/10/25.

Docket Numbers: ER24–3138–001.

Applicants: Midcontinent

Independent System Operator, Inc.

Description: Compliance filing: 2024–12–20_Att. FF, CTA Reform Compliance Filing to be effective 11/27/2024.

Filed Date: 12/20/24.

Accession Number: 20241220–5327.

Comment Date: 5 p.m. ET 1/10/25.

Docket Numbers: ER25–206–001.

Applicants: Evergy Metro, Inc.

Description: Tariff Amendment: Wholesale Distribution Access Tariff

Deficiency Filing to be effective 1/1/2025.

Filed Date: 12/20/24.

Accession Number: 20241220–5174.

Comment Date: 5 p.m. ET 1/10/25.

Docket Numbers: ER25–207–001.

Applicants: Evergy Missouri West, Inc.

Description: Tariff Amendment: Wholesale Distribution Access Tariff Deficiency Filing to be effective 1/1/2025.

Filed Date: 12/20/24.

Accession Number: 20241220–5176.

Comment Date: 5 p.m. ET 1/10/25.

Docket Numbers: ER25–208–001.

Applicants: Evergy Kansas Central, Inc.

Description: Tariff Amendment: Wholesale Distribution Access Tariff Deficiency Filing to be effective 1/1/2025.

Filed Date: 12/20/24

Accession Number: 20241220–5171

Comment Date: 5 p.m. ET 1/10/25.

Docket Numbers: ER25–229–001.

Applicants: Kuna BESS LLC.

Description: Tariff Amendment: Kuna BESS LLC, MBR Tariff to be effective 12/24/2024.

Filed Date: 12/20/24.

Accession Number: 20241220–5000.

Comment Date: 5 p.m. ET 12/30/24.

Docket Numbers: ER25–738–001.

Applicants: Midcontinent

Independent System Operator, Inc.

Description: Tariff Amendment: 2024–12–20_SA 4414 Entergy Louisiana-Entergy Louisiana Sub Original GIA (R1039) to be effective 12/10/2024.

Filed Date: 12/20/24.

Accession Number: 20241220–5314.

Comment Date: 5 p.m. ET 1/10/25.

Docket Numbers: ER25–767–000

Applicants: PJM Interconnection,

L.L.C.

Description: 205(d) Rate Filing: Original GIA, Service Agreement No. 7438; AF2–421/AG1–164/AG1–165 to be effective 11/20/2024.

Filed Date: 12/20/24

Accession Number: 20241220–5074

Comment Date: 5 pm ET 1/10/25.

Docket Numbers: ER25–768–000.

Applicants: Wapello Solar LLC.

Description: 205(d) Rate Filing: Change in Status to be effective 12/21/2024.

Filed Date: 12/20/24.

Accession Number: 20241220–5095

Comment Date: 5 p.m. ET 1/10/25.

Docket Numbers: ER25–769–000.

Applicants: Midcontinent

Independent System Operator, Inc.

Description: 205(d) Rate Filing: 2024–12–20_SA 4417 Wolverine Power–

Wolvernine Power GIA (Vestaburg) to be effective 12/11/2024.

Filed Date: 12/20/24.

Accession Number: 20241220–5106.

Comment Date: 5 p.m. ET 1/10/25.

Docket Numbers: ER25–770–000.

Applicants: Buckeye Power, Inc., PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): Revised SA No. 4753—NITSA Among PJM and Buckeye Power, Inc. to be effective 1/1/2025.

Filed Date: 12/20/24.

Accession Number: 20241220–5169.

Comment Date: 5 p.m. ET 1/10/25.

Docket Numbers: ER25–771–000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Original NSA Service Agreement No. 7444; Project Identifier No. AF2–354 to be effective 2/19/2025.

Filed Date: 12/20/24.

Accession Number: 20241220–5178.

Comment Date: 5 p.m. ET 1/10/25

Docket Numbers: ER25–772–000.

Applicants: Valley Electric Association, Inc.

Description: 205(d) Rate Filing: Annual TRBAA Filing for 2025 to be effective 1/1/2025.

Filed Date: 12/20/24.

Accession Number: 20241220–5179.

Comment Date: 5 p.m. ET 1/10/25

Docket Numbers: ER25–773–000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: 4345 Boot Hill Solar Surplus Interconnection GIA to be effective 2/18/2025.

Filed Date: 12/20/24.

Accession Number: 20241220–5181.

Comment Date: 5 p.m. ET 1/10/25

Docket Numbers: ER25–774–000.

Applicants: Morgantown Station, LLC.

Description: Tariff Amendment: Notice of Cancellation of Market-Based Rate Tariff to be effective 12/21/2024.

Filed Date: 12/20/24.

Accession Number: 20241220–5195.

Comment Date: 5 p.m. ET 1/10/25.

Docket Numbers: ER25–775–000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Revisions to OATT Sch. 12-Appendices re: 2025 RTEP Annual Cost Allocations to be effective 6/16/2022.

Filed Date: 12/20/24.

Accession Number: 20241220–5230.

Comment Date: 5 p.m. ET 1/10/25.

Docket Numbers: ER25–776–000.

Applicants: Midcontinent

Independent System Operator, Inc.

Description: 205(d) Rate Filing: 2024–12–20_SA 4413 Wolverine Power–

Wolverine Power GIA (Gaylord) to be effective 12/11/2024.

Filed Date: 12/20/24.

Accession Number: 20241220–5237.

Comment Date: 5 p.m. ET 1/10/25.

Docket Numbers: ER25–777–000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: 4347 Southwestern Power Admin/WFEC Interconnection Agreement to be effective 1/1/2025.

Filed Date: 12/20/24.

Accession Number: 20241220–5248

Comment Date: 5 p.m. ET 1/10/25.

Docket Numbers: ER25–778–000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Proposed Tariff Amendments for Surplus Interconnection Service to be effective 3/7/2025.

Filed Date: 12/20/24.

Accession Number: 20241220–5253.

Comment Date: 5 p.m. ET 1/10/25.

Docket Numbers: ER25–779–000.

Applicants: Southern California Edison Company.

Description: 205(d) Rate Filing: Amended DSA, Anza (WDT180, SA 180) + Remove eTariff Record to be effective 2/19/2025.

Filed Date: 12/20/24.

Accession Number: 20241220–5254.

Comment Date: 5 p.m. ET 1/10/25.

Docket Numbers: ER25–780–000.

Applicants: NorthWestern Corporation.

Description: 205(d) Rate Filing: Revised Exhibits to Montana Intertie Agreement to be effective 12/21/2024.

Filed Date: 12/20/24.

Accession Number: 20241220–5271.

Comment Date: 5 p.m. ET 1/10/25

Docket Numbers: ER25–781–000.

Applicants: Otter Tail Power Company.

Description: 205(d) Rate Filing: 2024–12–20 SA 4418 OTP–GRE T–LIA (10 Mile Lake) to be effective 12/17/2024.

Filed Date: 12/20/24.

Accession Number: 20241220–5278.

Comment Date: 5 p.m. ET 1/10/25.

Docket Numbers: ER25–782–000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: GIA SA No. 7442 & CSA SA No. 7443; AE2–316/AF1–302 & Cancellation of ISA No. 6911 to be effective 11/25/2024.

Filed Date: 12/20/24.

Accession Number: 20241220–5330.

Comment Date: 5 p.m. ET 1/10/25.

Docket Numbers: ER25–783–000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Credit Review of Bilateral Capacity

Transactions Proposal to be effective 7/26/2024

Filed Date: 12/20/24.

Accession Number: 20241220–5373.

Comment Date: 5 p.m. ET 1/10/25.

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: <https://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: December 20, 2024.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2024–31337 Filed 12–27–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–2725–076]

Oglethorpe Power Corporation: Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Licensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2725–076.

c. *Date filed:* December 6, 2024.

d. *Applicant:* Oglethorpe Power Corporation (OPC).

e. *Name of Project:* Rocky Mountain Pumped Storage Hydroelectric Project.

f. *Location:* On Heath Creek, in Floyd County, Georgia.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Jeff Swartz, Oglethorpe Power Corporation, Senior Vice President of Plant Operations, 2100 East Exchange Place, Tucker, Georgia 30084, email at Jeff.Swartz@opc.com.

i. *FERC Contact:* David Gandy at 202–502–8560, or david.gandy@ferc.gov.

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See*, 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* February 4, 2025.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at <https://ferconline.ferc.gov/FEROnline.aspx>. For assistance, please contact FERC Online Support at

FEROnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, 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, MD 20852. All filings must clearly identify the project name and docket number on the first page: Rocky Mountain Pumped Storage Hydroelectric Project (P-2725-076).

m. The application is not ready for environmental analysis at this time.

n. *The Rocky Mountain Pumped Storage Project consists of the following existing facilities:* (1) a 120-foot-high, 12,895-foot-long earth and rockfill upper dam; (2) a 221 acre upper reservoir with 10,650 acre-feet of storage and a normal operating pool elevation of 1,392 feet NAVD88; (3) a 35-foot-diameter, 567-foot-high concrete-lined power shaft; (4) a 35-foot-diameter, 1,935-foot-long concrete lined tunnel with two concrete lined bifurcations; (5) three 19-foot-diameter, 470-foot-long steel lined penstocks; (6) a 348-foot-long, 156-foot-wide, 175-foot-high powerhouse containing three reversible Francis pump-turbines, with a combined installed capacity of 904 megawatts; (7) three 230 kilovolt, 2.7-mile-long transmission lines; (8) a substation; and (9) appurtenant facilities.

The project has reserve storage water contained in two auxiliary pools adjacent to the lower reservoir. Pool I's surface area is 400 acres and is formed by four dams. The pool I dams consist of: (a) a 25-foot-high earthen dam of unspecified length; (b) a 20-foot-high, 775-foot-long earth and rockfill dam; (c) a 50-foot-high, 700-foot-long earth and rockfill dam; (d) a 50-foot-high, 405-foot-long earth and rockfill dam. Pool II surface area is 200 acres and is formed by a 30-foot-high, 335-foot-long earth and rockfill dam.

The Rocky Mountain Pumped Storage Project is operated in a pumped storage mode and OPC proposes to continue operating the project in that mode.

o. A copy of the application can be viewed on the Commission's website at <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 (P-2725). For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or call tollfree, (866) 208-3676 or (202) 502-8659 (TTY).

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.

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.

p. *Procedural schedule and final amendments:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Issue Deficiency Letter (if necessary).	February 2025.
Request for Additional Information.	February 2025.
Issue Notice of Acceptance	May 2025.
Issue Scoping Document 1 for comments.	June 2025.
Issue Scoping Document 2 (if necessary).	August 2025.

q. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: December 18, 2024.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2024-30864 Filed 12-27-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP23-516-000; CP23-516-001]

East Tennessee Natural Gas, LLC; Notice of Availability of the Final Environmental Impact Statement for the Proposed Ridgeline Expansion Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (EIS) for the Ridgeline Expansion Project (Project), proposed by East Tennessee Natural Gas, LLC (East Tennessee) in the above-referenced docket. East Tennessee requests authorization to construct and operate 122.2 miles of 30-inch-diameter natural gas pipeline and associated facilities in Trousdale, Smith, Jackson, Putnam, Overton, Fentress, Morgan, and Roane Counties, Tennessee. The purpose of the Project is to provide

about 300,000 dekatherms per day of new firm natural gas transportation capacity and up to 95,000 dekatherms of customized delivery service (*i.e.*, peaking service) from multiple providers to the site of Tennessee Valley Authority's Kingston Fossil Plant.

The final EIS assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed Project would have some limited adverse environmental effects; however, with implementation of East Tennessee's impact avoidance, minimization, and mitigation measures, as well as adherence to the mitigation measures recommended in the EIS, these effects would be avoided, mitigated, or reduced to less-than-significant levels.

The U.S. Army Corps of Engineers (USACE), the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, and the National Park Service participated as cooperating agencies in the preparation of the EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. The USACE will adopt and use the EIS to consider the issuance of an Individual Permit under section 404 of the Clean Water Act. Although the USACE provided input to the conclusions and recommendations presented in the final EIS, the USACE will present its own conclusions and recommendations in its Record of Decision for the Project.

The final EIS addresses the potential environmental effects of the construction and operation of the following Project facilities, all in the State of Tennessee:

- 122.2 miles of 30-inch-diameter pipeline in Trousdale, Smith, Jackson, Putnam, Overton, Fentress, Morgan, and Roane Counties, including 4.0 miles of header pipeline and 118.2 miles of mainline pipeline (collectively referred to as the Mainline);
- a new 14,600-horsepower, electric-driven compressor station (Hartsville Compressor Station) and an associated solar array to partially power the facility in Trousdale County;
- a new meter and regulating station to receive gas from Columbia Gulf Transmission, LLC in Trousdale County;
- modifications to two existing meter and regulating stations to receive gas from Texas Eastern Transmission, LP and Midwestern Gas Transmission Company in Trousdale County;

- a new delivery meter station to measure gas delivered to the Kingston Fossil Plant in Roane County; and
- related appurtenances.

East Tennessee also proposes to remove approximately 24 miles of previously abandoned-in-place pipe segments along East Tennessee's existing 22-inch-diameter Line 3100–1 associated with various prior pipeline replacement projects. East Tennessee would relay the new 30-inch-diameter Mainline pipe into the same trench.

The Commission mailed a copy of the *Notice of Availability* to Federal and State resources agencies, elected officials, environmental groups and non-governmental organizations, Native American Tribes, potentially affected landowners, local libraries and newspapers, and other stakeholders. The final EIS is only available in electronic format. It may be viewed and downloaded from FERC's website (www.ferc.gov), on the natural gas environmental documents page (<https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents>). In addition, the final EIS may be accessed by using the eLibrary link on FERC's website. Click on the eLibrary link (<https://elibrary.ferc.gov/eLibrary/search>), select "General Search," and enter the docket number in the "Docket Number" field, excluding the last three digits (*i.e.* CP23–516). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The final EIS is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (www.ferc.gov) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

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.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

Dated: December 20, 2024.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2024–31338 Filed 12–27–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Colorado River Storage Project—Rate Order No. WAPA–220

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed transmission and ancillary services formula rates.

SUMMARY: The Colorado River Storage Project (CRSP) Management Center (MC) of the Western Area Power Administration (WAPA) proposes new formula rates for CRSP transmission and ancillary services for CRSP MC's costs to be recovered under the Southwest Power Pool's (SPP) Open Access Transmission Tariff (Tariff) should CRSP MC decide to become a member of SPP. The proposed formula rates will become effective on the latter of CRSP MC's membership date or the go-live date of the expansion of the SPP Regional Transmission Organization (RTO) into the Western Interconnection (scheduled for April 1, 2026, as of the date of this notice) and will remain in effect for 5 years from the effective date, which with an effective date of April 1, 2026, will be March 31, 2031, or until superseded.

DATES: A consultation and comment period will begin December 30, 2024 and end March 31, 2025. CRSP MC will present a detailed explanation of the proposed formula rates and other modifications at a public information forum that will be held on February 19, 2025, at 2 p.m. MST to no later than 3 p.m. MST. CRSP MC will also host a public comment forum on February 19, 2025, at 3:15 p.m. MST to no later than 4 p.m. MST. The public information

forum and the public comment forum will be conducted virtually. Instructions for participating in the forums will be posted on CRSP MC's Rates website at least 14 days prior to the public information and comment forums at: www.wapa.gov/about-wapa/regions/crsp/rates/2026-rate-adjustment-transmission-and-ancillary-services/.

CRSP MC will accept comments any time during the consultation and comment period.

ADDRESSES: Written comments and requests to be informed of Federal Energy Regulatory Commission (FERC) actions concerning the proposed formula rates submitted by WAPA to FERC for approval should be sent to: Rodney G. Bailey, CRSP Manager, Colorado River Storage Project Management Center, Western Area Power Administration, 1800 South Rio Grande Avenue, Montrose, CO 81401, or email CRSPMC-rate-adj@wapa.gov. CRSP MC will post information about the proposed formula rates and written comments received to its rates website at: www.wapa.gov/about-wapa/regions/crsp/rates/2026-rate-adjustment-transmission-and-ancillary-services/.

FOR FURTHER INFORMATION CONTACT: Tamala D. Gheller, Rates Manager, Colorado River Storage Project Management Center, Western Area Power Administration, (970) 240–6545 or email: gheller@wapa.gov.

SUPPLEMENTARY INFORMATION: On April 28, 2023, WAPA published a **Federal Register** notice titled "Recommendation for the Western Area Power Administration's Rocky Mountain Region and Colorado River Storage Project Management Center to Pursue Final Negotiations Regarding Membership in the Southwest Power Pool Regional Transmission Organization, and for the Upper Great Plains Region to Expand its Participation" (88 FR 26298). On June 4, 2024, SPP submitted revisions to its Tariff, Bylaws, and Membership Agreement to expand the SPP RTO into the Western Interconnection to FERC.¹ If SPP succeeds in obtaining FERC's approval of its Tariff, Bylaws, and Membership Agreement revisions, and upon further approval by the Administrator, CRSP MC plans to become a member of SPP.²

¹ Southwest Power Pool, Inc., Submission of Revisions to Tariff, Bylaws, and Membership Agreement to Expand the Regional Transmission Organization into the Western Interconnections (Part 1 of 2) and (Part 2 of 2), Docket Nos. ER24–2184, ER24–2185 (June 4, 2024).

² WAPA's Rocky Mountain region also plans to become a member of the SPP RTO, and WAPA's Upper Great Plains region plans to expand its

CRSP MC's membership will include CRSP MC becoming a Transmission Owner member of SPP. WAPA will transfer functional control of eligible CRSP transmission facilities to SPP. At such time, for the eligible facilities, CRSP transmission and ancillary services will no longer be available under WAPA's Tariff, and the existing transmission and ancillary services rate schedules, specifically SP-NW6, SP-PTP10, SP-NFT9, SP-UU3, L-AS1, L-AS2, L-AS3, SP-El6, SP-SSR6, will no longer be applicable.

CRSP transmission service for these eligible facilities will be provided under the SPP Tariff by SPP as the transmission service provider. Accordingly, CRSP MC will need new rate designs/rate schedules and rate implementation protocols in place for specific costs to be recovered under the SPP Tariff.

CRSP MC will continue to be the transmission service provider for specific transmission facilities associated with serving a customer group in its Southern Division marketing area, who requested a pseudo-tie into the Western Area Lower Colorado Balancing Authority (WALC BA). CRSP MC will provide firm transmission service to serve this pseudo-tie and will not transfer functional control of such facilities to SPP.

As of the date of this notice, SPP's anticipated deadline for filing certain SPP Tariff documents for CRSP MC (including annual revenue requirements (ARR), formula rate templates, and formula rate implementation protocols proposed in this rate filing, as well as other pertinent documents not included in this rate filing) with FERC is October 2025. CRSP MC is publishing this notice of proposed formula rates and initiating the rate consultation and comment period at this time in order for CRSP MC to obtain FERC-approved formula rates prior to this SPP deadline.

If CRSP MC does not become a member of SPP, further actions under this notice of proposed rates will be canceled, and existing formula rates will remain in effect. If canceled, CRSP MC will inform customers by letter and by posting notice of such on CRSP MC's Rates website (www.wapa.gov/about-wapa/regions/crsp/rates/2026-rate-adjustment-transmission-and-ancillary-services/) and will withdraw the formula rates proposed in this notice.

CRSP MC is proposing a new formula rate to calculate the ARR for its CRSP

transmission facilities that will be transferred to the functional control of SPP under the SPP Tariff. CRSP MC is also proposing a new formula rate to calculate the ARR for Scheduling, System Control, and Dispatch Service (SSCD Service) under the SPP Tariff. CRSP MC's revenue requirements will be added to the annual revenue requirements of other transmission owners in the SPP pricing Zone 103, also identified as the Colorado River Storage Project Zone (CRSPZ), for transmission service billed by SPP within the CRSPZ. CRSP MC's revenue requirements under these proposed rates will also impact other costs for transmission service within the broader SPP footprint. For transmission and ancillary services provided under the SPP Tariff, CRSP MC also proposes to provide information related to CRSP MC's rate implementation and annual updates in "Formula Rate Implementation Protocols" (Protocols). CRSP MC is also proposing changes to its existing Firm Point-to-Point (PTP) Transmission Service rate design in order to accommodate transmission service deliveries into the WALC BA. Each of these topics is described in more detail below.

The proposed formula rates will provide sufficient revenue to recover annual operation, maintenance, replacement, and interest expense while ensuring repayment of the project within the cost recovery criteria set forth in Department of Energy (DOE) Order RA6120.2. For more specific information on the proposed formula rates, please see the customer rate brochure located on CRSP MC's Rates website at: www.wapa.gov/about-wapa/regions/crsp/rates/2026-rate-adjustment-transmission-and-ancillary-services/.

Proposed Transmission Formula Rate

For transmission service provided by SPP under SPP's Tariff, under Rate Schedule CRCMT-ATRR, CRSP MC proposes to provide its overall CRSP annual transmission revenue requirement (ATRR) as separate subtotals to distinguish CRSP transmission facilities in the CRSPZ from facilities in other SPP zones. SPP will utilize these CRSP ATRR subtotals, along with zonal and regional load and other applicable information, to calculate the applicable charges and revenue distribution for SPP transmission service under the SPP Tariff.

Consistent with CRSP MC's current transmission formula rates, CRSP MC proposes to continue recovering transmission-related expenses and

investments on a forward-looking basis by using projections to estimate transmission costs for the upcoming year, with a true-up of incurred costs in a subsequent year. Transmission-related annual costs include operation and maintenance, administrative and general costs, interest, and depreciation. The annual costs will be reduced by applicable revenue credits received by CRSP MC under the SPP Tariff.

Revenue requirement data will be submitted to SPP in standard formula rate templates with costs classified as either "Zonal" or "Regional," applying the definitions in the SPP Tariff. "Zonal" costs are those that meet certain criteria and are recovered within the local pricing zone, while "Regional" costs are those meeting certain criteria eligible to be recovered across SPP's Western BA area. The Formula Rate Template for the CRSP ATRR and related information will be posted on CRSP MC's Colorado River Colorado Missouri (CRCM) Open Access Same-Time Information System (OASIS) website (www.oasis.oati.com/CRCM/index.html), on CRSP MC's Rates website (www.wapa.gov/about-wapa/regions/crsp/rates/2026-rate-adjustment-transmission-and-ancillary-services/), and on SPP's Member Related Postings website (opsportal.spp.org/OASIS/Directory/Member%20Related%20Postings).

Proposed Formula Rate for Scheduling, System Control, and Dispatch Service

SSCD Service is required to operate a Transmission Owner's SPP Tariff facilities and schedule movement of power through, out of, within, or into one or both of the SPP BA areas and certain parts of the transmission system not located within a SPP BA area. Under this proposal, CRSP MC's ARR for SSCD Service, under Rate Schedule CRCMT-AS1, will be submitted to SPP in a standard formula rate template for inclusion in the SPP Tariff Schedule 1. The SSCD Service ARR will be used by SPP to determine the regional SPP Schedule 1 rate and revenue distribution for SPP through-and-out transactions and to determine the zonal SPP Schedule 1 rate and revenue distribution for the CRSPZ under the SPP Tariff.

For consistency with the CRSP ATRR proposal, CRSP MC proposes a formula-based rate methodology to calculate its SSCD Service ARR on a forward-looking basis by using projections to estimate costs associated with SSCD Service for the upcoming year, with a true-up of incurred costs in a subsequent year. CRSP MC's SSCD Service ARR will be derived by calculating CRSP MC's

membership participation in the SPP RTO. These regions are proposing new formula rate designs/rate schedules under separate Rate Order Nos. WAPA-219 and WAPA-218, respectively.

applicable annual costs associated with the provision of SSCD Service, including operation and maintenance, administrative and general, interest, and depreciation. The annual costs will be reduced by any applicable revenue received by CRSP MC under the SPP Tariff. The Formula Rate Template for the SSCD Service and related information will be posted on CRSP MC's CRCM OASIS website, on CRSP MC's Rates website, and on SPP's Member Related Postings website (see web addresses listed previously).

Formula Rate Implementation Protocols

For transmission service provided by SPP under SPP's Tariff, CRSP MC proposes to provide information relating to CRSP MC's rate implementation and annual update procedures and timelines in "Formula Rate Implementation Protocols" (Protocols). The Protocols, together with the above-mentioned formula rate templates, comprise the Formula Rates that will be submitted to SPP to be incorporated in the SPP Tariff. All relevant information pertaining to CRSP MC's annual updates, customer notifications and review periods, and meetings will be contained in the Protocols. The Protocols will be posted on CRSP MC's CRCM OASIS website, on CRSP MC's Rates website, and on SPP's Member Related Postings website (see web addresses listed previously).

CRSP Deliveries Into WALC BA

CRSP MC proposes to pseudo-tie certain generation into the WALC BA to serve a group of customers in its Southern Division marketing area. As part of these arrangements, CRSP MC will retain a portion of its transmission system from Glen Canyon to Pinnacle Peak under WAPA's functional control and under WAPA's Tariff. Accordingly, this identified portion of CRSP MC transmission system will not be transferred to SPP's functional control and will not be governed by SPP's Tariff.

For transmission service provided by CRSP MC under WAPA's Tariff, under Rate Schedule CRCMT-PTP, CRSP MC proposes a revenue requirement consistent with CRSP MC's current PTP Transmission Formula Rate. For consistency with the CRSP ATRR proposal, and consistent with CRSP MC's current transmission formula rates, CRSP MC proposes to continue recovering transmission-related expenses and investments on a forward-looking basis by using projections to estimate transmission costs for the upcoming year, with a true-up of incurred costs in a subsequent year.

Transmission-related annual costs include operation and maintenance, administrative and general costs, interest, and depreciation. The Formula Rate Template for the CRSP PTP ATRR and related information will be posted on CRSP MC's CRCM OASIS website and on CRSP MC's Rates website (see web addresses listed previously).

Legal Authority

DOE procedures for public participation in power and transmission rate adjustments are located at 10 CFR part 903. The proposed action is a major rate adjustment, as defined by 10 CFR 903.2(d). In accordance with 10 CFR 903.15(a) and 10 CFR 903.16(a), CRSP MC will hold public information and public comment forums for this rate adjustment. CRSP MC will review and consider all timely public comments at the conclusion of the consultation and comment period and adjust the proposal as appropriate. The rates will then be approved on an interim basis.

WAPA is establishing the formula rates for CRSP in accordance with section 302 of the DOE Organization Act (42 U.S.C. 7152).³

By Delegation Order No. S1-DEL-RATES-2016, effective November 19, 2016, the Secretary of Energy delegated: (1) the authority to develop power and transmission rates to the WAPA Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, or to remand or disapprove such rates, to FERC. By Delegation Order No. S1-DEL-S3-2024, effective August 30, 2024, the Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary for Infrastructure. By Redelegation Order No. S3-DEL-WAPA1-2023, effective April 10, 2023, the Under Secretary for Infrastructure further redelegated the authority to confirm, approve, and place such rates into effect on an interim basis to WAPA's Administrator.

Availability of Information

All brochures, studies, comments, letters, memorandums, or other

³ This Act transferred to, and vested in, the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s); and other acts that specifically apply to the projects involved.

documents that CRSP MC initiates or uses to develop the proposed formula rates are available for inspection and copying at the Colorado River Storage Project Management Center located at 1800 South Rio Grande Avenue, Montrose, Colorado. Many of these documents and supporting information are also available on CRSP MC's Rates website at: www.wapa.gov/about-wapa/regions/crsp/rates/2026-rate-adjustment-transmission-and-ancillary-services/.

Ratemaking Procedure Requirements

Environmental Compliance

WAPA is in the process of determining whether an environmental assessment or an environmental impact statement should be prepared or if this action can be categorically excluded from those requirements.⁴

Determination Under Executive Order 12866

WAPA has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Signing Authority

This document of the Department of Energy was signed on December 19, 2024, by Tracey A. LeBeau, Administrator, Western Area Power Administration, pursuant to delegated authority from the Secretary of Energy. That document, with the original signature and date, is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on December 19, 2024.

Jennifer Hartzell,

*Alternate Federal Register Liaison Officer,
U.S. Department of Energy.*

[FR Doc. 2024-30863 Filed 12-27-24; 8:45 am]

BILLING CODE 6450-01-P

⁴ In compliance with the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321-4347; the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500-1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021).

DEPARTMENT OF ENERGY

Western Area Power Administration

Pick-Sloan Missouri Basin Program—
Eastern Division—Rate Order No.
WAPA-218

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed transmission and ancillary services formula rates.

SUMMARY: The Upper Great Plains (UGP) region of the Western Area Power Administration (WAPA) proposes new formula rates for the Pick-Sloan Missouri Basin Program—Eastern Division (P-SMBP—ED) transmission and ancillary services for UGP's costs to be recovered under the Southwest Power Pool's (SPP) Open Access Transmission Tariff (Tariff) should UGP decide to expand its participation in SPP in the Western Interconnection. These rates will be used by UGP to provide rate data to SPP, the Regional Transmission Organization (RTO) of which UGP is a member, after SPP's planned expansion of the RTO into the Western Interconnection on April 1, 2026. The existing UGP rates for services expire on September 30, 2025, but are being extended under a separate rate process, Rate Order No. WAPA-217, to continue to provide existing rate data to SPP between October 1, 2025, and final implementation date of the planned RTO expansion into the Western Interconnection. The proposed rates will address UGP operating changes and new provisions and settlement requirements under the proposed revisions to SPP's Tariff filed with the Federal Energy Regulatory Commission (FERC) to accommodate their RTO expansion into the Western Interconnection. The proposed formula rates will become effective on the go-live date of the expansion of the SPP RTO into the Western Interconnection (scheduled for April 1, 2026, as of the date of this notice) and will remain in effect for five years from the effective date, which with an effective date of April 1, 2026, will be March 31, 2031, or until superseded.

DATES: A consultation and comment period will begin December 30, 2024 and end March 31, 2025. UGP will present a detailed explanation of the proposed formula rates and other modifications at a public information forum that will be held on February 19, 2025, at 8 a.m. MST to no later than 9 a.m. MST. UGP will also host a public comment forum on February 19, 2025, at 9:15 a.m. MST to no later than 10 a.m. MST. The public information forum and

the public comment forum will be conducted virtually. Instructions for participating in the forums will be posted on UGP's Rates website at least 14 days prior to the public information and comment forums at: www.wapa.gov/about-wapa/regions/ugp/ugp-rates and other posting locations noted below.

UGP will accept comments any time during the consultation and comment period.

ADDRESSES: Written comments and requests to be informed of FERC actions concerning the proposed formula rates submitted by WAPA to FERC for approval should be sent to: Lloyd Linke, Regional Manager, Upper Great Plains Region, Western Area Power Administration, 2900 4th Ave. North, 6th Floor, Billings, MT 59101-1266, or email UGPTRates@wapa.gov. UGP will post information about the proposed formula rates and written comments received to its Rates website at: www.wapa.gov/about-wapa/regions/ugp/ugp-rates and other posting locations noted below in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Linda Cady-Hoffman, Rates Manager, Upper Great Plains Region, Western Area Power Administration, (406) 255-2920 or email: cady@wapa.gov.

SUPPLEMENTARY INFORMATION: On September 28, 2020, FERC approved and confirmed Rate Schedules WAUGP-ATRR, WAUGP-AS1, WAUW-AS3, WAUW-AS4, WAUW-AS5, WAUW-AS6, and WAUW-AS7 under Rate Order No. WAPA-188 on a final basis through September 30, 2025.¹ These existing formula-based rate schedules are for transmission and ancillary services for the transmission facilities in the P-SMBP—ED that UGP transferred to the functional control of SPP for its existing membership. The existing formula rates are viewable online at the following locations: (1) UGP's Open Access Same-time Information System (OASIS) at: <https://www.oasis.oati.com/wapa/index.html>; (2) UGP's Rates website at: www.wapa.gov/about-wapa/regions/ugp/ugp-rates; and (3) the "Western Area Power Administration UGP Information" link on SPP's Member Related Postings website at: opsportal.spp.org/OASIS/Directory/Member%20Related%20Postings.

On April 28, 2023, WAPA published a **Federal Register** notice titled "Recommendation for the Western Area

Power Administration's Rocky Mountain Region and Colorado River Storage Project Management Center to Pursue Final Negotiations Regarding Membership in the Southwest Power Pool Regional Transmission Organization, and for the Upper Great Plains Region to Expand its Participation" (88 FR 26298). On June 4, 2024, SPP submitted revisions to its Tariff, Bylaws, and Membership Agreement to expand the SPP RTO into the Western Interconnection to FERC.² If SPP succeeds in obtaining FERC's approval of its Tariff, Bylaws, and Membership Agreement revisions, and upon further approval by the Administrator, UGP plans to expand its participation in SPP in the Western Interconnection.

As of the date of this notice, SPP's anticipated deadline for filing certain SPP Tariff documents for UGP (including annual revenue requirements (ARR), formula rate templates, and formula rate implementation protocols proposed in this rate filing, as well as other pertinent documents not included in this rate filing) with FERC is October 2025. UGP is publishing this notice of proposed formula rates and initiating the rate consultation and comment period at this time in order for UGP to obtain FERC-approved formula rates prior to this SPP deadline.

If UGP does not expand its participation in SPP in the Western Interconnection, further actions under this notice of proposed rates will be canceled, and existing formula rates will remain in effect. If canceled, UGP will inform customers by letter and by posting notice of such on UGP's OASIS website (www.oasis.oati.com/wapa/index.html), on UGP's Rates website (www.wapa.gov/about-wapa/regions/ugp/ugp-rates), and on the "Western Area Power Administration UGP Information" link on SPP's Member Related Postings website (opsportal.spp.org/OASIS/Directory/Member%20Related%20Postings) and will withdraw the formula rates proposed in this notice.

UGP needs to adopt new formula rates for transmission and ancillary services so that UGP's costs can continue to be recovered under the SPP Tariff with the SPP expansion of its RTO and Integrated Marketplace into the Western Interconnection, and to address the new and revised SPP settlements proposed in SPP's FERC filing for the RTO

² Southwest Power Pool, Inc., Submission of Revisions to Tariff, Bylaws, and Membership Agreement to Expand the Regional Transmission Organization into the Western Interconnections (Part 1 of 2) and (Part 2 of 2), Docket Nos. ER24-2184, ER24-2185 (June 4, 2024).

¹ Order Confirming and Approving Rate Schedules on a Final Basis, FERC Docket Nos. EF20-3-000 and EF20-3-001.

expansion. UGP's revenue requirements are added to the annual revenue requirements of other transmission owners in the multi-owner SPP pricing Zone 19, also identified as the Upper Missouri Zone (UMZ) for transmission service billed by SPP within the UMZ. UGP's revenue requirements under these proposed rates also impact other costs for transmission service within the broader SPP footprint.

The proposed rates continue the formula-based methodology that includes an annual update on January 1 of every year, to the financial data in the rate formulas, and include Rate Formula Implementation Protocols to clarify UGP's rate implementation and annual update procedures with changes related to the planned RTO expansion in the Western Interconnection to: (1) Terminate the Balancing Authority Area (BAA)-related ancillary services (and associated worksheets in the Rate Formula Templates) for Regulation and Frequency Response Service, Operating Reserves—Spinning Reserve Service and Supplemental Reserve Service, Energy Imbalance Service (EI), and Generator Imbalance Service (GI); (2) Incorporate changes in the Rate Formula Templates to calculate the Annual Transmission Revenue Requirement (ATRR) for the Miles City Direct Current (DC) Tie for SPP's settlements purposes related to SPP's proposed DC Tie Access Charge;³ (3) Incorporate changes in the Rate Formula Templates to calculate the subtotals of the ATRR for the SPP West and East BAAs separately for SPP's settlements purposes; (4) Incorporate a new worksheet in the Rate Formula Templates to calculate the Incremental Market Efficiency Use⁴ (Incremental MEU) share for the Miles City DC Tie; (5) Incorporate changes in the Rate Formula Templates to calculate the ATRRs for SPP Base Plan Upgrades separately for SPP's settlements purposes in each of the SPP West and East BAAs; and (6) Update, as needed, the existing Rate Formula Templates to smooth the true-up process impacts, increase transparency, and incorporate the changes noted above. The proposed

formula rates will remain in effect for five years from the effective date, which with an effective date of April 1, 2026, will be March 31, 2031, or until WAPA changes the formula rates through another public rate process pursuant to 10 CFR part 903, whichever occurs first.

UGP is a Transmission Owner member of SPP pursuant to negotiated provisions in its SPP Membership Agreement, Bylaws, and SPP Tariff. Transmission and ancillary services are provided by SPP under the SPP Tariff for UGP's facilities transferred to the functional control of SPP. UGP has transmission facilities in both the Eastern and Western Interconnections separated by the Miles City DC Tie and the Fort Peck Power Plant substation. UGP currently operates its Western Area Power Administration, Upper Great Plains West (WAUW) BAA in the Western Interconnection as the Balancing Authority (BA) and has not previously placed the portion of its transmission system located in the Western Interconnection into SPP's Integrated Marketplace. However, with the planned SPP expansion of its RTO into the Western Interconnection, UGP will merge its WAUW BAA into the SPP West BAA and discontinue its current role as a BA. UGP will also place its remaining transmission system and other generation and load located in the Western Interconnection (in the existing WAUW BAA footprint) into SPP's Integrated Marketplace on the effective date of UGP's expanded participation in SPP in the Western Interconnection.

The proposed formula rates will provide sufficient revenue to recover annual operation, maintenance, replacement, and interest expense while ensuring repayment of the project within the cost recovery criteria set forth in Department of Energy (DOE) Order RA 6120.2. For more information on the proposed rates, please see the customer rate brochure located on UGP's OASIS website, on UGP's Rates website, and on SPP's Member Related Postings website (see web addresses listed previously).

Proposed Transmission Formula Rates

UGP proposes changes to its current formula rate calculation methodology for its ATRR, currently provided under Rate Schedule WAUGP-ATRR. These changes will more clearly, transparently, and separately document UGP's facilities in the Western Interconnection, the Eastern Interconnection, and at the Miles City DC Tie and associated subtotals of the overall ATRR for each of these sub-sets of facilities. SPP will utilize these ATRR subtotals, along with zonal and regional

load and other applicable information, to calculate the applicable charges and revenue distribution for SPP transmission service under the SPP Tariff.

Consistent with UGP's current formula rates, UGP proposes to continue recovering transmission-related expenses and investments on a forward-looking basis by using projections to estimate transmission costs for the upcoming year, with a true-up of incurred costs in a subsequent year. Transmission-related annual costs include operation and maintenance, administrative and general costs, interest, and depreciation. The annual costs will be reduced by applicable revenue credits received by UGP under the SPP Tariff.

Revenue requirement data will be submitted to SPP in standard formula rate templates with costs classified as either "Zonal" or "Regional," applying the definitions in the SPP Tariff. "Zonal" costs are those that meet certain criteria and are recovered within the local pricing zone, while "Regional" costs are those meeting certain criteria eligible to be recovered across SPP's applicable West or East BAA, dependent upon where the transmission upgrade is located in the Western or Eastern Interconnection for SPP's settlement purposes under the SPP Tariff. The Formula Rate Template for UGP ATRR and related information will be posted on UGP's OASIS website, on UGP's Rates website, and on SPP's Member Related Postings website (see web addresses listed previously).

Proposed Miles City DC Tie Incremental Market Efficiency Use Share Formula Rate

In its FERC filing for the proposed expansion of the RTO into the Western Interconnection, SPP proposes to expand its Integrated Marketplace across the seam between the Eastern and Western Interconnections by including the West DC Ties⁵ into the Integrated Marketplace 5-minute market dispatch. To enable this market dispatch between the Eastern and Western Interconnections, SPP included a new Section 8.11 to Attachment AE of the SPP Tariff for the calculation of the Incremental MEU amounts. The

³ "DC Tie Access Charge: A charge on a transmission reservation utilizing a West DC Tie that sinks outside of the Zone where the West DC Tie is located. The Transmission Customer shall be responsible for DC Tie Access Charge determined in accordance with Schedule 14." (SPP Proposed Tariff at Part I, Section 1, D Definitions.)

⁴ "Incremental Market Efficiency Use (Incremental MEU) Charge: A market recovery mechanism to compensate West DC Tie Transmission Owners for the expected loss of life of certain West DC Tie facilities due to increased utilization of the West DC Ties by the Integrated Marketplace." (SPP Proposed Tariff at Part I, Section 1, I Definitions.)

⁵ "West DC Ties: A direct current interconnection between the Eastern Interconnection and Western Interconnection for which the DC Tie Access Charge and the Incremental Market Efficiency Use Charge may be applicable. In the Integrated Marketplace, the West DC Ties will be Non-Biddable Locations that will be used in the settlements in the TCR [Transmission Congestion Rights] Markets. The West DC Ties are Miles City, Stegall, or Sidney." (SPP Proposed Tariff at Part I, Section W Definitions.)

Incremental MEU compensates each West DC Tie Transmission Owner for the expected loss of life of that owner's West DC Tie facilities due to increased utilization of the West DC Ties by the Integrated Marketplace.

For SPP to compensate UGP as a West DC Tie Transmission Owner of the Miles City DC Tie for Incremental MEU under SPP's Tariff, UGP proposes to provide its Miles City DC Tie Incremental MEU share under Rate Schedule UGP-DCTIE-IMEU. SPP will utilize this Miles City DC Tie Incremental MEU share along with other applicable information to calculate the amount to be paid to UGP for the expected loss of life of certain Miles City DC Tie facilities due to increased utilization of those West DC Tie facilities by SPP in the Integrated Marketplace.

To simplify the calculation of the Incremental MEU and provide a consistent forward-looking known amount to be included in the market uplift, a loss-of-life will be estimated for each of the eligible groups of West DC Tie equipment due to expected market operation impacts, and a leveled annual estimate will be provided to SPP. The loss-of-life calculations will be based upon pre-defined impact metrics directly related to the increased market use for each of the West DC Tie equipment groups eligible for cost recovery. Revenue received from SPP for UGP's Miles City DC Tie Incremental MEU share will be credited against the Miles City DC Tie portion of the UGP ATRR described above.

The Miles City DC Tie Incremental MEU share data will be submitted to SPP in a standard formula rate template in accordance with the new SPP Tariff Attachment AE, Addendum 3A. The Formula Rate Template for the Miles City DC Tie Incremental MEU share will be posted on UGP's OASIS website, on UGP's Rates website, and on SPP's Member Related Postings website (see web addresses listed previously).

Proposed Formula Rate for Scheduling, System Control, and Dispatch Service

UGP proposes to continue to use its current formula rate calculation methodology for Scheduling, System Control, and Dispatch Service (SSCD), currently provided under Rate Schedule WAUGP-AS1. This rate schedule will continue to include transmission facilities in the Western Interconnection. The Formula Rate Template for SSCD and related information will be posted on UGP's OASIS website, on UGP's Rates website, and on SPP's Member Related Postings

website (see web addresses listed previously).

Formula Rate Implementation Protocols

For transmission service provided by SPP under SPP's Tariff, UGP will continue to provide information relating to UGP's rate implementation and annual update procedures and timelines in "Formula Rate Implementation Protocols" (Protocols). The Protocols, together with the above-mentioned formula rate templates, comprise the Formula Rates that will be submitted to SPP to be incorporated into the SPP Tariff. All relevant information pertaining to UGP's annual updates, customer notifications and review periods, and meetings will be contained in the Protocols. The Protocols will be posted on UGP's OASIS website, on UGP's Rates website, and on SPP's Member Related Postings website (see web addresses listed previously).

Proposed Termination of Regulation and Frequency Response Service Formula Rate

UGP proposes to terminate its current formula rate calculation methodology for Regulation and Frequency Response Service (Regulation), currently provided under Rate Schedule WAUW-AS3. This rate schedule addresses Regulation associated with UGP's WAUW BAA in the Western Interconnection. Given the SPP Integrated Marketplace will extend into the Western Interconnection, and UGP will merge its WAUW BAA into the SPP West BAA, UGP will no longer provide Regulation in the WAUW BAA as the BA.

Proposed Termination of Operating Reserves Service-Spinning and Supplemental Formula Rates

UGP proposes to terminate its current formula rate calculation methodology for Operating Reserve-Spinning Reserve Service and for Operating Reserve-Supplemental Reserve Service (collectively, Operating Reserves), currently provided under Rate Schedules WAUW-AS5 and WAUW-AS6, respectively. These rate schedules address Operating Reserves associated with UGP's WAUW BAA in the Western Interconnection. Given the SPP Integrated Marketplace will extend into the Western Interconnection, and UGP will merge its WAUW BAA into the SPP West BAA, UGP will no longer provide Operating Reserves in the WAUW BAA as the BA.

Proposed Termination of Energy Imbalance and Generator Imbalance Service Formula Rates

UGP proposes to terminate its current formula rate calculation methodologies for EI, currently provided under Rate Schedule WAUW-AS4, and GI, currently provided under Rate Schedule WAUW-AS7. These rate schedules address Energy Imbalance and Generator Imbalance associated with UGP's WAUW BAA in the Western Interconnection. Given that the SPP Integrated Marketplace will extend into the Western Interconnection, and UGP will merge its WAUW BAA into the SPP West BAA, UGP will no longer provide Energy Imbalance and Generator Imbalance in the WAUW BAA as the BA.

Legal Authority

DOE procedures for public participation in power and transmission rate adjustments are located at 10 CFR part 903. The proposed action is a major rate adjustment, as defined by 10 CFR 903.2(d). In accordance with 10CFR 903.15(a) and 10CFR 903.16(a), UGP will hold public information and public comment forums for this rate adjustment. UGP will review and consider all timely public comments at the conclusion of the consultation and comment period and adjust the proposal as appropriate. The rates will then be approved on an interim basis.

WAPA is establishing the formula rates for UGP in accordance with section 302 of the DOE Organization Act (42 U.S.C. 7152).⁶

By Delegation Order No. S1-DEL-RATES-2016, effective November 19, 2016, the Secretary of Energy delegated: (1) the authority to develop power and transmission rates to the WAPA Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, or to remand or disapprove such rates, to FERC. By Delegation Order No. S1-DEL-S3-2024, effective August 30, 2024, the Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the

⁶ This Act transferred to, and vested in, the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s); and other acts that specifically apply to the projects involved.

Under Secretary for Infrastructure. By Redesignation Order No.S3–DEL–WAPA1–2023, effective April 10, 2023, the Under Secretary for Infrastructure further redelegated the authority to confirm, approve, and place such rates into effect on an interim basis to WAPA’s Administrator.

Availability of Information

All brochures, studies, comments, letters, memorandums, or other documents that UGP initiates or uses to develop the proposed formula rates are available for inspection and copying at the Upper Great Plains Regional office located at 2900 4th Ave. North, 6th Floor, Billings, Montana. Many of these documents and supporting information are also available on UGP’s Rates website at: www.wapa.gov/about-wapa/regions/ugp/ugp-rates and other posting locations noted.

Ratemaking Procedure Requirements

Environmental Compliance

WAPA is in the process of determining whether an environmental assessment or an environmental impact statement should be prepared or if this action can be categorically excluded from those requirements.⁷

Determination Under Executive Order 12866

WAPA has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Signing Authority

This document of the Department of Energy was signed on December 19, 2024, by Tracey A. LeBeau, Administrator, Western Area Power Administration, pursuant to delegated authority from the Secretary of Energy. That document, with the original signature and date, is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

⁷ In compliance with the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321–4347; the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021).

Signed in Washington, DC, on December 19, 2024.

Jennifer Hartzell,

*Alternate Federal Register Liaison Officer,
U.S. Department of Energy.*

[FR Doc. 2024–30858 Filed 12–27–24; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2022–0174; FRL 12525–01–OLEM]

Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention; Final Action on Petition for Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action denying petition for reconsideration.

SUMMARY: The U.S. Environmental Protection Agency (EPA) received a petition for reconsideration of the final revisions to the Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention, published in the **Federal Register** on March 11, 2024. The agency is providing notice that it is denying the petition for reconsideration. The basis for EPA’s action is set out fully in a letter addressed to the petitioner, available in the rulemaking docket.

DATES: December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Kristina Guarino, United States Environmental Protection Agency, Office of Land and Emergency Management, 1200 Pennsylvania Ave. NW (Mail Code 5104A), Washington, DC 20460; telephone number: (202) 566–1235; email address: guarino.kristina@epa.gov.

SUPPLEMENTARY INFORMATION:

I. How can I get copies of this document and other related information?

A copy of this **Federal Register** notice, the petition for reconsideration, and the letter describing the full basis for this action are available in the rulemaking docket (Docket ID No. EPA–HQ–OLEM–2022–0174). Publicly available docket materials are available electronically through www.regulations.gov. In addition, following signature, an electronic copy of this final action and the letter will be available on the internet at [https://www.epa.gov/rmp/risk-management-](https://www.epa.gov/rmp/risk-management-program-safer-communities-chemical-accident-prevention-final-rule)

[program-safer-communities-chemical-accident-prevention-final-rule](https://www.epa.gov/rmp/risk-management-program-safer-communities-chemical-accident-prevention-final-rule). Publicly available docket materials are available either electronically at <https://www.regulations.gov> or in hard copy at the Environmental Protection Agency, EPA Docket Center, William Jefferson Clinton West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. For further information on EPA Docket Center services and the current status, please visit <https://www.epa.gov/dockets>.

II. Judicial Review

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by the EPA. This section provides, in part, that “a petition for review of action of the Administrator in promulgating . . . any standard of performance or requirement under section [111] of [the CAA],” or any other “nationally applicable” final action, “may be filed only in the United States Court of Appeals for the District of Columbia.” The EPA has determined that its action denying the petition for reconsideration is nationally applicable for purposes of CAA section 307(b)(1) because the action directly relates to the Risk Management Program regulations promulgated under CAA section 112(r), which are nationally applicable requirements. Thus, any petition for review of the final letter denying the petition for reconsideration must be filed in the Court of Appeals for the District of Columbia Circuit on or before February 28, 2025.

Michael S. Regan,
Administrator.

[FR Doc. 2024–31216 Filed 12–27–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Appointment of Board Member to the Federal Accounting Standards Advisory Board

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that David Vaudt has been appointed to the Federal Accounting Standards Advisory Board (FASAB or “the Board”). Mr. Vaudt’s five-year term will begin on January 27, 2025.

ADDRESSES: The news release is available on the FASAB website at <https://www.fasab.gov/news-releases/>. Copies can be obtained by contacting FASAB at (202) 512-7350.

FOR FURTHER INFORMATION CONTACT: Ms. Monica R. Valentine, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548, or call (202) 512-7350.

Authority: 31 U.S.C. 3511(d); Federal Advisory Committee Act, 5 U.S.C. 1001-1014.

Dated: December 20, 2024.

Monica R. Valentine,
Executive Director.

[FR Doc. 2024-31253 Filed 12-27-24; 8:45 am]

BILLING CODE 1610-02-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-1328; FR ID 270090]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written PRA comments should be submitted on or before February 28, 2025. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email PRA@fcc.gov and to nicole.ongele@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418-2991.

SUPPLEMENTARY INFORMATION: The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

OMB Control Number: 3060-1328.

Title: Participation Information Collection for the IoT Labeling Program.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents and Responses: 332 respondents; 3,150 responses.

Estimated Time per Response: 20 hours.

Frequency of Response: One-time and on occasion reporting requirements; recordkeeping requirements.

Obligation to Respond: Voluntary. Statutory authority for this collection is contained in 1, 2, 4(i), 4(n), 302, 303(r), 312, 333, and 503, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(n), 302a, 303(r), 312, 333, 503; the IoT Cybersecurity Improvement Act of 2020, 15 U.S.C. 278g-3a to 278g-3e.

Total Annual Burden: 43,100 hours.

Total Annual Cost: No Cost.

Needs and Uses: The Commission seeks to revise this collection to reflect changes to these rules adopted by the Commission in a Public Notice on September 10, 2024 (opening an application filing window and adopting for Cybersecurity Label Administrator (CLA) and Lead Administrator). The FCC's consumer IoT cybersecurity labeling program will provide consumers with easily understood, accessible information on the relative security of a consumer IoT product they are considering for purchase, which will increase the security of devices consumers bring into their homes and as part of a national IoT ecosystem. CLAs will be authorized by the Commission to certify use of the FCC IoT Label, which includes the U.S. government certification mark (U.S. Cyber Trust Mark), by manufacturers whose products are found to be in compliance with the Commission's IoT

cybersecurity labeling program rules. The September 2024 Public Notice adopted rules for the CLAs and the Lead Administrator to reduce the risk of unauthorized access, use, disclosure, disruption, modification, or destruction of program data. Under this collection, each CLA will be required to create, update, and implement a cybersecurity risk management plan identifying the cyber risks that the entity faces, the controls used to mitigate those risks, and the steps taken to ensure that these controls are applied effectively to their operations. The plan must also describe how the CLA employs its organizational resources and processes to ensure the confidentiality, integrity, and availability of its information and information systems. The CLA's cybersecurity risk management plan must be available to the Commission upon request.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024-31013 Filed 12-27-24; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Community Reinvestment Act Regulations Asset-Size Thresholds

AGENCY: Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC).

ACTION: Announcement of 2025 asset-size thresholds.

SUMMARY: Under their Community Reinvestment Act (CRA) regulations, the Board and the FDIC (collectively, the Agencies) annually adjust the asset-size thresholds used to define "small bank" and "intermediate small bank." As required by the CRA regulations, the adjustment to the threshold amounts is based on the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). Applying this annual inflation adjustment methodology, the Agencies are announcing that, from January 1, 2025, through December 31, 2025, "small bank" will mean a bank that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.609 billion; and "intermediate small bank" will mean a small bank with assets of at least \$402 million as of December 31 of both of the prior two calendar years and less than \$1.609 billion as of December 31 of either of the prior two calendar years.

DATES: These asset-size thresholds are in effect from January 1, 2025, through December 31, 2025.

FOR FURTHER INFORMATION CONTACT:

Board: Amal S. Patel, Senior Counsel, Division of Consumer and Community Affairs; or Sumeet Shroff, Counsel, or Cody Gaffney, Counsel, Legal Division, Board of Governors of the Federal Reserve System at (202) 452-2412. For the hearing impaired and users of Telecommunications Device for the Deaf (TDD) and TTY-TRS, please call 711 from any telephone, anywhere in the United States.

FDIC: Patience R. Singleton, Senior Policy Analyst, Supervisory Policy Branch, Division of Depositor and Consumer Protection, (202) 898-6859, psingleton@fdic.gov; Cassandra Duhaney, Counsel, (202) 898-6804, cduhaney@fdic.gov; or Alys V. Brown, Senior Attorney, (202), 898-3565, alybrown@fdic.gov, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Community Reinvestment Act Asset-Size Thresholds

Under the current CRA regulations,¹ “small bank” means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.564 billion; and “intermediate small bank” means a small bank with assets of at least \$391 million as of December 31 of both of the prior two calendar years and less than \$1.564 billion as of December 31 of either of the prior two calendar years.² Pursuant to the annual inflation adjustment methodology described below, the Agencies are announcing that from January 1, 2025, through December 31, 2025, “small bank” will mean a bank that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.609 billion; and “intermediate small bank” will mean a small bank with assets of at least \$402 million as of

December 31 of both of the prior two calendar years and less than \$1.609 billion as of December 31 of either of the prior two calendar years.³

Calculation Methodology

The Agencies’ CRA regulations establish CRA performance standards for small banks and intermediate small banks. The CRA regulations define small and intermediate small banks by reference to asset-size criteria expressed in dollar amounts, and they further require the Agencies to publish annual adjustments to these dollar figures based on the year-to-year change in the average of the CPI-W, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million.⁴ This adjustment formula was first adopted for CRA purposes by the Agencies and the OCC in 2005.⁵

During the 12-month period ending November 2024, the CPI-W increased by 2.91 percent. Because the year-to-year change in the CPI-W was non-zero, the Agencies are making this annual adjustment. Beginning January 1, 2025, banks that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.609 billion are small banks. Small banks with assets of at least \$402 million as of December 31 of both of the prior two calendar years and less than \$1.609 billion as of December 31 of either of the prior two calendar years are intermediate small banks.

The Agencies publish current and historical asset-size thresholds on the

³ Historically, the Agencies have announced these annual inflation adjustments via rulemakings that amend the “small bank” and “intermediate small bank” definitions in their CRA regulations. *See, e.g.*, 88 FR 87895 (Dec. 20, 2023) (implementing annual inflation adjustments for 2024). However, because the eCFR has been updated to reflect the text of the October 2023 final rule, and because the October 2023 final rule is currently enjoined, the Agencies have determined that this document (rather than a rulemaking) is the best vehicle for announcing the annual inflation adjustments for 2025. Once the litigation is resolved, the Agencies expect to resume their historical practice of announcing these annual inflation adjustments via rulemakings. The OCC adjusts the asset-size criteria for institutions that are subject to OCC-issued CRA regulations, including national banks and Federal and State savings associations, separately from the Agencies.

⁴ *See* 12 CFR 228.12(u)(2) and 345.12(u)(2) of the current CRA regulations.

⁵ *See* 70 FR 44256 (Aug. 2, 2005). Subsequently, the Office of Thrift Supervision (OTS), the agency then responsible for regulating savings associations, adopted an annual inflation adjustment methodology consistent with that of the Agencies and the OCC for its CRA regulations, previously set forth at 12 CFR part 563e. *See* 72 FR 13429 (Mar. 22, 2007). The Dodd-Frank Wall Street Reform and Consumer Protection Act transferred CRA rulemaking authority for Federal and State savings associations from the OTS to the OCC. *See* 12 U.S.C. 5412.

website of the Federal Financial Institutions Examination Council.⁶

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on December 15, 2024.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024-30849 Filed 12-27-24; 8:45 am]

BILLING CODE 6210-01-P; 6714-01-P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreement to the Secretary by email at Secretary@fmc.gov, or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreement are available through the Commission’s website (www.fmc.gov) or by contacting the Office of Agreements at (202)-523-5793 or tradeanalysis@fmc.gov.

Agreement No.: 201438.

Agreement Name: Maesk/HL Mediterranean Vessel Sharing Agreement.

Parties: Maersk A/S; Hapag-Lloyd AG.

Filing Party: Wayne Rohde, Cozen O’Connor.

Synopsis: The Agreement authorizes the Parties to share vessels in the trades between the U.S. East Coast on the one hand and ports in Turkey, Italy, and Morocco on the other hand.

Proposed Effective Date: 1/27/2025.

Location: <https://www2.fmc.gov/FMC/Agreements/Web/Public/AgreementHistory/87583>.

Agreement No.: 201439.

Agreement Name: Hapag-Lloyd/ZIM Med-North America/Jamaica Slot Exchange and Slot Charter Agreement.

Parties: Hapag Lloyd AG; ZIM Integrated Shipping Services Ltd.

⁶ *See* <https://www.ffiec.gov/cra/examinations.htm> (“Current and Historical Asset-Size Thresholds and Examples”).

¹ In October 2023, the Agencies and the Office of the Comptroller of the Currency (OCC) jointly issued a final rule to strengthen and modernize their Community Reinvestment Act regulations. *See* 89 FR 6574 (Feb. 1, 2024). Although the final rule was intended to take effect on April 1, 2024, the final rule has been challenged in litigation, and the final rule is currently enjoined. As such, the legacy CRA regulations (referred to in this notice as the “current CRA regulations”) remain in effect. The text of the current CRA regulations may be found: (i) in the 2022, 2023, or 2024 bound versions of title 12 of the Code of Federal Regulations; (ii) in the historical version of the Electronic Code of Federal Regulations (eCFR) as of March 29, 2024; or (iii) in appendix G of the final rule, as published in the eCFR on February 1, 2024.

² *See* 12 CFR 228.12(u)(1) and 345.12(u)(1) of the current CRA regulations.

Filing Party: Wayne Rohde, Cozen O'Connor.

Synopsis: The Agreement authorizes the parties to exchange slots and charter space on their respective services in the trades between the U.S. East Coast on the one hand and ports in Greece, Israel, Italy, Jamaica, Morocco, Spain, and Turkey on the other hand.

Proposed Effective Date: 01/27/2025.

Location: <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/87584>.

Agreement No.: 201429-001.

Agreement Name: Gemini Cooperation Agreement.

Parties: Hapag Lloyd AG; Hapag-Lloyd USA, LLC; Maersk A/S.

Filing Party: Wayne Rohde, Cozen O'Connor.

Synopsis: The amendment revises Articles 5.A.2(f) and 12.2(d) to clarify the use of space to transport preference cargoes.

Proposed Effective Date: 1/27/2025.

Location: <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/86566>.

Agreement No.: 201440.

Agreement Name: North Europe-USEC Vessel Sharing Agreement.

Parties: CMA CGM S.A.; COSCO SHIPPING Lines Co., Ltd.; Evergreen Marine (U.K.) Limited; Ocean Network Express Pte. Ltd.; Orient Overseas Container Line Limited; OOCL (Europe) Limited.

Filing Party: Joshua Stein, Cozen O'Connor.

Synopsis: The purpose of this Agreement is to authorize the Parties to charter and exchange space on one another's vessels and to coordinate and cooperate with respect to the Parties' transportation services and operations in the trades between, on the one hand, ports in North Europe (including Belgium, France, Germany, United Kingdom, and Netherlands), and on the other hand, Mexico and U.S. ports in the Atlantic coast range.

Proposed Effective Date: 01/30/2025.

Location: <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/87586>.

Agreement No.: 201441.

Agreement Name: ONE/CMA CGM AL5-California Bridge Vessel Sharing Agreement.

Parties: CMA CGM S.A.; Ocean Network Express Pte. Ltd.

Filing Party: Joshua Stein, Cozen O'Connor.

Synopsis: The Agreement authorizes the parties to share vessels in the trade between ports on the U.S. East Coast/ Gulf and the U.S. West Coast on the one hand and ports in the United Kingdom,

Germany, France, the Netherlands, Belgium, Colombia, Panama, and Dominican Republic on the other.

Proposed Effective Date: 02/01/2025.

Location: <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/87587>.

Agreement No.: 201442.

Agreement Name: ONE to YML AP1 Slot Charter Agreement.

Parties: Ocean Network Express Pte. Ltd.; Yang Ming Marine Transport Corporation & Yangming (UK) Ltd.

Filing Party: Joshua Stein, Cozen O'Connor.

Synopsis: The Agreement authorizes ONE to charter space to YML in the ports in China, Taiwan and Vietnam on the one hand and ports on the U.S. West Coast on the other hand.

Proposed Effective Date: 02/02/2025.

Location: <https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/87588>.

Dated: December 20, 2024.

Jennifer Everling,

Assistant Secretary.

[FR Doc. 2024-31056 Filed 12-27-24; 8:45 am]

BILLING CODE 6730-02-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of a Sole Source Cooperative Agreement To Fund Burkina Faso Ministry of Health, Direction of Disease Control Epidemics and Pandemics (DLMEP), Pasteur Institute of Ivory Coast (ICPI), National Public Health Institute of Liberia (NPHIL), Nigeria Center for Disease Control (NCDC), Senegal Ministry of Health and Social Action, and Sierra Leone Ministry of Health (MoH)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces seven separate awards to fund Burkina Faso Ministry of Health, Direction of Disease Control Epidemics and Pandemics in Cameroon, Pasteur Institute of Ivory Coast in Cote d'Ivoire, National Public Health Institute of Liberia in Liberia, Nigeria Center for Disease Control in Nigeria, Senegal Ministry of Health and Social Action in

Senegal, and Ministry of Health in Sierra Leone. For Burkina Faso Ministry of Health, the award is for approximately \$1,000,000, with an expected total funding of approximately \$5,000,000. For Direction of Disease Control Epidemics and Pandemics, the award is for approximately \$500,000, with an expected total funding of approximately \$2,500,000. For Pasteur Institute of Ivory Coast (ICPI), the award is for approximately \$2,000,000, with an expected total funding of approximately \$10,000,000. For National Public Health Institute of Liberia (NPHIL), the award is for approximately \$1,000,000 with an expected total funding of approximately \$5,000,000. For Nigeria Center for Disease Control (NCDC), the award is for approximately \$500,000 with an expected total funding of approximately \$2,500,000. For Senegal Ministry of Health and Social Action, the award is for approximately \$500,000 with an expected total funding of approximately \$2,500,000. For Sierra Leone Ministry of Health (MoH), the award is for approximately \$1,000,000, with an expected total funding of approximately \$5,000,000. The total 5-year period amount for the seven recipients is \$32,500,000, subject to the availability of funds. The awards will protect Americans and people worldwide from public health threats by building capacity within their respective countries to strengthen public health preparedness; early pathogen detection to mitigate the impact of global disease outbreaks and public health; and bolstering rapid response to global health emergencies.

DATES: The period for these awards will be September 30, 2025 through September 29, 2030.

FOR FURTHER INFORMATION CONTACT: Broderick Yoerg, Division of Global Health Protection, Global Health Center, Centers for Disease Control and Prevention, 1600 Clifton Rd., Atlanta, GA 30329, Telephone: (404) 234-0666, Email: DGHPNOFOs@cdc.gov.

SUPPLEMENTARY INFORMATION: The sole source award will provide support around disease surveillance and outbreak response, including establishing routine surveillance and developing information technology tools and systems. Broad areas of support include, but are not limited to: emergency management, ensuring countries have the knowledge and resources they need, including emergency operations centers that can mount a fast, coordinated response when outbreaks happen; safe laboratory systems and diagnostics, building the capacity to identify disease threats close

to the source and inform decision-making; and developing the workforce, training frontline responders, laboratorians, disease detectives, emergency managers, and other health professionals who are responsible for taking the lead when crisis strikes.

These are the only entities that can carry out this work, as they are in a unique position to conduct this work as host government ministries of health. They have the authority to support health service delivery through capacity building and oversee the national coordination of surveillance, preparedness, prevention, and response activities to all forms of health threats and public health emergencies.

Summary of the Award

Recipient: Burkina Faso Ministry of Health, Direction of Disease Control Epidemics and Pandemics, Pasteur Institute of Ivory Coast, National Public Health Institute of Liberia, Nigeria Center for Disease Control, Senegal Ministry of Health and Social Action, and Sierra Leone Ministry of Health.

Purpose of the Award: The purpose of these awards is to support disease surveillance and outbreak response, emergency management, safe laboratory systems and diagnostics and developing the public health workforce in Burkina Faso, Cameroon, Cote d'Ivoire, Liberia, Nigeria, Senegal, and Sierra Leone.

Amount of Award: For Burkina Faso Ministry of Health, the award is for approximately \$1,000,000 in Federal Fiscal Year (FFY) 2025, with an expected total funding of approximately \$5,000,000 for the 5-year period of performance, subject to availability of funds. For Direction of Disease Control Epidemics and Pandemics (DLMEP), the award is for approximately \$500,000 in Federal Fiscal Year (FFY) 2025, with an expected total funding of approximately \$2,500,000 for the 5-year period of performance, subject to availability of funds. For Pasteur Institute of Ivory Coast (IPCI), the award is for approximately \$2,000,000 in Federal Fiscal Year (FFY) 2025, with an expected total funding of approximately \$10,000,000 for the 5-year period of performance, subject to availability of funds. For National Public Health Institute of Liberia (NPHIL), the award is for approximately \$1,000,000 in Federal Fiscal Year (FFY) 2025, with an expected total funding of approximately \$5,000,000 for the 5-year period of performance, subject to availability of funds. For Nigeria Center for Disease Control (NCDC), the award is for approximately \$500,000 in Federal Fiscal Year (FFY) 2025, with an expected total funding of approximately

\$2,500,000 for the 5-year period of performance, subject to availability of funds. For Senegal Ministry of Health and Social Action, the award is for approximately \$500,000 in Federal Fiscal Year (FFY) 2025, with an expected total funding of approximately \$2,500,000 for the 5-year period of performance, subject to availability of funds. For Sierra Leone Ministry of Health (MoH), the award is for approximately \$1,000,000 in Federal Fiscal Year (FFY) 2025, with an expected total funding of approximately \$5,000,000 for the 5-year period of performance, subject to availability of funds.

Authority: This program is authorized under Section 307 of the Public Health Service Act [42 U.S.C. 242] and Section 301(a) [42 U.S.C. 241(a)] of the Public Health Service Act.

Period of Performance: September 20, 2025 through September 29, 2030.

Dated: December 17, 2024.

Terrance Perry,

*Acting Director, Office of Grants Services,
Centers for Disease Control and Prevention.*

[FR Doc. 2024–31200 Filed 12–27–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of a Sole Source Cooperative Agreement To Fund Guinea Agence Nationale de Sécurité Sanitaire (ANSS), Kementerian Kesehatan RI, Pakistan National Institute of Health, and Tanzania Ministry of Health (MoH)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces four separate awards to fund Agence Nationale de Sécurité Sanitaire, Kementerian Kesehatan RI, Pakistan National Institute of Health, and Tanzania Ministry of Health. For Guinea Agence Nationale de Sécurité Sanitaire, the award is for approximately \$2,000,000, with an expected total funding of approximately \$10,000,000. For Kementerian Kesehatan RI, the award is for approximately \$1,500,000, with an expected total funding of approximately \$7,500,000. For Pakistan National Institute of Health, the award

is for approximately \$700,000, with an expected total funding of approximately \$3,500,000. For Tanzania Ministry of Health, the award is for approximately \$2,000,000, with an expected total funding of approximately \$10,000,000. The total 5-year period amount for the four recipients is \$31,000,000. The awards will protect Americans and people worldwide from public health threats by building capacity within their respective countries to strengthen public health preparedness; early pathogen detection to mitigate the impact of global disease outbreaks and public health; and bolstering rapid response to global health emergencies.

DATES: The period for these awards will be September 30, 2025 through September 29, 2030.

FOR FURTHER INFORMATION CONTACT:

Broderick Yoerg, Division of Global Health Protection, Global Health Center, Centers for Disease Control and Prevention, 1600 Clifton Rd, Atlanta, GA 30329, Telephone: (404) 234–0666, Email: DGHPNFOs@cdc.gov.

SUPPLEMENTARY INFORMATION: The sole source award will provide support around disease surveillance and outbreak response, including establishing routine surveillance and developing information technology tools and systems. Broad areas of support include, but are not limited to: emergency management, ensuring countries have the knowledge and resources they need, including emergency operations centers that can mount a fast, coordinated response when outbreaks happen; safe laboratory systems and diagnostics, building the capacity to identify disease threats close to the source and inform decision-making; and developing the workforce, training frontline responders, laboratorians, disease detectives, emergency managers, and other health professionals who are responsible for taking the lead when crisis strikes.

These are the only entities that can carry out this work as they are in a unique position to conduct this work as host government ministries of health. They have the authority to support health service delivery through capacity building and oversee the national coordination of surveillance, preparedness, prevention, and response activities to all forms of health threats and public health emergencies.

Summary of the Award

Recipient: Guinea Agence Nationale de Sécurité Sanitaire, Ministry of Health Indonesia, Pakistan National Institute of Health, and Ministry of Health Tanzania.

Purpose of the Award: The purpose of these awards is to support disease surveillance and outbreak response, emergency management, safe laboratory systems and diagnostics and developing the public health workforce in Guinea, Indonesia, Pakistan, and Tanzania.

Amount of Award: For Guinea Agence Nationale de Securite Santiare, the award is for approximately \$2,000,000 in Federal Fiscal Year (FFY) 2025, with an expected total funding of approximately \$10,000,000 for the, 5-year period of performance, subject to availability of funds. For Kementerian Kesehatan RI, the award is for approximately \$1,500,000 in Federal Fiscal Year (FFY) 2025, with an expected total funding of approximately \$7,500,000 for the 5-year period of performance, subject to availability of funds. For Pakistan National Institute of Health, the award is for approximately \$700,000 in Federal Fiscal Year (FFY) 2025, with an expected total funding of approximately \$3,500,000 for the 5-year period of performance, subject to availability of funds. For Ministry of Health Tanzania, the award is for approximately \$2,000,000 in Federal Fiscal Year (FFY) 2025, with an expected total funding of approximately \$10,000,000 for the 5-year period of performance, subject to availability of funds.

Authority: This program is authorized under Section 307 of the Public Health Service Act [42 U.S.C. 242] and Section 301(a) [42 U.S.C. 241(a)] of the Public Health Service Act.

Period of Performance: September 30, 2025 through September 29, 2030.

Dated: December 17, 2024.

Terrance Perry,

*Acting Director, Office of Grants Services,
Centers for Disease Control and Prevention.*

[FR Doc. 2024–31198 Filed 12–27–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of a Single Source Cooperative Agreement To Fund Ponce Health Sciences Foundation, Inc.

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and

Human Services (HHS), announces the award of approximately \$5,000,000, with an expected total funding of approximately \$25,000,000 over a 5-year period, to Ponce Health Sciences Foundation, Inc. The award will support surveillance and research studies for endemic and emerging arboviruses in Puerto Rico.

DATES: The period for this award will be 09/01/2025 through 08/31/2030.

FOR FURTHER INFORMATION CONTACT:

Gregory Anderson, MS, MPH, Scientific Review Officer, National Center for HIV, Viral Hepatitis, STD, and TB Prevention, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Mailstop H24–6, Atlanta, Georgia 30329–4027. Telephone: (404) 718–8833; Email: gca5@cdc.gov.

SUPPLEMENTARY INFORMATION: The single source award will strengthen an established research platform for arboviruses in hospital and community settings to identify emerging and endemic pathogens like dengue and Oropouche viruses, improve patient management, and evaluate prevention and control strategies. The core objectives include: 1) strengthen hospital surveillance of acute febrile illness (AFI); 2) maintain an AFI platform for conducting clinical research on special populations such as children and pregnant women; 3) maintain a community cohort to assess incidence and prevalence of arboviral infections and other AFIs, while also evaluate the effectiveness of vector control strategies; 4) strengthen the infrastructure for project data management and analysis; and 5) strengthen collaborations with the local government, community leaders, and other stakeholders to ensure continuity of the established program.

Ponce Health Sciences Foundation (PHSF), Inc. is in a unique position to conduct this work, as it is the only institution with the infrastructure, training, and established community trust to implement study objectives rapidly and effectively. It successfully implemented the Sentinel Enhanced Dengue Surveillance System (SEDSS) at the St. Luke's Episcopal Hospital (SLEH) in 2012 and Centro de Emergencia y Medicina Integrada (CEMI) in 2016 in Ponce, PR. PHSF successfully built and managed a community cohort of >3000 participants with annual visits and implemented interventions to evaluate efficacy of vector control techniques. PHSF has built long-standing relationships with the community stakeholders, which facilitates rapid implementation of public health programs and

interventions. In addition, it has the following: an extensive historical database and well-developed data management systems in place to handle the large volume of data generated by this work; a well-trained workforce familiar with the local epidemiology, cultural context, and public health challenges; and laboratories equipped to process arbovirus samples quickly and efficiently, with validated protocols and established quality control measures.

Summary of the Award

Recipient: Ponce Health Sciences Foundation, Inc.

Purpose of the Award: The purpose of this award is to support surveillance and research studies for endemic and emerging arboviruses in Puerto Rico.

Amount of Award: \$5,000,000 in Federal Fiscal Year (FFY) 2025 funds, with a total estimated \$25,000,000 for the five-year period of performance, subject to availability of funds.

Authority: This program is authorized under Public Health Service Act, sections 301(a) (42 U.S.C. 241) and 317(k)(2) (42 U.S.C. 247b), as amended.

Period of Performance: 09/01/2025 through 08/31/2030.

Dated: December 23, 2024.

Terrance Perry,

*Acting Director, Office of Grants Services,
Centers for Disease Control and Prevention.*

[FR Doc. 2024–31316 Filed 12–27–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of a Single Source Cooperative Agreement To Fund University of Oslo (UiO).

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces the award of approximately \$1,500,000, with an expected total funding of approximately \$7,500,000 over a 5-year period, to the University of Oslo (UiO). This award will protect Americans and people worldwide from public health threats by building capacity within their respective countries to strengthen public health preparedness; early pathogen detection to mitigate the impact of global disease outbreaks and

public health; and bolstering rapid response to global health emergencies.

DATES: The period for this award will be September 30, 2025 through September 29, 2030.

FOR FURTHER INFORMATION CONTACT: Broderick Yoerg, Division of Global Health Protection, Global Health Center, Centers for Disease Control and Prevention, 1600 Clifton Rd., Atlanta, GA 30329, Telephone: (404) 234-0666, Email: DGHPNOFOs@cdc.gov.

SUPPLEMENTARY INFORMATION: The single source award will enhance public health surveillance, outbreak detection and response for disease that pose global health security risks by delivering high-quality, effective, and timely informatics solutions to strengthen data and health information systems. This award will strengthen the core District Health Information System 2 (DHIS2) software, improve interoperability with laboratory information systems, and enhance electronic Integrated Disease Surveillance and Response's functionality in support Integrated Disease Surveillance and Response, National Disease Surveillance, and other types of public health surveillance systems.

University of Oslo is in a unique position to conduct this work, as it is the only organization that can modify and share the core DHIS2 software therefore, CDC can only work with them to provide enhancements that are then available to all countries, globally.

Summary of the Award

Recipient: University of Oslo.

Purpose of the Award: The purpose of this award is to support and further scale the DHIS2, an open-source software platform developed and maintained by UiO. The global strategy seeks to leverage the Health Information Systems Program (HISP) partnership network to collect, validate, analyze, visualize, and implement public health data, while building local capacity to strengthen health information systems in countries worldwide. This effort is expected to significantly strengthen global health surveillance systems, contribute to improved public health outcomes and respond more effectively to global health threats.

Amount of Award: \$1,500,000 in Federal Fiscal Year (FFY) 2025 funds, with a total estimated \$7,500,000 for the 5-year period of performance, subject to availability of funds.

Authority: This program is authorized under Section 307 of the Public Health Service Act [42 U.S.C. 242j] and Section 301(a) [42 U.S.C. 241](a) of the Public Health Service Act.

Period of Performance: September 30, 2025 through September 29, 2030.

Dated: December 17, 2024.

Terrance Perry,

Acting Director, Office of Grants Services, Centers for Disease Control and Prevention.

[FR Doc. 2024-31201 Filed 12-27-24; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity: Unaccompanied Children Bureau Assessments for Children and Sponsors (Office of Management and Budget #: 0970-NEW)

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), U.S. Department of Health and Human Services, is inviting public comments on the proposed information collection, including proposed changes. The request consists of several forms that will allow the Unaccompanied Children Bureau (UCB) to continue conducting statutorily mandated assessments of unaccompanied children in ORR care and custody as well as their sponsors. These assessments allow ORR to understand the status and needs of the child and their potential sponsor; assessment findings inform all decisions concerning the child's care while in ORR custody and eventual reunification with a sponsor.

DATES: *Comments due* February 28, 2025. In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described in this notice.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing infocollection@acf.hhs.gov. Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: ORR has undertaken a reorganization of its information collections to promote operational efficiency. The reorganization will result in more collections that contain fewer forms under a single Office of Management and Budget (OMB)

number. This request is to create a new information collection that contains forms associated with the provision of critical assessments to unaccompanied children and their sponsors. This information collection will contain seven forms transferred from one existing information collection and two new forms. The forms and the information collection under which they are currently approved are as follows:

- Services Provided to Unaccompanied Children (OMB #0970-0553)
 - Sponsor Assessment (Form S-5)
 - Adult Contact Profile (Form S-7)
 - Initial Intakes Assessment (Form S-8)
 - Assessment for Risk (Form S-9)
 - UC Assessment (Form S-11)
 - UC Case Review (Form S-12)
 - Individual Service Plan (Form S-13)
- Newly Developed Category 4 Initiative Forms:
 - Category 4 Reunification Case Review and Staffing (Form TBD-#)
 - Family Finding and Mobility Mapping (Form TBD-#)

These forms are completed by care provider case managers and clinicians at care provider facilities, and exclusively for the Sponsor Assessment (Form S-5), by unification specialists operating remotely. These forms assess the suitability of potential sponsors applying to reunify with an unaccompanied child; capture critical historical, biographic and medical data for children upon admission to the UCB care provider; assess the child for sexual abuse history and risk of abusive behavior towards others; review and update prior assessment data over time; and collaboratively identify potential sponsors for children without a viable sponsor (referred to as "Category 4" cases) utilizing child-friendly interactive techniques and extensive kinship network mapping. These forms are documentary in nature and a critical component of the child's case file. In addition to grouping forms related to Assessments together in this information collection, ORR is proposing the following revisions:

- Global Changes across all currently approved forms:
 - Replace "UC", "UAC", and "Minor" with "Child" or "Unaccompanied Child" wherever they appear
 - Update dropdown options for the "Gender" field, wherever it appears, to include male, female, and nonbinary
 - Replace "Primary" language with "Preferred"

- Simplify certain fields that capture both date and time to only capture the date when hour and minute of completion/certification is immaterial
- Include Physical Location of the Child field in the UC Basic Information section across all forms to conform with changes concurrently proposed in the Services Provided to Unaccompanied Children Information Collection (OMB# 0970–0553)
- Minor terminology edits to conform with UCB style guide standards as established in the UC Program Foundational Rule (45 CFR 410) as well as to improve clarity and consistency with other form titles and/or fields
- Add translator or interpreter certification to assessments requiring input directly from a child or sponsor, as relevant.
- **Sponsor Assessment (Form S–5):** Currently, there are two approved versions of this form—one for UC Portal and one for the UC Path system, which was never implemented. ORR plans to discontinue the UC Path version of this form, which was never deployed, and make the following revisions to the UC Portal version.
 - Add new Current Sponsor Status field to the Sponsor Assessment to provide a high-level progress status for each assessment to inform concurrent planning efforts to identify alternative sponsors and Case Review (Form S–12)
 - Add Date Sponsor Identified to Adult Contact Profile section to improve data tracking for program performance evaluation
 - Add “Mail—Letter from Unification Specialist” option to Sponsor Document Type dropdown menu in the document upload field
 - Revise “Substance Abuse Disclosed by Sponsor” under Criminal History and Background Checks Self Disclosure section to read “Legal issues related to drug or alcohol use (e.g., D.U.I, D.W.I, Possession, Manufacture, Distribution of controlled substances)” to better capture data concerning the sponsor’s risk profile
 - Add several questions to the Care Plan section of the form to document the sponsor’s awareness and ability to care for the child’s healthcare needs
 - Add functionality to add multiple adult caregivers to the Care Plan section of the form and identify one as the current or primary caregiver
- Add a sponsor-child debt attestation question to the Trafficking and Fraud section of the form to document the sponsor’s understanding and intent to comply with ORR policy prohibiting the sponsor from seeking or collecting any financial remuneration from the child or their family or encouraging the child to work counter to child labor laws or without a legal permit
- Rename “Summary Case Manager Assessment Tab” to “Sponsor Assessment Summary Tab” to reflect inclusion of the Unification Specialist role and emphasize that the summary step before certification of the form
- Add Unification Specialist role, contact information, and recommendation fields to the “Summary Sponsor Assessment” section
- Add an open text field that is triggered by conditional logic when the assessment is completed outside of the five-calendar day deadline, prompting the respondent to indicate a reason for the delay
- Adjust the burden estimate to account for an increase in the number of children placed in ORR care thus increasing the number of potential sponsors assessed, reflect that the form is completed by four different groups of respondents, and to reflect a slight increase in the overall number of fields the respondents will need to complete. The annual number of Case Manager respondents increased from 216 to 300. The annual number of Unification Specialist respondents is estimated to be approximately 680, the annual number of Interpreter respondents is estimated to be 300; and the number of sponsors expected to participate in the assessment is expected to increase from 57,195 to 98,185. The annual number of responses per respondent changed as follows: the number of responses per sponsor remains unchanged at 1; the number of responses per Case Manager is expected to increase from 265 to 327; the number of responses per Unification Specialist is estimated to be 144; and the number of responses per Interpreter is estimated to be 327. The average burden hours per response remains unchanged at 1 hour, reflecting the minimal substantive changes described above.
- **Adult Contact Profile (Form S–7):** The Adult Contact Profile was developed for the UC Path case management system which was never implemented; the Adult Contact Profile is currently approved under the Services Provided to Unaccompanied Children information collection (OMB# 0970–0553) is being renewed with one substantive change. ORR plans to incorporate the adult contact profile with all UC Path features into the UC Portal case management system at a future date, which will allow ORR to establish unique UC Portal profiles for non-sponsor adults, such as household members, relatives in home country, and designated alternate caregivers. This will facilitate improved data tracking and flagging across cases should these individuals later apply to sponsor a child.
 - Remove the “Legal Status” question from the form as irrelevant and immaterial to facilitating better data tracking across cases
- **Initial Assessment (Form S–8):** Currently, there are two approved versions of this form—one for UC Portal and one for the UC Path system, which was never implemented. ORR plans to discontinue the UC Path version of this form, which was never deployed, and make the following revisions to the UC Portal version.
 - Add a field to document the child’s preferred gender pronouns to initial intakes assessment section.
 - Clarify instructions to the respondent mandating the assessment to be completed within 24 hours of admission to the care provider program
 - Introduce questions related to languages spoken, fluency, and comprehension to document the child’s understanding of the assessment questions
 - Add a field to the Family Information section to indicate if a relative might be a potential sponsor
 - Rephrase sensitive questions pertaining to mental health concerns using more specific and child-friendly terms and eliminating redundant questions
 - Adjust the burden estimate to account for a projected increase in the number of children placed in ORR care since the form’s last renewal and reflect that the form is completed by three different potential respondents with input from the child. The annual number of Case Manager respondents is expected to increase from 216 to 300, the annual number of Clinician

respondents is estimated to be 300, the annual number of Interpreter respondents is estimated to be 300, and the number of children projected to be referred in FY 2025 is expected to increase from 60,048 to 98,185. The annual number of responses per respondent changed as follows: the number of responses per child remains unchanged at 1, the number of responses per Case Manager is expected to decrease from 265 to 164, the number of responses per Clinician is estimated to be 164, and the number of responses per Interpreter is estimated to be 327. The average burden hours per response remains unchanged at .33 hours, reflecting the minimal substantive changes described above.

• *Assessment for Risk (Form S-9):*

- Currently, there are two approved versions of this form—one for UC Portal and one for the UC Path system, which was never implemented. ORR plans to discontinue the UC Path version of this form, which was never deployed, and make the following revisions to the UC Portal version.
 - Clarify terminology concerning the purpose of the assessment in the instructions to the respondent
 - Revise question text in the following ways:
 - Include more specific and child-friendly terminology concerning sensitive topics related to sexual activity and sexual abuse history
 - Incorporate inclusive terminology concerning gender identity and expression
 - Incorporate “suspected or diagnosed” terminology to questions pertaining to disabilities
 - Add fields to document the following:
 - If the child would like to be referred to a mental health counselor or clinician to discuss their past sexual activity and/or sexual abuse history
 - If the child or caretaker in home country report any issues with the child’s ability to carry out tasks of daily living that may affect the child’s housing assignment while in ORR care
 - The creation of an individual 504 plan under the “Actions Taken” question of the “Housing,” “Other Service Assignments,” and “Follow-Up” Section
 - Adjust the burden estimate to account for a projected decrease in the number of children placed in ORR care since the form’s last renewal and reflect that the form is completed by three

different potential respondents with input from the child. The annual number of Case Manager respondents is expected to increase from 216 to 300, the annual number of Clinician respondents is estimated to be 300, the annual number of Interpreter respondents is estimated to be 300, and the number of children projected to be referred in FY 2025 is expected to decrease from 120,096 to 98,185. The annual number of responses per respondent changed as follows: the number of responses per child remains unchanged at 1, the number of responses per Case Manager is expected to decrease from 556 to 164, the number of responses per Clinician is estimated to be 164, and the number of responses per Interpreter is estimated to be 327. The average burden hours per response remains unchanged at .75 hours, reflecting the minimal substantive changes described above.

Unaccompanied Child Assessment

(Form S-11): ORR currently maintains two approved versions of this form under the Services Provided to Unaccompanied Children information collection (OMB# 0970-0553), one version for the UC Portal case management system currently in use, and a second version developed for the UC Path system which was never implemented. ORR plans to discontinue the UC Path version of the Unaccompanied Child Assessment, which was never deployed, renewing only the UC Portal version with the changes described below:

- Add the following fields to the Journey and Apprehension section:
 - What neighbors or other people were important in your daily life in COO?
 - Did someone you know come to the U.S. before you and tell you about opportunities?
 - Did you meet any adults along the journey with whom you built a trusting relationship? If yes, what are their names and where are they now?
 - Who are some trusted adults that the child knows at their intended destination?
 - As a sub-question to “Have you been to the U.S. before?”—Ask: “if yes, with whom did you live?”
 - Under the Family/Significant Relationships section, add:
 - Name, address, contact, and relationship of parent or legal guardian fields
 - Field to capture current address/residence of other family remaining in country of origin

- Fields to capture contact info and indicate sponsorship potential of identified friends and/or family residing in the U.S.
- A field to document any family members who previously lived in the U.S., their dates of residence and if they maintain contact with any former U.S.-based contacts
 - Revise Medical Assessment questions to capture more specific health status and health concern data as follows:
- Adding fields related to current health status, allergies, diet, mobility, and the child’s need for assistance with daily activities
- Add field to capture if the child has any health concerns they’d like to discuss with a health care provider
- Add fields to capture data concerning any medication the child arrived with, their prescribed dosing interval and last dose administered
 - Add the following question to the Education section: “Have you ever been diagnosed with a learning disability (dyslexia, dysgraphia, auditory processing disorder, etc.)? (Yes/No) If yes, specify”
 - Update terminology concerning the ORR mandated Legal Screening to read “Confidential Legal Consultation”, as required by the UCB Foundational Rule (45 CFR 410)
 - Revise the Mental Health section of the form as follows:
- Add “Future Oriented” option to Thought Process field
- Revise terminology throughout and split compound questions into simpler, distinct questions to improve child-friendliness of the assessment and the specificity of their responses
- Add question concerning the use of inhalants to the Substance Use History sub-section
 - Revise the Trafficking section, adding questions to document contacts with others that the child made during their journey to the U.S. and capture their contact information
 - Add explanatory text to the Americans with Disabilities Act of 1990, 42 U.S.C. 12102(1) citation under the Trafficking Victims Protection Reauthorization Act (TVPRA) section and the subsequent question documenting disability concerns that require further evaluation
 - Add document upload field to Additional Information section to link the child’s journey mapping file to the UC Assessment
 - Adjust the burden estimate to

- account for a projected decrease in the number of children placed in ORR care since the form's last renewal and reflect that the form is completed by three different potential respondents with input from the child. The annual number of Case Manager respondents is expected to increase from 216 to 300, the annual number of Clinician respondents is estimated to be 300, the annual number of Interpreter respondents is estimated to be 300, and the number of children projected to be referred in FY 2025 is expected to decrease from 120,096 to 98,185. The annual number of responses per respondent changed as follows: the number of responses per child remains unchanged at 1, the number of responses per Case Manager is expected to decrease from 556 to 164, the number of responses per Clinician is estimated to be 164, and the number of responses per Interpreter is estimated to be 327. The average burden hours per response is expected to increase from 2.0 to 2.25 hours, reflecting the addition of new fields described above.
- *Unaccompanied Child Case Review (Form S-12)*: Currently, there are two approved versions of this form—one for UC Portal and one for the UC Path system, which was never implemented. ORR plans to discontinue the UC Path version of this form, which was never deployed, and make the following revisions to the UC Portal version.
 - Revise the Medical Section with the following:
 - Remove the following fields:
 - “List any allergies”
 - “Do you feel unwell”
 - “If yes, what are your symptoms?”
 - “Additional medical information”
 - Entire Medical History Checklist as redundant to information captured in the UC Portal Health Tab
 - Entire Medication History subsection as redundant to information captured in the UC Portal Health Tab
 - Add the following fields:
 - “Does the child have any health concerns (medical, mental health, dental) that have not been evaluated by a healthcare professional? If yes, specify:”
 - “Does the child have any health-related travel restrictions? If yes, specify:”
 - “Provide a short summary of the child's medical and/or psychological functioning:”
 - “If the child is ready for discharge,
- does the child have any health problems, including dental and mental health, that requires follow-up after release from ORR care? If yes, specify:”
- “Describe follow-up care plan:”
 - Replace “Legal Screening” with “Confidential Legal Consultation” consistent with the UC Program Foundational Rule (45 CFR 410).
 - Remove all fields from the “Mental Health” section to avoid duplication under the “Medical” section and remove “Axis” evaluation terminology which no longer conforms to standard psychiatric practice as specified in the 5th edition of the Diagnostic and Statistical Manual (DSM-V).
 - Revise the Trafficking Section as follows:
 - Add auto-populated fields added to Unaccompanied Child Assessment (Form S-11) to capture who the child met along their journey and if they have their contact information
 - Revise the TVPRA section as follows:
 - Mirror changes to the TVPRA section as pertaining to the addition of explanatory text for the Americans with Disabilities Act of 1990 and related fields.
 - Add fields to document the recommended level of post-release services and type of home study
 - Revise the Recommendation section to include a concurrent planning subsection capturing the following:
 - If the case is undergoing concurrent planning
 - Name, contact info, sponsor category, and status of additional potential sponsors
 - Revise Care plan section as follows:
 - Add fields to capture and distinguish Unification Specialist, Clinician, and Case Manager comments
 - Remove Legal comments as field duplicates information collected in Legal section
 - Adjust the burden estimate to account for a projected decrease in the number of children placed in ORR care since the form's last renewal and reflect that the form is completed by three different potential respondents. The annual number of Case Manager respondents is expected to increase from 216 to 300, the annual number of Clinician respondents is estimated to be 300, the annual number of Unification Specialist respondents is estimated to be 300, and the number of children projected to be referred in FY 2025 is expected to decrease from 120,096 to 98,185. The annual
- number of responses per respondent changed as follows: the number of responses per Case Manager is expected to decrease from 556 to 164, the number of responses per Clinician is estimated to be 164, and the number of responses per Unification Specialist is estimated to be 144. The average burden hours per response is expected to decrease from 2.0 to .5 hours, reflecting the removal of numerous fields described above.
- *Individual Service Plan (Form S-13)*: Two versions of this form are approved under the Services Provided to Unaccompanied Children information collection (OMB# 0970-0553), one associated with the UC Portal case management system, and another designed for the UC Path system which was never implemented. ORR plans to discontinue the UC Path version of this form, which was never deployed, and incorporate features from the UC Path version into UC Portal with this transfer. ORR has made the following modifications to the form:
 - Add a field to the Data Entry—Admission Assessment Individual Service Plan to identify if the child has a 504 Service Plan to document any services or accommodations needed due to their disability status.
 - Add the following auto-populated and system generated fields to the UC Portal Individual Service Plan display window:
 - Assessment Status
 - Does the child have a 504 Service Plan?
 - Submitted Date
 - Remove certain fields native to the UC Path system which do not have a corresponding feature or function in the UC Portal:
 - Under New Admission Assessment Section:
 - Assessment ID
 - Admission
 - Under New Service Mandatory Section:
 - Contract Number (SYSTEM GENERATED)
 - Individual Service Plan (SYSTEM GENERATED)
 - Name (AUTO-POPULATE)
 - Under Document Upload Tab Section:
 - Verified by Government Agency/Consulate
 - Entity
 - Individual
 - Adult Contact Relationship
 - Under Certification by Case Manager Section:

- Legacy ID (SYSTEM GENERATED)
- Revise the Legal Orientation task from “Legal Screening” to “Confidential Legal Consultation” to conform with terminology presented in the UC Program Foundational Rule (45 CFR 410)
- Replace “Contract” with “Service” where it appears on the form
- Display content entered in the New Contract “Notes” field to each internet Service Provider Service
- Adjust the burden estimate to account for a projected decrease in the number of children placed in ORR care since the form’s last renewal and reflect that the form is completed by three different potential respondents with input from the child. The annual number of Case Manager respondents is expected to increase from 216 to 300, the annual number of Clinician respondents is estimated to be 300, the annual number of Interpreter respondents is estimated to be 300, and the number of children projected to be referred in FY 2025 is expected to decrease from 120,096 to 98,185. The annual number of responses per respondent changed as follows: The number of responses per Case Manager is expected to decrease from 694 to 167, the number of responses per Clinician is estimated to be 167, and the number of responses per Translator is estimated to be 327. The average burden hours per response remains unchanged at .33 hours reflecting the minimal substantive changes described above.
- *Category 4 Reunification Case Review and Staffing (Form TBD-#)*: This is a new form created by ORR to support sponsor identification and outreach for children designated “Category 4” or without a viable sponsor. The form is completed by the care provider case manager, and in complex cases, by the care provider clinician in response to the child’s Mobility Map, also submitted for approval under this information collection. The contents of the form, once complete, are shared with a concurrent planning team comprised of the care provider Case

Manager, Supervising Case Manager, Clinician, Case Coordinator, and Federal Field Specialist at a staffing meeting to discuss findings and develop a permanency action plan to identify a qualified sponsor for the child. The burden estimate for this form is as follows:

- ORR estimates, based on historic averages that approximately 35,347 children or 36 percent of cases referred to ORR care and custody in FY 2025 will be designated “Category 4” at some point during their length of care. The number of case managers completing the form is estimated to be 300 annually, the number of clinicians completing the form is estimated to be 300 annually. The average number of responses per respondent is estimated to be approximately 147 per case manager and approximately 74 per clinician as clinicians will only complete the form if the case is deemed “complex” due to extended length of stay, medically fragile status of the child, trafficking, abuse, or neglect history concerns, or other extenuating circumstances that may make reunification with a vetted sponsor more difficult. The average burden hour per response associated with this form is estimated to be 1.88 hours for standard, non-complex cases involving only the child’s case manager and 2.5 hours for complex cases requiring the involvement of a clinician.
- *Family Finding and Mobility Mapping (Form TBD-#)*: This form is an instructional guide for use by care provider case managers and clinicians to facilitate the creation of a “Mobility Map” by a Category 4 child. The mobility map is a visual representation of the child’s life in their home country and their journey to the U.S., which is intended to identify parents, legal guardians, extended family members, family friends, kinship networks, and other potential sponsor leads as well as identify

potential sponsor fraud and parental rights violations. The Mobility Map is created by the child in response to child-friendly questions and facilitative techniques deployed by a care provider case manager, and potentially a clinician if the child’s case is complex. The Family Finding and Mobility Mapping Guide provides instructions to care provider staff to engage the child safely and effectively in this Participatory Learning and Action process. The burden estimate for the Mobility Map is as follows:

- ORR estimates, based on historic averages that approximately 35,347 children or 36 percent of cases referred to ORR care and custody in FY 2025 will be designated “Category 4” at some point during their length of care. The number of children completing the form is estimated to be approximately 35,247, the number of case managers completing the form is estimated to be approximately 300, and the number of clinicians completing the form is estimated to be approximately 300. The average number of responses per respondent is estimated to be approximately 1.5 per child, approximately 177 per case manager and approximately 88 per clinician as clinicians will only participate in the Mobility Mapping process if the case is deemed “complex” due to extended length of stay, medically fragile status of the child, trafficking, abuse, or neglect history concerns, or other extenuating circumstances that may make reunification with a vetted sponsor more difficult. The average burden hour per response associated with this form is estimated to be 1.5 hours for the each of the respondents, including the child, case manager, and clinician.

Respondents: ORR grantee and contractor staff, unaccompanied children, and their sponsors.

ANNUAL BURDEN ESTIMATES

Form	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual total burden hours
Sponsor Assessment (Form S-5)—Sponsor	98,185	1.0	1.00	98,185.0
Sponsor Assessment (Form S-5)—Case Manager	300	327.0	1.00	98,100.0
Sponsor Assessment (Form S-5)—Unification Specialist	680	144.0	1.00	97,920.0
Sponsor Assessment (Form S-5)—Interpreter	300	327.0	1.00	98,100.0
Adult Contact Profile (Form S-7)—Unification Specialist	680	144.0	0.75	73,440.0
Initial Assessment (Form S-8)—Case Manager	300	164.0	0.33	16,236.0

ANNUAL BURDEN ESTIMATES—Continued

Form	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual total burden hours
Initial Assessment (Form S-8)—Clinician	300	164.0	0.33	16,236.0
Initial Assessment (Form S-8)—Child	98,185	1.0	0.33	32,401.0
Initial Assessment (Form S-8)—Interpreter	300	327.0	0.33	32,373.0
Assessment for Risk (Form S-9)—Case Manager	300	164.0	0.75	36,900.0
Assessment for Risk (Form S-9)—Clinician	300	164.0	0.75	36,900.0
Assessment for Risk (Form S-9)—Child	98,185	1.0	0.75	73,639.0
Assessment for Risk (Form S-9)—Interpreter	300	327.0	0.75	73,575.0
Unaccompanied Child Assessment (Form S-11)—Case Manager	300	164.0	2.25	110,700.0
Unaccompanied Child Assessment (Form S-11)—Clinician	300	164.0	2.25	110,700.0
Unaccompanied Child Assessment (Form S-11)—Child	98,185	1.0	2.25	220,917.0
Unaccompanied Child Assessment (Form S-11)—Interpreter	300	327.0	2.25	220,725.0
Unaccompanied Child Case Review (Form S-12)—Case Manager	300	327.0	0.50	49,050.0
Unaccompanied Child Case Review (Form S-12)—Clinician	300	327.0	0.50	49,050.0
Unaccompanied Child Case Review (Form S-12)—Unification Specialist	680	144.0	0.50	48,960.0
Individual Service Plan (Form S-13)—Case Manager	300	164.0	0.33	16,236.0
Individual Service Plan (Form S-13)—Clinician	300	164.0	0.33	16,236.0
Individual Service Plan (Form S-13)—Interpreter	300	327.0	0.33	32,373.0
Category 4 Reunification Case Review and Staffing (Form TBD-#)—Case Manager	300	147.0	1.88	82,688.0
Category 4 Reunification Case Review and Staffing (Form TBD-#)—Clinician	300	74.0	2.50	55,500.0
Family Finding and Mobility Mapping (Form TBD-#)—Child	35,347	2.0	1.50	106,041.0
Family Finding and Mobility Mapping (Form TBD-#)—Case Manager	300	177.0	1.50	79,650.0
Family Finding and Mobility Mapping (Form TBD-#)—Clinician	300	88.0	1.50	39,600.0
Estimated Annual Burden Hours Total				1,728,226.0

Comments: The Department specifically requests comments on (a) whether the proposed 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 proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 6 U.S.C. 279; 8 U.S.C. 1232.

Mary C. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2024-31129 Filed 12-27-24; 8:45 am]

BILLING CODE 4184-45-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Evaluation of the Center for Legal and Judicial Innovation and Advancement (CLJIA) (Previously Evaluation of the Child Welfare Capacity Building Collaborative) (Office of Management and Budget #0970-0576)

AGENCY: Children's Bureau, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: This collection relates to survey instruments to be administered in conjunction with technical assistance (TA) delivered to legal and judicial staff who participate in strategic planning workshops and attorneys and judicial trainings with a Children's Bureau TA provider. This is a revision and extension to Office of Management and Budget (OMB) #0970-0576 to remove instruments that are no longer in use, revise the title of the collection, and to revise the name of the TA provider in the instruments still in use.

DATES: *Comments due February 28, 2025.* In compliance with the requirements of the Paperwork

Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing infocollection@acf.hhs.gov. Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: This request will remove most of the prior instruments approved under OMB #0970-0576. The larger project was successful in getting information about the broad array of TA. It also showed therein that there was more diversity among the audiences being served than anticipated, and thus, CB had opted to pursue evaluation individually by Center going forward. There were larger scope and approach changes for the other prior Centers, and those evaluations will need to be reimaged.

The remaining three instruments are and will continue to be used by the Center for Legal and Judicial Innovation and Advancement (CLJIA) and the Children's Bureau to improve the development and delivery of CLJIA services, specifically the Academies and Workshops, and assess the quality, satisfaction with services, and impact on their intended outcomes, including increased knowledge and skills. Data collection includes online and paper-

based surveys and assessments administered to participants in Academies and Workshops.

There are no significant changes to the instruments. The name of the TA provider was changed and that has been updated.

Respondents: Child welfare and court professionals.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Workshop Feedback Survey	480	1	0.07	46.1	15
Academy Feedback Survey	1,050	1	0.07	73.5	25
Pre/Post Academy Assessment	1,050	2	0.22	462	154
Estimated Total Annual Burden Hours					194

Comments: The Department specifically requests comments on (a) whether the proposed 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 proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 5106(b)(5); 42 U.S.C. 5113(b)(4); 42 U.S.C. 629h.

Mary C. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2024-31119 Filed 12-27-24; 8:45 am]

BILLING CODE 4184-29-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; National Youth in Transition Database (NYTD) and Youth Outcomes Survey (Office of Management and Budget #0970-0340)

AGENCY: Children's Bureau, Administration for Children and

Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) is requesting a three-year extension of the National Youth in Transition Database (NYTD) and Youth Outcomes Survey (Office of Management and Budget (OMB)#: 0970-0340, expiration date May 31, 2025). There are no changes requested to the form.

DATES: *Comments due* February 28, 2025. In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing infocollection@acf.hhs.gov. Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The Foster Care Independence Act of 1999 (42 U.S.C. 1305 *et seq.*) as amended by Public Law 106-169 requires state child welfare agencies to collect and report to ACF data on the characteristics of youth receiving independent living services and information regarding their outcomes. The regulation implementing the NYTD, listed in 45 CFR 1356.80, contains standard data collection and reporting requirements for states to meet the law's requirements. Additionally,

the Family First Prevention Services Act of 2017 (House of Representatives 253) further outlines the expectation of the collection and reporting of data and outcomes regarding youth who are in receipt of independent living services. ACF will continue to use the information collected under the regulation to track independent living services, assess the collective outcomes of youth, and potentially to evaluate state performance regarding those outcomes consistent with the law's mandate.

Respondents: State agencies that administer the Chafee Foster Care Program for Successful Transition to Adulthood (Chafee program) report on the young people who are served by the program and who complete the youth outcomes survey.

Annual Burden Estimates

The annual burden estimates are based on data to inform 2025 estimates. Estimates for years further out are likely to be similar, but the number of youth respondents and time to complete the state data file may fluctuate and more detail will be provided in the submission to OMB and the corresponding notice published in the **Federal Register**.

Instrument	Total number of respondents	Number of responses per respondent	Average burden hours per response	Annualized burden hours
State Data File	52	2 (annually)	1,317	136,968
Youth Outcomes Survey	9,300	1	0.5	4,650

Estimated Total Annual Burden Hours: 141,618.

Comments: The Department specifically requests comments on (a)

whether the proposed 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 proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: NYTD is authorized by Public Law 106–169, enacted December 14, 1999. This public law establishes the John H. Chafee Foster Care Independence Program (CFCIP) now known as Chafee Foster Care Program for Successful Transition to Adulthood (Chafee program) at section 477 of the Social Security Act. NYTD data are collected pursuant to 45 CFR 1356.80.

Mary C. Jones,
ACF/OPRE Certifying Officer.

[FR Doc. 2024–31087 Filed 12–27–24; 8:45 am]

BILLING CODE 4184–73–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–E–0223]

Determination of Regulatory Review Period for Purposes of Patent Extension; OMISIRGE

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for OMISIRGE and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by February 28, 2025. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence

during the regulatory review period by June 30, 2025. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 28, 2025. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2024–E–0223 for “Determination of Regulatory Review Period for Purposes of Patent Extension; OMISIRGE.”

Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- *Confidential Submissions—*To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984

(Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product OMISIRGE (omidubicel-only). OMISIRGE is indicated for use in adults and pediatric patients 12 years and older with hematologic malignancies who are planned for umbilical cord blood transplantation following myeloablative conditioning to reduce the time to neutrophil recovery and the incidence of infection. Subsequent to this approval, the USPTO received a patent term restoration application for OMISIRGE (U.S. Patent No. 7,955,852) from Gamida Cell Ltd., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 3, 2024, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of OMISIRGE represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for OMISIRGE is 4,563 days. Of this time, 4,242 days occurred during the testing phase of the regulatory review period, while 321 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* October 21, 2010. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on October 21, 2010.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* June 1, 2022. FDA has verified the applicant's claim that the biologics license application (BLA) for OMISIRGE (BLA B125738) was initially submitted on June 1, 2022.

3. *The date the application was approved:* April 17, 2023. FDA has verified the applicant's claim that BLA B125738 was approved on April 17, 2023.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,826 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket

No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: December 19, 2024.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2024–31262 Filed 12–27–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–5603]

Agency Information Collection Activities; Proposed Collection; Comment Request; New Animal Drug and Veterinary Master Files

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information associated with new animal drug applications and veterinary master files.

DATES: Either electronic or written comments on the collection of information must be submitted by February 28, 2025.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 28, 2025. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the

instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2024-N-5603 for "Agency Information Collection Activities; Proposed Collection; Comment Request; Reporting Associated with New Animal Drug and Veterinary Master Files." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The

Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT:

Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A-12M, 11601 Landsdown St., North Bethesda, MD 20852, 301-796-8867, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

New Animal Drug Applications and Veterinary Master Files—21 CFR 514 and 558, and Section 571 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360ccc)

OMB Control Number 0910-0032—Extension

This information collection supports implementation of section 512 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360b), which governs new animal drugs. Agency regulations in 21 CFR part 514 (part 514) and associated regulations 21 CFR part 558, establish format and content requirements regarding new animal drug application (NADA) submissions, as well as provide for pre-application submissions, amended applications, and application supplements. This information collection also supports implementation of section 571 of the FD&C Act (21 U.S.C. 360ccc) regarding application for conditional approval of new animal drug (CNADA) submissions. As set forth in the FD&C Act and regulations, requisite elements include safety and effectiveness data, proposed labeling, product manufacturing information, and where necessary, complete information on food safety (including microbial food safety) and any methods used to determine residues of drug chemicals in edible tissue from food producing animals. Applications must be prepared as appropriate to support the submission. Respondents to the information collection are persons developing, manufacturing, and/or researching new animal drugs.

We developed Form FDA 356v (Application for Approval of a New Animal Drug (or Submission to Support New Animal Drug Approval)) to provide a uniform format for submitting requisite information and to ensure efficient processing by the Agency.

Form FDA 356v is available for download at <https://www.fda.gov/about-fda/reports-manuals-forms/forms>. We also develop Agency guidance documents that may assist respondents with understanding NADA/CNADA requirements and related information collection activity. This includes FDA Guidance #152 (<https://www.fda.gov/regulatory-information/search-fda-guidance-documents/cvm-gfi-152-evaluating-safety-antimicrobial-new-animal-drugs-regard-their-microbiological-effects>), which outlines a risk assessment approach for evaluating the microbial food safety of antimicrobial new animal drugs and includes Agency recommendations in this regard.

Under section 512(b)(3) of the FD&C Act, any person intending to file an NADA or supplemental NADA or a request for an investigational exemption under section 512(j) of the FD&C Act may request a conference prior to making a submission. Section 514.5 of our regulations (21 CFR 514.5) sets forth procedures for pre-submission conferences and describes documentation associated with making requests, and preparing for and conducting meetings. We encourage sponsors to submit data for review at the most appropriate and productive times in the drug development process. Rather than submitting all data for review as part of a complete application, we have

found that the submission of data supporting discrete technical sections during the investigational phase is most appropriate and productive. This “phased review” of data submissions has created efficiencies for both us and the animal pharmaceutical industry.

We also encourage, as appropriate, the submission of a Veterinary Master File (VMF). For more information on VMFs we invite you to visit <https://www.fda.gov/animal-veterinary/development-approval-process/veterinary-master-files>. A VMF provides detailed information used in support of application submissions. Questions regarding VMF submissions may be directed to the Center for Veterinary Medicine at cvmesubmitter@fda.hhs.gov. We have found that utilizing VMFs has increased the efficiency of the animal drug development and animal drug review processes for both FDA and the animal pharmaceutical industry, providing for the confidential exchange of information with FDA, and a process for reporting information outside of an NADA/CNADA or an Investigational New Animal Drug file, as well as an opportunity for increased communication with FDA during early stages of product development. A holder of a VMF may also authorize other parties to reference information included in the VMF without disclosing information in the file to those parties.

Veterinary master files can be used as repositories for information that can be referenced in multiple submissions to the Agency.

Section 558.5(i) of our regulations (21 CFR 558.5(i)) describes the procedure for requesting a waiver of the labeling requirements in § 558.5(h) if there is evidence to indicate that it is unlikely a new animal drug would be used in the manufacture of a liquid medicated feed.

Finally, section 571 of the FD&C Act established requirements for the conditional approval of certain drugs¹ and the procedures for submitting CNADAs. Although FDA receives fewer than one application submission annually under section 571 of the FD&C Act when averaged over a 3-year period, we use a place holder of one response and 1 hour annually to account for burden associated with these submissions.

The reporting associated with NADAs/CNADAs and related submissions is necessary to ensure that new animal drugs are in compliance with sections 512(b)(1) and 571 of the FD&C Act. We use the information collected to review the data, labeling, and manufacturing controls and procedures to evaluate the safety and effectiveness of the proposed new animal drug.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN^{1 2}

21 CFR part, activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
§ 514; applications and amendments, pre-submission conference requests, evidence to establish safety and effectiveness, manufacturing, labeling, and other changes, submission of data studies and other changes.	254	2.8	711	42.25	30,040
§ 558.5(i); requirements for liquid medicated feed	254	.01	2.5	5	13
Applications for conditional approval submitted under section 571 of the FD&C Act.	3	1	3	1	3
Form FDA 356V	254	30.8	7,823	0.75 (45 minutes).	5,867
VMF submissions	16	1	16	20	320
Total .....	.....	.....	8,556	.....	36,243

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

² Totals may not sum due to rounding.

Although we have characterized the information collection activity as a reporting burden, we include in our estimate time required for searching data sources and preparing and maintaining necessary and applicable records. Based on the number of

sponsors subject to animal drug user fees, we estimate that there are 254 respondents. We use this estimate to calculate the “number of responses per respondent” by dividing the total annual responses by the number of respondents except for CNADA

submission and VMFs. For CNADAs we calculate an average of three responses and for VMF submissions we calculate and average of 16 VMFs.

Our estimated burden for the information collection reflects an overall decrease of 2,606 hours and an increase of 928 responses. We attribute

¹ Animal drugs intended for use in minor species, minor use in major species, or for serious or life-

threatening conditions or unmet animal or human health needs where a demonstration of effectiveness

would require a complex or particularly difficult study or studies.

this adjustment to an increase in the number of submissions which generate a Form FDA 0356v; however, there is also a decrease to the submissions we received reported under part 514.

Dated: December 16, 2024.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2024–31308 Filed 12–27–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2024–E–0299, FDA–2024–E–0301, and FDA–2024–E–0302]

Determination of Regulatory Review Period for Purposes of Patent Extension; VEOZAH

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for VEOZAH and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by February 28, 2025. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by June 30, 2025. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 28, 2025. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket Nos. FDA–2024–E–0299, FDA–2024–E–0301, and FDA–2024–E–0302 for “Determination of Regulatory Review Period for Purposes of Patent Extension; VEOZAH.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two

copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, VEOZAH (fezolinetant) indicated for treatment of moderate to severe vasomotor symptoms due to menopause. Subsequent to this approval, the USPTO received patent term restoration applications for VEOZAH (U.S. Patent No. 9,422,299; 9,987,274; 10,836,768) from Ogeda SA and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated February 6, 2024, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of VEOZAH represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for VEOZAH is 2,573 days. Of this time, 2,248 days occurred during the testing phase of the regulatory review period, while 325 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* April 27, 2016. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on April 27, 2016.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* June 22, 2022. FDA has verified the applicant's claim that

the new drug application (NDA) for VEOZAH (NDA 216578) was initially submitted on June 22, 2022.

3. *The date the application was approved:* May 12, 2023. FDA has verified the applicant's claim that NDA 216578 was approved on May 12, 2023.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 616 days, 1,064 days, or 1,141 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: December 20, 2024.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2024–31269 Filed 12–27–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–5720]

General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting; Establishment of Public Docket; Request for Comments—Dermal Fillers

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) announces a forthcoming public advisory committee meeting of the General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee (the Committee). The general function of the Committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will take place virtually on February 20, 2025, from 9 a.m. to 6 p.m. Eastern Time.

ADDRESSES: All meeting participants will be heard, viewed, captioned, and recorded for this advisory committee meeting via an online teleconferencing and/or video conferencing platform.

Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: <https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm>.

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2024–N–5720. The docket will close on March 20, 2025. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 20, 2025. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Comments received on or before January 30, 2025, will be provided to the Committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2024-N-5720 for "General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be

made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information, be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify the information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT: Akinola Awojope, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5216, Silver Spring, MD 20993-0002, Akinola.Awojope@fda.hhs.gov, 301-636-0512, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area). A notice in the **Federal Register** about last-minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's website at <https://www.fda.gov/AdvisoryCommittees/default.htm> and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing and/or video conferencing platform.

On February 20, 2025, the Committee will discuss and make recommendations regarding the benefits and risks of dermal fillers with new indications for use such as in the décolletage area. The discussion will include the following topics: (1) risks associated with new potential indications for use for dermal filler devices such as (a) the décolletage injection location and the potential impact of filler material on imaging studies (e.g., breast cancer screening), and (b) anatomic locations that may require larger volume injections, (2) removal of dermal filler implant material, and (3) benefit-risk assessments, the informed decision process, and patient preference.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material and the link to the online teleconference and/or video conferencing meeting will be available at <https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. All electronic and written submissions to the Docket (see **ADDRESSES**) on or before January 30, 2025, will be provided to the Committee. Oral presentations from the public will be scheduled on February 20, 2025, between approximately 11:30 a.m. and 12:30 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before January 21, 2025. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session,

FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by January 22, 2025.

For press inquiries, please contact the Office of Media Affairs at fdaoma@fda.hhs.gov or 301-796-4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Artair Mallett at Artair.Mallett@fda.hhs.gov or 301-796-9638, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at <https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*). This meeting notice also serves as notice that, pursuant to 21 CFR 10.19, the requirements in 21 CFR 14.22(b), (f), and (g) relating to the location of advisory committee meetings are hereby waived to allow for this meeting to take place using an online meeting platform. This waiver is in the interest of allowing greater transparency and opportunities for public participation, in addition to convenience for advisory committee members, speakers, and guest speakers. The conditions for issuance of a waiver under 21 CFR 10.19 are met.

Dated: December 19, 2024.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2024-31260 Filed 12-27-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2024-N-0008]

Request for Nominations for Individuals and Consumer Organizations for Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is requesting that any consumer organizations interested in participating in the selection of voting and/or nonvoting consumer representatives to serve on its advisory committees or panels notify FDA in writing. FDA is also requesting nominations for voting and/or nonvoting consumer representatives to serve on advisory committees and/or panels for which vacancies currently exist or are expected to occur in the near future. Nominees recommended to serve as a voting or nonvoting consumer representative may be self-nominated or may be nominated by a consumer organization. FDA seeks to include the views of individuals on its advisory committees regardless of their gender identification, religious affiliation, racial and ethnic identification, or disability status, and, therefore, encourages nominations of appropriately qualified candidates from all groups.

DATES: Any consumer organization interested in participating in the selection of an appropriate voting or nonvoting member to represent consumer interests on an FDA advisory committee or panel may send a letter or email stating that interest to FDA (see **ADDRESSES**) by February 13, 2025, for vacancies listed in this notice.

Concurrently, nomination materials for prospective candidates should be sent to FDA (see **ADDRESSES**) by February 13, 2025. Nominations will be accepted for current vacancies and for those that will or may occur through December 31, 2025.

ADDRESSES: All statements of interest from consumer organizations interested in participating in the selection process should be submitted electronically to ACOMSSubmissions@fda.hhs.gov or by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993-0002.

Consumer representative nominations should be submitted electronically by logging into the FDA Advisory Committee Membership Nomination Portal: <https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm>, or by mail to Advisory Committee Oversight and Management Staff, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993-0002. Additional information about becoming a member of an FDA advisory committee can also be obtained by visiting FDA's website at <https://www.fda.gov/AdvisoryCommittees/default.htm>.

FOR FURTHER INFORMATION CONTACT:

For questions relating to participation in the selection process: Kimberly Hamilton, Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993-0002, 301-796-8220, Kimberly.Hamilton@fda.hhs.gov.

For questions relating to specific advisory committees or panels, contact the appropriate contact person listed in table 1.

TABLE 1—ADVISORY COMMITTEE CONTACTS

Contact person	Committee/panel
Rakesh Raghuwanshi, Office of the Chief Scientist, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 3309, Silver Spring, MD 20993-0002, 301-796-4769, Rakesh.Raghuwanshi@fda.hhs.gov .	FDA Science Board Advisory Committee.
Christina Vert, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Silver Spring, MD 20993-0002, 240-402-8054, Christina.Vert@fda.hhs.gov .	Blood Products Advisory Committee.
Marie Degregorio, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Silver Spring, MD 20993-0002, 240-402-4207, Marie.Degregorio@fda.hhs.gov .	Cellular, Tissue and Gene Therapies Advisory Committee.
Sussan Paydar, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Silver Spring, MD 20993-0002, 202-657-8533, Sussan.Paydar@fda.hhs.gov .	Vaccines and Related Biological Products Advisory Committee.
Joyce Frimpong, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2438, Silver Spring, MD 20993-0002, 301-796-7973, Joyce.Frimpong@fda.hhs.gov .	Anesthetic and Analgesic Drug Products Advisory Committee; Obstetrics, Reproductive and Urologic Drugs Advisory Committee; Psychopharmacologic Drugs Advisory Committee.

TABLE 1—ADVISORY COMMITTEE CONTACTS—Continued

Contact person	Committee/panel
Michael Gu, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2506, Silver Spring, MD 20993-0002, 301-796-2031, <i>Michael.Gu@fda.hhs.gov</i> .	Antimicrobial Drugs Advisory Committee, Drug Safety and Risk Management Advisory Committee; Non-Prescription Drugs Advisory Committee; Oncologic Drugs Advisory Committee; Pharmaceutical Science and Clinical Pharmacology Drugs Advisory Committee.
LaToya Bonner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2428, Silver Spring, MD 20993-0002, 301-796-2855, <i>LaToya.Bonner@fda.hhs.gov</i> .	Cardiovascular and Renal Drugs Advisory Committee; Dermatologic and Ophthalmic Drugs Advisory Committee; Endocrinologic and Metabolic Drugs Advisory Committee.
Takyiah Stevenson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2406, Silver Spring, MD 20993-0002, 240-402-2507, <i>Takyiah.Stevenson@fda.hhs.gov</i> .	Medical Imaging Advisory Committee;
Jessica Seo, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2412, Silver Spring, MD 20993-0002, 301-796-7699, <i>Jessica.Seo@fda.hhs.gov</i> .	Gastrointestinal Drugs Advisory Committee; Peripheral and Central Nervous System Drugs Advisory Committee.
Candace Nalls, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5211, Silver Spring, MD 20993-0002, 301-636-0510, <i>Candace.Nalls@fda.hhs.gov</i> .	Anesthesiology and Respiratory Therapy Devices Panel; Clinical Chemistry and Clinical Toxicology Devices Panel; Ear, Nose and Throat Devices Panel; Gastroenterology-Urology Devices Panel; General and Plastic Surgery Devices Panel.
James Swink, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5211, Silver Spring, MD 20993-0002, 301-796-6313, <i>James.Swink@fda.hhs.gov</i> .	Circulatory System Devices Panel; General Hospital and Personal Use Devices Panel; Hematology and Pathology Devices Panel; Immunology Devices Panel; Medical Devices Dispute Resolution Panel; Microbiology Devices Panel; Molecular and Clinical Genetics Panel; Radiological Devices Panel.
Akinola Awojope, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5216, Silver Spring, MD 20993-0002, 301-636-0512, <i>Akinola.Awojope@fda.hhs.gov</i> .	Dental Products Panel; Ophthalmic Devices Panel; Orthopaedic and Rehabilitation Devices Panel.

SUPPLEMENTARY INFORMATION: FDA is or nonvoting consumer representatives requesting nominations for voting and/ for the vacancies listed in table 2:

TABLE 2—COMMITTEE DESCRIPTIONS, TYPE OF CONSUMER REPRESENTATIVE VACANCY, AND APPROXIMATE DATE NEEDED

Committee/panel/areas of expertise needed	Type of vacancy	Approximate date needed
FDA Science Board Advisory Committee—The Science Board provides advice to the Commissioner of Food and Drugs (the Commissioner) and other appropriate officials on specific complex scientific and technical issues important to FDA and its mission, including emerging issues within the scientific community. Additionally, the Science Board provides advice that supports the Agency in keeping pace with technical and scientific developments, including in regulatory science; and input into the Agency's research agenda, and on upgrading its scientific and research facilities and training opportunities. It also provides, where requested, expert review of Agency-sponsored intramural and extramural scientific research programs.	1—Voting	Immediately.
Blood Products Advisory Committee—Knowledgeable in the fields of clinical and administrative medicine, hematology, immunology, blood banking, surgery, internal medicine, biochemistry, engineering, biological and physical sciences, biotechnology, computer technology, statistics, epidemiology, sociology/ethics, and other related professions.	1—Voting	October 1, 2025.
Cellular, Tissue and Gene Therapies—Knowledgeable in the fields of cellular therapies, tissue transplantation, gene transfer therapies and xenotransplantation (biostatistics, bioethics, hematology/oncology, human tissues and transplantation, reproductive medicine, general medicine and various medical specialties including surgery and oncology, immunology, virology, molecular biology, cell biology, developmental biology, tumor biology, biochemistry, rDNA technology, nuclear medicine, gene therapy, infectious diseases, and cellular kinetics).	1—Voting	April 1, 2025.
Vaccines and Related Biological Products Advisory Committee—Knowledgeable in the fields of immunology, molecular biology, rDNA, virology, bacteriology, epidemiology or biostatistics, allergy, preventive medicine, infectious diseases, pediatrics, microbiology, and biochemistry.	1—Voting	February 1, 2025.
Anesthetic and Analgesic Drug Products Advisory Committee—Knowledgeable in the fields of anesthesiology, analgesics (such as: abuse deterrent opioids, novel analgesics, and issues related to opioid abuse), epidemiology or statistics, and related specialties.	1—Voting	Immediately.
Obstetrics, Reproductive and Urologic Drugs Advisory Committee—Knowledgeable in the fields of obstetrics, gynecology, urology, pediatrics, epidemiology or statistics, and related specialties.	1—Voting	Immediately.
Psychopharmacologic Drugs Advisory Committee—Knowledgeable in the fields of psychopharmacology, psychiatry, epidemiology or statistics, and related specialties.	1—Voting	Immediately.
Antimicrobial Drugs Advisory Committee—Knowledgeable in the fields of infectious disease, internal medicine, microbiology, pediatrics, epidemiology or statistics, and related specialties.	1—Voting	Immediately.
Drug Safety and Risk Management Advisory Committee—Knowledgeable in risk communication, risk management, drug safety, medical, behavioral, and biological sciences as they apply to risk management, and drug abuse.	1—Voting	Immediately.
Non-Prescription Drugs Advisory Committee—Knowledgeable in the fields of internal medicine, family practice, clinical toxicology, clinical pharmacology, pharmacy, dentistry, and related specialties.	1—Voting	Immediately.
Oncologic Drugs Advisory Committee—Knowledgeable in the fields of general oncology, pediatric oncology, hematologic oncology, immunologic oncology, biostatistics, and other related professions.	1—Voting	Immediately.

TABLE 2—COMMITTEE DESCRIPTIONS, TYPE OF CONSUMER REPRESENTATIVE VACANCY, AND APPROXIMATE DATE NEEDED—Continued

Committee/panel/areas of expertise needed	Type of vacancy	Approximate date needed
Pharmaceutical Science and Clinical Pharmacology—Knowledgeable in the fields of pharmaceutical sciences (pharmaceutical manufacturing, bioequivalence research, laboratory analytical techniques, pharmaceutical chemistry, physiochemistry, biochemistry, molecular biology, immunology, microbiology) and clinical pharmacology (dose-response, pharmacokinetics-pharmacodynamics, modeling and simulation, pharmacogenomics, clinical trial design, pediatrics and special populations and innovative methods in drug development), biostatistics, related biomedical and pharmacological specialties, current good manufacturing practices, and quality systems implementation.	1—Voting	December 1, 2025.
Cardiovascular and Renal Drugs Advisory Committee—Knowledgeable in the fields of cardiology, hypertension, arrhythmia, angina, congestive heart failure, diuresis, and biostatistics.	1—Voting	Immediately.
Dermatologic and Ophthalmic Drugs Advisory Committee—Knowledgeable in the fields of dermatology, ophthalmology, internal medicine, pathology, immunology, epidemiology or statistics, and other related professions.	1—Voting	September 1, 2025.
Endocrinologic and Metabolic Drugs Advisory Committee—Knowledgeable in the fields of endocrinology, metabolism, epidemiology or statistics, and related specialties.	1—Voting	Immediately.
Medical Imaging Drugs Advisory Committee—Knowledgeable in the fields of nuclear medicine, radiology, epidemiology, statistics, and related specialties.	1—Voting	Immediately.
Peripheral and Central Nervous Systems Drugs Advisory Committee—Knowledgeable in the fields of neurology, neuropharmacology, neuropathology, otolaryngology, epidemiology or statistics, and related specialties.	1—Voting	Immediately.
Anesthesiology and Respiratory Therapy Devices Panel—Anesthesiologists, pulmonary medicine specialists, or other experts who have specialized interests in ventilator support, pharmacology, physiology, or the effects and complications of anesthesia.	1—Nonvoting	Immediately.
Clinical Chemistry and Clinical Toxicology Devices Panel—Doctor of Medicine or Philosophy with experience in clinical chemistry (<i>e.g.</i> , cardiac markers), clinical toxicology, clinical pathology, clinical laboratory medicine, and endocrinology.	1—Nonvoting	Immediately.
Ear, Nose and Throat Devices Panel—Otolologists, neurotologists, audiologists	1—Nonvoting	Immediately.
General and Plastic Surgery Devices Panel—Surgeons (general, plastic, reconstructive, pediatric, thoracic, abdominal, pelvic, and endoscopic); dermatologists; experts in biomaterials, lasers, wound healing, and quality of life; and biostatisticians.	1—Nonvoting	Immediately.
Circulatory System Devices Panel—Interventional cardiologists, electrophysiologists, invasive (vascular) radiologists, vascular and cardiothoracic surgeons, and cardiologists with special interest in congestive heart failure.	1—Nonvoting	Immediately.
General Hospital and Personal Use Devices Panel—Internists, pediatricians, neonatologists, endocrinologists, nurses, biomedical engineers or microbiologists/infection control practitioners or experts.	1—Nonvoting	Immediately.
Hematology and Pathology Devices Panel—Hematologists (benign and/or malignant hematology), hematopathologists (general and special hematology, coagulation and homeostasis, and hematological oncology), gynecologists with special interests in gynecological oncology, cytopathologists, and molecular pathologists with special interests in development of predictive biomarkers.	1—Nonvoting	Immediately.
Immunology Devices Panel—Persons with experience in medical, surgical, or clinical oncology, internal medicine, clinical immunology, allergy, molecular diagnostics, or clinical laboratory medicine.	1—Nonvoting	Immediately.
Medical Devices Dispute Resolution Panel—Experts with broad, cross-cutting scientific, clinical, analytical, or mediation skills.	1—Nonvoting	October 1, 2024.
Microbiology Devices Panel—Clinicians with an expertise in infectious disease, <i>e.g.</i> , pulmonary disease specialists, sexually transmitted disease specialists, pediatric infectious disease specialists, experts in tropical medicine and emerging infectious diseases, mycologists; clinical microbiologists and virologists; clinical virology and microbiology laboratory directors, with expertise in clinical diagnosis and in vitro diagnostic assays, <i>e.g.</i> , hepatologists; molecular biologists.	1—Nonvoting	Immediately.
Molecular and Clinical Genetics Devices Panel—Experts in human genetics and in the clinical management of patients with genetic disorders, <i>e.g.</i> , pediatricians, obstetricians, neonatologists. The Agency is also interested in considering candidates with training in inborn errors of metabolism, biochemical and/or molecular genetics, population genetics, epidemiology, and related statistical training. Additionally, individuals with experience in genetic counseling, medical ethics, and ancillary fields of study will be considered.	1—Nonvoting	Immediately.
Radiological Devices Panel—Physicians with experience in general radiology, mammography, ultrasound, magnetic resonance, computed tomography, other radiological subspecialties, and radiation oncology; scientists with experience in diagnostic devices, radiation physics, statistical analysis, digital imaging, and image analysis.	1—Nonvoting	Immediately.
Dental Products Panel—Dentists, engineers and scientists who have expertise in the areas of dental implants, dental materials, periodontology, tissue engineering, and dental anatomy.	1—Nonvoting	Immediately.
Ophthalmic Devices Panel—Ophthalmologists with expertise in corneal-external disease, vitreo-retinal surgery, glaucoma, ocular immunology, ocular pathology; optometrists; vision scientists; and ophthalmic professionals with expertise in clinical trial design, quality of life assessment, electrophysiology, low vision rehabilitation, and biostatistics.	1—Nonvoting	Immediately.
Orthopaedic and Rehabilitation Devices Panel—Orthopedic surgeons (joint spine, trauma, and pediatric); rheumatologists; engineers (biomedical, biomaterials, and biomechanical); experts in rehabilitation medicine, sports medicine, and connective tissue engineering; and biostatisticians.	1—Nonvoting	Immediately.

I. Functions and General Description of the Committee Duties**A. FDA Science Board Advisory Committee**

The Science Board Advisory Committee (Science Board) provides advice to the Commissioner and other appropriate officials on specific complex scientific and technical issues important to FDA and its mission, including emerging issues within the scientific community. Additionally, the Science Board provides advice that supports the Agency in keeping pace with technical and scientific developments, including in regulatory science, and input into the Agency's research agenda and on upgrading its scientific and research facilities and training opportunities. It also provides, where requested, expert review of Agency-sponsored intramural and extramural scientific research programs.

B. Blood Products Advisory Committee

Reviews and evaluates available data concerning the safety, effectiveness, and appropriate use of blood products derived from blood and serum or biotechnology which are intended for use in the diagnosis, prevention, or treatment of human diseases as well as the safety, effectiveness, and labeling of the products, on clinical and laboratory studies involving such products, on the affirmation or revocation of biological product licenses, and on the quality and relevance of FDA's research program which provides the scientific support for regulating these products.

C. Cellular, Tissue, and Gene Therapies

Reviews and evaluates available data relating to the safety, effectiveness, and appropriate use of human cells, human tissues, gene transfer therapies, and xenotransplantation products which are intended for transplantation, implantation, infusion, and transfer in the prevention and treatment of a broad spectrum of human diseases and in the reconstruction, repair, or replacement of tissues for various conditions, as well as considers the quality and relevance of FDA's research program which provides scientific support for the regulation of these products.

D. Vaccines and Related Biological Products

Reviews and evaluates data concerning the safety, effectiveness, and appropriate use of vaccines and related biological products which are intended for use in the prevention, treatment, or diagnosis of human diseases, as well as considers the quality and relevance of FDA's research program which provides

scientific support for the regulation of these products.

E. Anesthetic and Analgesic Drug Products Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products, including analgesics (e.g., abuse-deterrent opioids, novel analgesics) and issues related to opioid abuse, and those for use in anesthesiology, and makes appropriate recommendations to the Commissioner.

F. Obstetrics, Reproductive and Urologic Products Advisory Committee

Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drug products for use in the practice of obstetrics, gynecology, urology, and related specialties.

G. Psychopharmacologic Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the practice of psychiatry and related fields.

H. Antimicrobial Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of infectious diseases and disorders.

I. Drug Safety and Risk Management Advisory Committee

Reviews and evaluates information on risk management, risk communication, and quantitative evaluation of spontaneous reports for drugs for human use and for any other product for which FDA has regulatory responsibility. Advises on the scientific and medical evaluation of all information gathered by the Department of Health and Human Services (HHS) and the Department of Justice with regard to safety, efficacy, and abuse potential of drugs or other substances, and recommends actions to be taken by HHS with regard to the marketing, investigation, and control of such drugs or other substances.

J. Nonprescription Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of over the counter (nonprescription) human drug products, or any other FDA-regulated product, for use in the treatment of a broad spectrum of human symptoms and diseases, and advises the

Commissioner either on the promulgation of monographs establishing conditions under which these drugs are generally recognized as safe and effective and not misbranded or on the approval of new drug applications for such drugs. The Committee serves as a forum for the exchange of views regarding the prescription and nonprescription status, including switches from one status to another, of these various drug products and combinations thereof. The Committee may also conduct peer review of Agency-sponsored intramural and extramural scientific biomedical programs in support of FDA's mission and regulatory responsibilities.

K. Oncologic Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of cancer.

L. Pharmaceutical Science and Clinical Pharmacology

Reviews and evaluates scientific, clinical, and technical issues related to the safety and effectiveness of drug products for use in the treatment of a broad spectrum of human diseases, the quality characteristics which such drugs purport or are represented to have, and as required, any other product for which FDA has regulatory responsibility, and makes appropriate recommendations to the Commissioner. The Committee may also review Agency-sponsored intramural and extramural biomedical research programs in support of FDA's drug regulatory responsibilities and its critical path initiatives related to improving the efficacy and safety of drugs and improving the efficiency of drug development.

M. Cardiovascular and Renal Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of cardiovascular and renal disorders.

N. Dermatologic and Ophthalmic Drugs

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of dermatologic and ophthalmic disorders.

O. Endocrinologic and Metabolic Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human

drug products for use in the treatment of endocrine and metabolic disorders.

P. Medical Imaging Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in diagnostic and therapeutic procedures using radioactive pharmaceuticals and contrast media used in diagnostic radiology.

Q. Gastrointestinal Drugs Advisory Committee

Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of gastrointestinal diseases.

R. Peripheral and Central Nervous System Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of neurologic diseases.

S. Medical Devices Advisory Committee Panels

The Medical Devices Advisory Committee has established certain panels to review and evaluate data on the safety and effectiveness of marketed and investigational devices and make recommendations for their regulation. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area: (1) advises on the classification or reclassification of devices into one of three regulatory categories and advises on any possible risks to health associated with the use of devices; (2) advises on formulation of product development protocols; (3) reviews premarket approval applications for medical devices; (4) reviews guidelines and guidance documents; (5) recommends exemption of certain devices from the application of portions of the Federal Food, Drug, and Cosmetic Act; (6) advises on the necessity to ban a device; and (7) responds to requests from the Agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, may also make appropriate recommendations to the Commissioner on issues relating to the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

The Medical Devices Dispute Resolution Panel provides advice to the Commissioner on complex or contested scientific issues between FDA and medical device sponsors, applicants, or manufacturers relating to specific products, marketing applications, regulatory decisions and actions by FDA, and Agency guidance and policies. The Panel makes recommendations on issues that are lacking resolution, are highly complex in nature, or result from challenges to regular advisory panel proceedings or Agency decisions or actions.

II. Criteria for Members

Persons nominated for membership as consumer representatives on committees or panels should meet the following criteria: (1) demonstrate an affiliation with and/or active participation in consumer or community-based organizations, (2) be able to analyze technical data, (3) understand research design, (4) be able to discuss benefits and risks, and (5) be able to evaluate the safety and efficacy of products under review. The consumer representative should be able to represent the consumer perspective on issues and actions before the advisory committee; serve as a liaison between the committee and interested consumers, associations, coalitions, and consumer organizations; and facilitate dialogue with the advisory committees on scientific issues that affect consumers.

III. Selection Procedures

Selection of members representing consumer interests is conducted through procedures that include the use of organizations representing the public interest and public advocacy groups. These organizations recommend nominees for the Agency's selection. Representatives from the consumer health branches of Federal, State, and local governments also may participate in the selection process. Any consumer organization interested in participating in the selection of an appropriate voting or nonvoting member to represent consumer interests should send a letter stating that interest to FDA (see **ADDRESSES**) within 30 days of publication of this document.

Within the subsequent 45 days, FDA will compile a list of consumer organizations that will participate in the selection process and will forward to each such organization a ballot listing at least two qualified nominees selected by the Agency based on the nominations received, together with each nominee's current curriculum vitae or resume. Ballots are to be filled out and returned

to FDA within 30 days. The nominee receiving the highest number of votes ordinarily will be selected to serve as the member representing consumer interests for that particular advisory committee or panel.

IV. Nomination Procedures

Any interested person or organization may nominate one or more qualified persons to represent consumer interests on the Agency's advisory committees or panels. Self-nominations are also accepted. Nominations must include a current, complete resume or curriculum vitae for each nominee and a signed copy of the *Acknowledgement and Consent* form available at the FDA Advisory Nomination Portal (see **ADDRESSES**), and a list of consumer or community-based organizations for which the candidate can demonstrate active participation.

Nominations must also specify the advisory committee(s) or panel(s) for which the nominee is recommended. In addition, nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will ask potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflicts of interest. Members will be invited to serve for terms of up to 4 years.

FDA will review all nominations received within the specified timeframes and prepare a ballot containing the names of qualified nominees. Names not selected will remain on a list of eligible nominees and be reviewed periodically by FDA to determine continued interest. After selecting qualified nominees for the ballot, FDA will provide those consumer organizations that are participating in the selection process with the opportunity to vote on the listed nominees. Only organizations vote in the selection process. Persons who nominate themselves to serve as voting or nonvoting consumer representatives will not participate in the selection process.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: December 16, 2024.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2024-31270 Filed 12-27-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2024-D-5580]

M15 General Principles for Model-Informed Drug Development; International Council for Harmonisation; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled “M15 General Principles for Model-Informed Drug Development.” The draft guidance was prepared under the auspices of the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use (ICH). The draft guidance discusses the multidisciplinary principles of model-informed drug development (MIDD). This includes recommendations on MIDD planning, model evaluation, and evidence documentation. The draft guidance also includes a harmonized framework for assessing evidence derived from MIDD. The draft guidance is intended to facilitate multidisciplinary understanding, appropriate use, and harmonized assessment of MIDD and its associated evidence.

DATES: Submit either electronic or written comments on the draft guidance by February 28, 2025 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact

information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2024-D-5580 for “M15 General Principles for Model-Informed Drug Development.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For

more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002, or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1-800-835-4709 or 240-402-8010. See the **SUPPLEMENTARY**

INFORMATION section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Hao Zhu, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3134, Silver Spring, MD 20993-0002, Hao.Zhu@fda.hhs.gov; or James Myers, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911.

Regarding the ICH: Jill Adleberg, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6364, Silver Spring, MD 20993-0002, 301-796-5259, Jill.Adleberg@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled “M15 General Principles for Model-Informed Drug Development.” The draft

guidance was prepared under the auspices of ICH. ICH seeks to achieve greater regulatory harmonization worldwide to ensure that safe, effective, high-quality medicines are developed, registered, and maintained in the most resource-efficient manner.

By harmonizing the regulatory requirements in regions around the world, ICH guidelines enhance global drug development, improve manufacturing standards, and increase the availability of medications. For example, ICH guidelines have substantially reduced duplicative clinical studies, prevented unnecessary animal studies, standardized the reporting of important safety information, and standardized marketing application submissions.

The six Founding Members of the ICH are FDA; the Pharmaceutical Research and Manufacturers of America; the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; and the Japanese Pharmaceutical Manufacturers Association. The Standing Members of the ICH Association include Health Canada and Swissmedic. ICH membership continues to expand to include other regulatory authorities and industry associations from around the world (refer to <https://www.ich.org/>).

ICH works by engaging global regulatory and industry experts in a detailed, science-based, and consensus-driven process that results in the development of ICH guidelines. The regulators around the world are committed to consistently adopting these consensus-based guidelines, realizing the benefits for patients and for industry.

As a Founding Regulatory Member of ICH, FDA plays a major role in the development of each of the ICH guidelines, which FDA then adopts and issues as guidance for industry. FDA's guidance documents do not establish legally enforceable responsibilities. Instead, they describe the Agency's current thinking on a topic and should be viewed only as recommendations, unless specific regulatory or statutory requirements are cited.

In November 2024, the ICH Assembly endorsed the draft guideline entitled "M15 General Principles for Model-Informed Drug Development" and agreed that the guideline should be made available for public comment. The draft guideline is the product of the Multidisciplinary Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Multidisciplinary Expert Working Group.

The draft guidance promotes multidisciplinary understanding and harmonized assessment of MIDD by discussing principles, assessment frameworks, evaluation, and reporting of MIDD and its generated evidence. Appropriate use of MIDD can enable greater efficiency in drug development, while harmonized approaches to assessment can promote consistent and transparent evaluation of MIDD evidence to inform regulatory decision making.

This draft guidance has been left in the original ICH format. The final guidance will be reformatted and edited to conform with FDA's good guidance practices regulation (21 CFR 10.115) and style before publication. The draft guidance, when finalized, will represent the current thinking of FDA on "M15 General Principles for Model-Informed Drug Development." It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information for submission of regulatory information, including nonclinical and clinical data, prior information of drug and disease characteristics derived from model-informed drug development, have been approved under OMB control numbers 0910–0014, 0910–0001, and 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at <https://www.regulations.gov>, <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, <https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances>, or <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>.

Dated: December 16, 2024.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2024–31027 Filed 12–27–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2024–E–0440 and FDA–2024–E–0441]

Determination of Regulatory Review Period for Purposes of Patent Extension; ROCTAVIAN

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for ROCTAVIAN and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see

SUPPLEMENTARY INFORMATION) are incorrect must submit either electronic or written comments and ask for a redetermination by February 28, 2025. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by June 30, 2025. See "Petitions" in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 28, 2025. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a

third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket Nos. FDA-2024-E-0440 and FDA-2024-E-0441 for "Determination of Regulatory Review Period for Purposes of Patent Extension; ROCTAVIAN." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- *Confidential Submissions—*To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and

contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 301-796-3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count

toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biological product ROCTAVIAN (valoctocogene roxaparvovec-rvox). ROCTAVIAN is indicated for the treatment of adults with severe hemophilia A (congenital factor VIII deficiency with factor VIII activity <1 IU/dL) without pre-existing antibodies to adeno-associated virus serotype 5 detected by an FDA-approved test. Subsequent to this approval, the USPTO received patent term restoration applications for ROCTAVIAN (U.S. Patent Nos. 9,504,762 and 11,406,690) from BioMarin Pharmaceutical, Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated April 24, 2024, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of ROCTAVIAN represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for ROCTAVIAN is 2,101 days. Of this time, 816 days occurred during the testing phase of the regulatory review period, while 1,285 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* September 29, 2017. The applicant claims October 5, 2017, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was September 29, 2017, which was the first date after receipt of the IND that the investigational studies were allowed to proceed.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* December 23, 2019. FDA has verified the applicant's claim that

the biologics license application (BLA) for ROCTAVIAN (BLA B125720) was initially submitted on December 23, 2019.

3. *The date the application was approved:* June 29, 2023. FDA has verified the applicant's claim that BLA B125720 was approved on June 29, 2023.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 803 days or 1,023 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see DATES). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see DATES), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: December 20, 2024.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2024–31276 Filed 12–27–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2016–E–4589, FDA–2016–4590, and FDA–2016–E–4588]

Determination of Regulatory Review Period for Purposes of Patent Extension; XTAMPZA ER

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for XTAMPZA ER and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by February 28, 2025. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by June 30, 2025. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 28, 2025. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any

confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket Nos. FDA–2016–E–4589, FDA–2016–4590, and FDA–2016–E–4588 for “Determination of Regulatory Review Period for Purposes of Patent Extension; XTAMPZA ER.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit

both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory

review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA’s determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, XTAMPZA ER (oxycodone myristate), indicated for the management of pain severe enough to require daily, around-the-clock, long-term opioid treatment and for which alternative treatment options are inadequate. Subsequent to this approval, the USPTO received patent term restoration applications for XTAMPZA ER (U.S. Patent Nos. 7,399,488; 7,771,707; and 8,449,909) from Collegium Pharmaceutical, Inc., and the USPTO requested FDA’s assistance in determining the patents’ eligibility for patent term restoration. In a letter dated October 19, 2023, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of XTAMPZA ER represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product’s regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for XTAMPZA ER is 3,214 days. Of this time, 2,712 days occurred during the testing phase of the regulatory review period, while 502 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* July 11, 2007. FDA has verified the applicant’s claim that the date the investigational new drug application became effective was on July 11, 2007.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* December 12, 2014. FDA has verified the applicant’s claim that the new drug application (NDA) for XTAMPZA ER (NDA 208090) was initially submitted on December 12, 2014.

3. *The date the application was approved:* April 26, 2016. FDA has

verified the applicant’s claim that NDA 208090 was approved on April 26, 2016.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 784 days, 1,295 days, or 1,673 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see DATES). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see DATES), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: December 13, 2024.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2024–31023 Filed 12–27–24; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–E–3269]

Determination of Regulatory Review Period for Purposes of Patent Extension; NEXOBRID

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has

determined the regulatory review period for NEXOBRID and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see SUPPLEMENTARY INFORMATION) are incorrect must submit either electronic or written comments and ask for a redetermination by February 28, 2025. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by June 30, 2025. See “Petitions” in the SUPPLEMENTARY INFORMATION section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 28, 2025. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the

manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2023-E-3269 for “Determination of Regulatory Review Period for Purposes of Patent Extension; NEXOBRID.” Received comments, those filed in a timely manner (see ADDRESSES), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 301-796-3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product NEXOBRID (anacaulase-bcdb). NEXOBRID is indicated for eschar removal in adults with deep partial thickness and/or full

thickness thermal burns. Subsequent to this approval, the USPTO received a patent term restoration application for NEXOBRID (U.S. Patent No. 8,540,983) from MediWound, Ltd., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated January 30, 2024, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of NEXOBRID represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for NEXOBRID is 7,427 days. Of this time, 6,514 days occurred during the testing phase of the regulatory review period, while 913 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* August 30, 2002. The applicant claims August 29, 2002, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was August 30, 2002, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* June 29, 2020. FDA has verified the applicant's claim that the biologics license application (BLA) for NEXOBRID (BLA 761192) was initially submitted on June 29, 2020.

3. *The date the application was approved:* December 28, 2022. FDA has verified the applicant's claim that BLA 761192 was approved on December 28, 2022.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 5 years of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**).

Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: December 13, 2024.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2024–31022 Filed 12–27–24; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–D–5016]

Protocol Deviations for Clinical Investigations of Drugs, Biological Products, and Devices; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled “Protocol Deviations for Clinical Investigations of Drugs, Biological Products, and Devices.” This draft guidance provides recommendations to assist sponsors, clinical investigators, and institutional review boards (IRBs) in defining, identifying, and reporting protocol deviations. The guidance provides definitions for protocol deviations and important protocol deviations. In addition, the guidance provides a recommended classification system for sponsors to report protocol deviations to FDA in clinical study reports for drugs, biological products, and devices; for

investigators to report protocol deviations to sponsors and to IRBs; and for IRBs to evaluate protocol deviations.

DATES: Submit either electronic or written comments on the draft guidance by February 28, 2025 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2023–D–5016 for “Protocol Deviations for Clinical Investigations of Drugs, Biological Products, and Devices.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at

<https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002; or the Office of Policy, Guidance and Policy Development, Center for Devices

and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Dat Doan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3334, Silver Spring, MD 20993, 240–402–8926; or James Myers, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911; or Soma Kalb, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G318, Silver Spring, MD 20993–0002, 301–796–6359.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled “Protocol Deviations for Clinical Investigations of Drugs, Biological Products, and Devices.” Protocols document the study design, objectives, population, planned procedures, investigational product management, method(s) of data capture, monitoring and oversight plans, and statistical analysis plans either directly or by reference to associated investigational plans. In the conduct of a clinical investigation, some deviations from the specifics outlined in the protocol may occur.

This guidance provides recommendations to assist sponsors, clinical investigators, and IRBs in defining, identifying, and reporting protocol deviations. FDA regulations do not include a definition of the term protocol deviation or provide a system for classifying the various types of deviations that may occur during the conduct of a clinical investigation. A system that applies consistent classification, reporting, and documentation standards is important to assure the most interpretable and useful information emerges from the reporting of protocol deviations. To address these considerations, this guidance includes (1) definitions for protocol deviations and important protocol deviations, (2) recommendations on the types of protocol deviations that sponsors should report to FDA in clinical study reports, (3) recommendations on the

types of protocol deviations that investigators should report to sponsors and to IRBs, and (4) recommendations for IRBs in their evaluation of protocol deviations.

This draft guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on “Protocol Deviations for Clinical Investigations of Drugs, Biological Products, and Devices.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 56 have been approved under OMB control number 0910–0130; the collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014; the collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001; the collections of information in 21 CFR part 320 have been approved under OMB control number 0910–0291; the collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; and the collections of information in 21 CFR part 814 have been approved under OMB control number 0910–0231.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, <https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances>, <https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products>, or <https://www.regulations.gov>.

Dated: December 17, 2024.
P. Ritu Nalubola,
Associate Commissioner for Policy.
[FR Doc. 2024–31261 Filed 12–27–24; 8:45 am]
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–2149]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; De Novo Classification Process (Evaluation of Automatic Class III Designation)

AGENCY: Food and Drug Administration, HHS.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.
DATES: Submit written comments (including recommendations) on the collection of information by January 29, 2025.
ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function. The OMB control number for this information collection is 0910–0844. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD

20852, 301–796–8867, PRAStaff@fda.hhs.gov.
SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.
De Novo Classification Process (Evaluation of Automatic Class III Designation)—21 CFR Part 860, Subpart D
OMB Control Number 0910–0844—Revision

This information collection supports FDA regulations and information collection discussed in associated guidance. Sections 201(h), 513(a) and (f), 701(a), and 704 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 321(h), 360c(a) and (f), 371(a), and 374) establish a comprehensive system for the regulation of medical devices intended for human use. Section 513(f)(2) of the FD&C Act provides for a “De Novo” classification process, most recently amended by section 3101 of the 21st Century Cures Act (Pub. L. 114–255). The final rule “Medical Device De Novo Classification Process” (86 FR 54826), established part 860, subpart D (21 CFR part 860, subpart D) (§§ 860.200 through 860.260) to implement provisions in section 513(f)(2) of the FD&C Act. These regulations govern format and content elements for De Novo device classification requests, as well as withdrawal of the requests, and explain FDA procedures for acceptance, review, and granting or denying a request. FDA’s guidance for industry and FDA staff, “De Novo Classification Process (Evaluation of Automatic Class III Designation)”, provides guidance on the process for the submission and review of a De Novo classification request under section 513(f)(2) of the FD&C Act, also known as the De Novo classification process. This process provides a pathway to class I or class II classification for medical devices for which general controls or general and special controls provide a reasonable assurance of safety and effectiveness,

but for which there is no legally marketed predicate device.
In addition to regulatory requirements set forth in part 860, subpart D, the guidance document entitled “Acceptance Review for De Novo Classification Requests” communicates our thinking on criteria set out in § 860.230, in assessing whether a De Novo request should be accepted for substantive review. The guidance document includes an “Acceptance Checklist” to assist respondents in this regard.
The guidance document “Electronic Submission Template for Medical Device De Novo Requests,” provides the standards for the submission of De Novo requests by electronic format, a timetable for establishment of these standards, and criteria for waivers of and exemptions from the requirements to meet a statutory requirement. This guidance is also intended to represent one of several steps in meeting FDA’s commitment to the development of electronic submission templates to serve as guided submission preparation tools for industry to improve submission consistency and enhance efficiency in the review process.
The collections of information described by this notice are necessary to satisfy the previously mentioned statutory requirements for administration of this voluntary submission program. FDA uses the information to evaluate whether a medical device may be reclassified from class III into class I or II and, if applicable, to determine the general and/or special controls necessary to sufficiently regulate the medical device. Respondents to this information collection are private sector or other for-profit businesses.
In the **Federal Register** of May 29, 2024 (89 FR 46402), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.
FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR part 860, subpart D; information collection activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
§§ 860.210, 860.220, 860.230; De Novo requests—format, content, and acceptance elements.	79	1	79	182	14,378
§ 860.230; FDA acceptance of request (<i>GFI Acceptance Checklist</i> ; Appendix A) ¹ .	79	1	79	.....	.....

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN—Continued

21 CFR part 860, subpart D; information collection activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
\$ 860.250; withdrawal of request	5	1	5	0.17 (10 mins.)	1
Total					14,379

¹ FDA assumes activities associated with review of the Acceptance Checklist are included in burden for submission of requests captured in row 1.

Our estimated burden for the information collection reflects an overall increase of 2,002 hours and a corresponding increase of 11 responses. We attribute this adjustment to an increase in the number of submissions we received over the last few years. Since the publication of the 60-day notice, we issued the guidance document entitled “Electronic Submission Template for Medical Device De Novo Requests” (August 23, 2024, 89 FR 68166; <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/electronic-submission-template-medical-device-de-novo-requests>) and are including it in this information collection. Given that all submissions were previously received electronically and the ability to voluntarily submit De Novo requests using eSTAR was included in the previous information collection request (ICR), inclusion of the guidance in this ICR is not expected to impact the estimated burden.

Dated: December 13, 2024.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2024–31014 Filed 12–27–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–0008]

Request for Nominations of Individuals and Industry Organizations for the Patient Engagement Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is requesting that any industry organizations interested in participating in the selection of a pool of nonvoting industry representatives to serve as temporary nonvoting members on the Patient Engagement Advisory

Committee (the Committee) in the Center for Devices and Radiological Health notify FDA in writing. FDA is also requesting nominations for temporary nonvoting industry representatives to be included in a pool of individuals to serve on the Committee. Nominees recommended to serve as a temporary nonvoting industry representative may either be self-nominated or nominated by an industry organization. This position may be filled by representatives from different medical device areas based on expertise relevant to the topics being considered by the Committee. Nominations will be accepted for upcoming vacancies effective with this notice. FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups.

DATES: Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interest must send a letter stating that interest to the FDA by January 29, 2025, (see sections I and II of this document for details). Concurrently, nomination materials for prospective candidates should be sent to FDA by January 29, 2025.

ADDRESSES: All statements of interest from industry organizations interested in participating in the selection process of a pool of nonvoting industry representatives should be sent electronically to Margaret Ames (see **FOR FURTHER INFORMATION CONTACT**). All nominations for nonvoting industry representatives should be submitted electronically by accessing the FDA Advisory Committee Membership Nomination Portal: <https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm> or by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002. Information about becoming a member on an FDA advisory

committee can also be obtained by visiting FDA’s website at <https://www.fda.gov/AdvisoryCommittees/default.htm>.

FOR FURTHER INFORMATION CONTACT:

Margaret Ames, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5213, Silver Spring, MD 20993–0002, 301–796–5960, email: margaret.ames@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for a pool of nonvoting industry representatives for the Committee. The list of needed expertise on May 1, 2025, is identified below:

- Cybersecurity
- Communication of Benefit & Risk Information to Patients; Medical Device Labeling
- Digital Health Technology/Artificial Intelligence
- Health Equity
- Patient Engagement
- Patient Preference Elicitation
- Patient-Reported Outcomes Development, Validation, and Use in Regulatory Studies or Clinical Practice
- Postmarket Studies, Including Observational and Registry-Based Studies
- Human Factors

FDA is publishing separate documents regarding:

1. Request for Nominations for Voting Members for the Patient Engagement Advisory Committee
2. Request for Nominations for Consumer Representative for the Patient Engagement Advisory Committee

I. General Description of the Committee’s Duties

The Committee provides advice on complex issues relating to medical devices, the regulation of devices, and their use by patients. Agency guidance and policies, clinical trial or registry design, patient preference study design, benefit-risk determinations, device labeling, unmet clinical needs, available alternatives, patient reported outcomes and device-related quality of life or

health status issues are among the topics that may be considered by the Committee. Members are knowledgeable in areas such as clinical research, primary care patient experience, healthcare needs of patient groups in the United States or are experienced in the work of patient and health professional organizations, methodologies for eliciting patient preferences, and strategies for communicating benefits, risks and clinical outcomes to patients and research subjects. The Commissioner of Food and Drugs (the Commissioner), or designee, shall have the authority to select from a group of individuals nominated by industry to serve temporarily as nonvoting members who are identified with industry interests. The number of temporary members selected for a particular meeting will depend on the meeting topic(s).

II. Qualifications

Persons nominated for the Patient Engagement Advisory Committee should be full-time employees of firms that manufacture medical device products, or consulting firms that represent manufacturers or have similar appropriate ties to industry.

III. Selection Procedure

Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interest must send a letter stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document (see **DATES**). Within the subsequent 30 days, FDA will send a letter to each organization that has expressed an interest, attaching a complete list of all such organizations; and a list of all nominees along with their current résumés or curriculum vitae. The letter will also state that it is the responsibility of the interested organizations to confer with one another and to select a candidate or candidates (to serve in a pool of individuals with varying areas of expertise) to represent industry interest for the Committee, within 60 days after the receipt of the FDA letter. The interested organizations are not bound by the list of nominees in selecting a candidate or candidates. However, if no individual is selected within 60 days, the Commissioner will select temporary nonvoting members (or pool of individuals) to represent industry interests.

IV. Nomination Procedure

Individuals may self-nominate and/or an organization may nominate one or more individuals to serve as a

temporary nonvoting industry representative. Nominations must include a cover letter and a current, complete résumé or curriculum vitae for each nominee, including current business and/or home address, telephone number, and email address if available, and a signed copy of the Acknowledgement and Consent form available at the FDA Advisory Committee Membership Nomination Portal (see **ADDRESSES**). Nominations should specify the advisory committee for which the nominee is recommended within 30 days of publication of this document (see **DATES**). In addition, nominations should acknowledge that the nominee is aware of the nomination, unless self-nominated. FDA will forward all nominations to the organizations expressing interest in participating in the selection process for the Committee. Only interested industry organizations participate in the selection process. Persons who nominate themselves as nonvoting industry representatives will not participate in the selection process.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*) and 21 CFR part 14, relating to advisory committees.

Dated: December 20, 2024.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2024–31272 Filed 12–27–24; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–0846]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; National Agriculture and Food Defense Strategy Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing that a collection of information entitled “National Agriculture and Food Defense Strategy Survey” has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA).

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601

Landsdown St., North Bethesda, MD 20852, 301–796–8867, PRASStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: On August 15, 2024, the Agency submitted a proposed collection of information entitled “National Agriculture and Food Defense Strategy Survey” to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0855. The approval expires on November 30, 2027. A copy of the supporting statement for this information collection is available on the internet at <https://www.reginfo.gov/public/do/PRAMain>.

Dated: December 16, 2024.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2024–31298 Filed 12–27–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–4597]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Shortages Data Collection

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing that a collection of information entitled “Shortages Data Collection” has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA).

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10 a.m.–12 p.m., 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, PRASStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: On May 20, 2024, the Agency submitted a proposed collection of information entitled “Shortages Data Collection” to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910-0491. The approval expires on October 31, 2027. A copy of the supporting statement for this information collection is available on the internet at <https://www.reginfo.gov/public/do/PRAMain>.

Dated: December 13, 2024.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2024-31025 Filed 12-27-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2022-D-1562]

E11A Pediatric Extrapolation; International Council for Harmonisation; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled “E11A Pediatric Extrapolation.” The guidance was prepared under the auspices of the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use (ICH). The guidance provides a comprehensive and systematic approach to pediatric extrapolation during drug development. Notably, the guidance discusses approaches to safety extrapolation and defining extrapolation as a continuum. The guidance also includes approaches to study designs and statistical methodologies, including modeling and simulation, for developing and implementing pediatric extrapolation. The guidance is intended to provide approaches that can increase the efficiency of pediatric drug development and accelerate the availability of safe and effective drugs approved for use in children. The guidance replaces the draft guidance “E11A Pediatric Exploration” issued on August 29, 2022.

DATES: The announcement of the guidance is published in the **Federal Register** on December 30, 2024.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2022-D-1562 for “E11A Pediatric Exploration.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS

CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002, or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1-800-835-4709 or 240-402-8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Lynne Yao, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5412, Silver Spring, MD 20993-0002, 301-796-2141,

Lynne.Yao@fda.hhs.gov; or James Myers, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911.

Regarding the ICH: Jill Adleberg, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6364, Silver Spring, MD 20993-0002, 301-796-5259, jill.adleberg@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled “E11A Pediatric Exploration.” The guidance was prepared under the auspices of ICH. ICH seeks to achieve greater regulatory harmonization worldwide to ensure that safe, effective, high-quality medicines are developed, registered, and maintained in the most resource-efficient manner.

By harmonizing the regulatory requirements in regions around the world, ICH guidelines enhance global drug development, improve manufacturing standards, and increase the availability of medications. For example, ICH guidelines have substantially reduced duplicative clinical studies, prevented unnecessary animal studies, standardized the reporting of important safety information, and standardized marketing application submissions.

The six Founding Members of the ICH are FDA; the Pharmaceutical Research and Manufacturers of America; the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; and the Japanese Pharmaceutical Manufacturers Association. The Standing Members of the ICH Association include Health Canada and Swissmedic. ICH membership continues to expand to include other regulatory authorities and industry associations from around the world (refer to <https://www.ich.org/>).

ICH works by engaging global regulatory and industry experts in a detailed, science-based, and consensus-driven process that results in the development of ICH guidelines. The regulators around the world are committed to consistently adopting these consensus-based guidelines, realizing the benefits for patients and for industry.

As a Founding Regulatory Member of ICH, FDA plays a major role in the development of each of the ICH guidelines, which FDA then adopts and issues as guidance for industry. FDA’s

guidance documents do not establish legally enforceable responsibilities. Instead, they describe the Agency’s current thinking on a topic and should be viewed only as recommendations, unless specific regulatory or statutory requirements are cited.

In the **Federal Register** of August 29, 2022 (87 FR 52788), FDA published a notice announcing the availability of a draft guidance entitled “E11A Pediatric Extrapolation.” The notice gave interested persons an opportunity to submit comments by October 28, 2022.

After consideration of the comments received and revisions to the guideline, a final draft of the guideline was submitted to the ICH Assembly and endorsed by the regulatory agencies in August 2024.

This guidance finalizes the draft guidance issued on August 29, 2022. The final guidance includes clarification and minor formatting changes to its recommendations on pediatric extrapolation concepts and approaches. The guidance was restructured for easier navigability and includes additional details on key concepts like study designs, modeling approaches, and the role of biomarkers. Additionally, the final guidance includes updates to the figure on the continuum of pediatric extrapolation.

This guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on “E11A Pediatric Extrapolation.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information relating to submission of investigational new drug applications, including efficient approaches to clinical trial design and study protocols, have been approved under OMB control number 0910-0014. The collections of information relating to submission of new drug applications have been approved under OMB control number 0910-0001. The collections of information relating to submission of biologics license applications have been

approved under OMB control number 0910-0338.

III. Electronic Access

Persons with access to the internet may obtain the guidance at <https://www.regulations.gov>, <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, <https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances>, or <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>.

Dated: December 16, 2024.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2024–31026 Filed 12–27–24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–D–4490]

Combined Food and Drug Administration and Sponsor Oncologic Drugs Advisory Committee Briefing Document; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled “Combined FDA and Sponsor Oncologic Drugs Advisory Committee (ODAC) Briefing Document.” This draft guidance provides recommendations to sponsors regarding use and development of a combined version of the ODAC briefing document, as part of the Oncology Center of Excellence’s (OCE) Project Point/Counterpoint initiative. This single document includes information that customarily would be contained in separate briefing documents prepared individually by the Sponsor and FDA. Project Point/Counterpoint is an option for advisory committee meetings for oncology products. Sponsors in non-oncology therapeutic areas who want to discuss whether a combined advisory committee briefing document may be appropriate for their applications should contact the relevant review division. This briefing document format may provide efficiencies by allowing Sponsors and FDA to choose to use a single document that provides the views of the Sponsor and FDA on key issues.

DATES: Submit either electronic or written comments on the draft guidance by February 28, 2025 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier** (for written/paper submissions): Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2024-D-4490 for "Combined FDA and Sponsor Oncologic Drugs Advisory Committee (ODAC) Briefing Document." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Jennifer Gao or Jamie Brewer, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993-0002, 240-402-4683 or 240-

402-4463; or James Myers, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240-402-5923.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Combined FDA and Sponsor Oncologic Drugs Advisory Committee (ODAC) Briefing Document." This guidance provides recommendations to sponsors regarding use and development of a combined version of the briefing document for matters before the ODAC, as part of the OCE Project Point/Counterpoint initiative. This single briefing document includes information that customarily would be contained in separate briefing documents prepared individually by the Sponsor and FDA. Project Point/Counterpoint is an option for advisory committee meetings for oncology products. Sponsors in non-oncology therapeutic areas who want to discuss whether a combined advisory committee briefing document may be appropriate for their applications should contact the relevant review division.

Sponsors and FDA customarily prepare their own separate ODAC briefing documents. This can lead to repetition of information (*i.e.*, trial design, endpoints, eligibility criteria, etc.) and increases the number of documents that ODAC committee members need to review. Additionally, ODAC committee members may need to go back and forth from each briefing document to consider the Sponsor's and FDA's position on each issue. Project Point/Counterpoint may provide efficiencies by allowing Sponsors and FDA to choose to use a single document that provides the views of the Sponsor and FDA on key issues.

The combined briefing document was first piloted for use at an ODAC meeting in December 2019. This format decreases the number of documents ODAC members must review by providing the applicant's and FDA's positions in one document. It serves as a stand-alone document containing the background information and an objective description of the data for the clinical trial or topic under discussion at ODAC, followed by the positions of the Sponsor and FDA.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on "Combined FDA and Sponsor

Oncologic Drugs Advisory Committee (ODAC) Briefing Document.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

FDA tentatively concludes that this draft guidance contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Dated: December 18, 2024.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2024–31305 Filed 12–27–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–5717]

Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments—Supplemental New Drug Application 218276 S–004 for FABHALTA (iptacopan) Oral Capsules in the Treatment of Adults With C3G

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Cardiovascular and Renal Drugs Advisory Committee (the Committee). The general function of the Committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held on February 24, 2025, from 9 a.m. to 5 p.m. Eastern Time.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31

Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. The public will also have the option to participate, and the advisory committee meeting will be heard, viewed, captioned, and recorded through an online teleconferencing and/or video conferencing platform.

Answers to commonly asked questions about FDA advisory committee meetings, including information regarding special accommodations due to a disability, visitor parking, and transportation, may be accessed at: <https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm>.

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2024–N–5717. The docket will close on February 21, 2025. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 21, 2025. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Comments received on or before February 7, 2025, will be provided to the Committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2024–N–5717 for “Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments—Supplemental New Drug Application (sNDA) 218276 S–004 for FABHALTA (iptacopan) Oral Capsules in the Treatment of Adults with C3G.” Received comments, those filed in a timely manner (see ADDRESSES), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify the information as “confidential.” Any information marked

as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT: Jessica Seo, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993-0002, 301-796-7699, email: CRDAC@fda.hhs.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area). A notice in the **Federal Register** about last-minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check FDA’s website at <https://www.fda.gov/AdvisoryCommittees/default.htm> and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before the meeting.

SUPPLEMENTARY INFORMATION: Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing and/or video conferencing platform. The Committee will discuss supplemental new drug application (sNDA) 218276 S-004, for FABHALTA (iptacopan) oral capsules, submitted by Novartis Pharmaceuticals Corporation, for the treatment of adults with complement 3 glomerulopathy (C3G).

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA’s website at the time of the advisory committee meeting. Background material and the link to the online teleconference and/or video conference meeting will be available at the location of the advisory committee meeting and

at <https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee meeting link. The online presentation of materials will include slide presentations with audio and video components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. All electronic and written submissions to the Docket (see **ADDRESSES**) on or before February 7, 2025, will be provided to the Committee. Oral presentations from the public will be scheduled between approximately 1:15 p.m. and 2:15 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, whether they would like to present online or in-person, and an indication of the approximate time requested to make their presentation on or before January 30, 2025. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. Similarly, room for interested persons to participate in-person may be limited. If the number of registrants requesting to speak in-person during the open public hearing is greater than can be reasonably accommodated in the venue for the in-person portion of the advisory committee meeting, FDA may conduct a lottery to determine the speakers who will be invited to participate in-person. The contact person will notify interested persons regarding their request to speak by January 31, 2025. Persons attending FDA’s advisory committee meetings are advised that FDA is not responsible for providing access to electrical outlets.

For press inquiries, please contact the Office of Media Affairs at fdaoma@fda.hhs.gov or 301-796-4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Jessica Seo (see **FOR FURTHER INFORMATION CONTACT**)

at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at <https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*). This meeting notice also serves as notice that, pursuant to 21 CFR 10.19, the requirements in 21 CFR 14.22(b), (f), and (g) relating to the location of advisory committee meetings are hereby waived to allow for this meeting to take place using an online meeting platform in conjunction with the physical meeting room (see location). This waiver is in the interest of allowing greater transparency and opportunities for public participation, in addition to convenience for advisory committee members, speakers, and guest speakers. The conditions for issuance of a waiver under 21 CFR 10.19 are met.

Dated: December 20, 2024.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2024-31309 Filed 12-27-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2024-D-5601]

E6(R3) Good Clinical Practice: Annex 2; International Council for Harmonisation; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled “E6(R3) Good Clinical Practice: Annex 2.” The draft guidance was prepared under the auspices of the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use (ICH). The draft guidance is the second annex to “E6(R3) Good Clinical Practice” published June of 2023. This annex provides additional considerations for the application of good clinical practices to a variety of trial designs and data sources.

Specifically, this draft guidance discusses trials with decentralized and pragmatic elements and real-world data sources. This draft guidance highlights the importance of quality by design and focusing efforts and resources on critical aspects of the trials that might impact the safety of participants and the reliability of results. The draft guidance is intended to encourage innovation in trial design and provides flexible, modern, and clear good clinical practices for conducting trials, while avoiding unnecessary complexities.

DATES: Submit either electronic or written comments on the draft guidance by February 28, 2025 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked, and

identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2024-D-5601 for "E6(R3) Good Clinical Practice: Annex 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." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building,

4th Floor, Silver Spring, MD 20993-0002, or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your requests. The guidance may also be obtained by calling CBER at 1-800-835-4709 or 240-402-8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Amy Chi, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6334, Silver Spring, MD 20993-0002, amy.chi@fda.hhs.gov; or James Myers, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911.

Regarding the ICH: Jill Adleberg, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6364, Silver Spring, MD 20993-0002, 301-796-5259, Jill.Adleberg@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "E6(R3) Good Clinical Practice: Annex 2." The draft guidance was prepared under the auspices of ICH. ICH seeks to achieve greater regulatory harmonization worldwide to ensure that safe, effective, and high-quality medicines are developed, registered, and maintained in the most resource-efficient manner.

By harmonizing the regulatory requirements in regions around the world, ICH guidelines enhance global drug development, improve manufacturing standards, and increase the availability of medications. For example, ICH guidelines have substantially reduced duplicative clinical studies, prevented unnecessary animal studies, standardized the reporting of important safety information, and standardized marketing application submissions.

The six Founding Members of the ICH are FDA; the Pharmaceutical Research and Manufacturers of America; the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of

Health, Labour, and Welfare; and the Japanese Pharmaceutical Manufacturers Association. The Standing Members of the ICH Association include Health Canada and Swissmedic. ICH membership continues to expand to include other regulatory authorities and industry associations from around the world (refer to <https://www.ich.org>).

ICH works by engaging global regulatory and industry experts in a detailed, science-based, and consensus-driven process that results in the development of ICH guidelines. The regulators around the world are committed to consistently adopting these consensus-based guidelines, realizing the benefits for patients and for industry.

As a Founding Regulatory Member of ICH, FDA plays a major role in the development of each of the ICH guidelines, which FDA then adopts and issues as guidance for industry. FDA's guidance documents do not establish legally enforceable responsibilities. Instead, they describe the Agency's current thinking on a topic and should be viewed only as recommendations, unless specific regulatory or statutory requirements are cited.

In November 2024, the ICH Assembly endorsed the draft guideline entitled "E6(R3) Good Clinical Practice: Annex 2" and agreed that the guideline should be made available for public comment. The draft guideline is the product of the Efficacy Expert Working Group of the ICH. FDA and the Efficacy Expert Working Group will consider comments on this draft.

The draft guidance provides guidance on good clinical practices for trial design and conduct, with a focus on trials with decentralized and pragmatic elements as well as trials that utilize real-world data. Since the original E6 guidance was published in 1996, clinical trials have evolved significantly with new designs and technological innovations. Annex 2 provides additional considerations to the previously published draft guidance entitled "E6(R3) Good Clinical Practice (GCP)," which includes a Principles document and Annex 1. This draft guidance, entitled "E6(R3) Good Clinical Practice: Annex 2," is intended to be read and implemented with E6(R3) Principles and Annex 1.

This draft guidance has been left in the original ICH format. The final guidance will be reformatted and edited to conform with FDA's good guidance practices regulation (21 CFR 10.115) and style before publication. The draft guidance, when finalized, will represent the current thinking of FDA on "E6(R3) Good Clinical Practice: Annex 2." It

does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3502). The collections of information in 21 CFR part 312.145 pertaining to good clinical practices have been approved under OMB control number 0910–0014. The collections of information in 21 CFR parts 50 and 56 pertaining to protection of human subjects, institutional review boards, and informed consent have been approved under OMB control number 0910–0130. The collections of information in 21 CFR part 11 pertaining to electronic records and electronic signatures have been approved under OMB control number 0910–0303.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at <https://www.regulations.gov>, <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, <https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances>, or <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>.

Dated: December 20, 2024.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2024–31275 Filed 12–27–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–5702]

Transfer of Regulatory Responsibility From the Center for Devices and Radiological Health to the Center for Biologics Evaluation and Research; Medical Maggots and Medicinal Leeches

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; announcement of transfer.

SUMMARY: The Food and Drug Administration (FDA) is announcing the transfer of regulatory responsibility for medical maggots and medicinal leeches to the Center for Biologics Evaluation and Research (CBER). These products are currently regulated by the Center for Devices and Radiological Health (CDRH). FDA is transferring regulatory responsibility of these products to CBER because these products are living organisms that more closely align with products regulated by CBER. This action affects only Center assignment and does not change requirements applicable to these products.

DATES: FDA is transferring regulatory responsibility to CBER on December 30, 2024.

FOR FURTHER INFORMATION CONTACT:

Annette Marthaler, Office of Combination Products, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Silver Spring, MD 20993, 301–796–8930, annette.marthaler@fda.hhs.gov or combination@fda.gov.

SUPPLEMENTARY INFORMATION: FDA is announcing the transfer of regulatory responsibility for medical maggots (*Phaenicia sericacta* (blow fly) larvae) and medicinal leeches (*Hirudo medicinalis*) from CDRH to CBER.

Medical maggots (including maggots and larvae) (product code NQK) (also referred to as maggot therapy) are harvested and provided disinfected for use in debriding non-healing necrotic skin and soft tissue wounds, including pressure ulcers, venous stasis ulcers, neuropathic foot ulcers, and non-healing traumatic or post-surgical wounds. Medicinal leeches (product code NRN) belong to the *Annelida* worm classification. The animal is a bloodsucking aquatic animal living in fresh water indicated as an adjunct to graft tissue healing when problems of venous congestion may delay healing, or to overcome the problem of venous congestion by creating prolonged localized bleeding.

FDA is transferring the regulatory responsibility for medical maggots and medicinal leeches to CBER so that these products are regulated by the same Center that regulates other living organisms for human use. The transfer will help ensure the consistent and effective regulation of products that are living organisms for human use. This transfer affects only Center assignment and does not change requirements applicable to these products.

For the transferred products, submissions, communications, and required reports should be directed to CBER after December 30, 2024. CDRH will continue to handle submissions

received (including those under review or on hold) until the publication date of this **Federal Register** document for transferred products and, if applicable, until a final decision on the submission is reached. For questions on any submissions with CDRH, please contact CDRH Product Jurisdiction at CDRHProductJurisdiction@fda.hhs.gov. For questions on submissions to CBER, please contact CBERProductJurisdiction@fda.hhs.gov.

Dated: December 20, 2024.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2024–31266 Filed 12–27–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–3248]

Fosun Pharma USA Inc., et al.; Withdrawal of Approval of 23 Abbreviated New Drug Applications; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** on July 29, 2024. The document announced the withdrawal of approval of 23 abbreviated new drug applications (ANDAs) from multiple applicants, withdrawn as of August 28, 2024. The document indicated that FDA was withdrawing approval of the ANDAs 073462 for tolmetin sodium capsules, equivalent to (EQ) 400 milligrams (mg) base; 073588 for tolmetin sodium tablets, EQ 200 mg base; 074002 for tolmetin sodium tablets, EQ 600 mg base; 077040 for citalopram hydrobromide tablets, EQ 10 mg base, EQ 20 mg base; EQ 40 mg base; 085787 for trifluoperazine hydrochloride (HCl) concentrate, EQ 10 mg base/milliliters (mL); 086808 for cyproheptadine HCl tablets, 4 mg; 087774 for phenylbutazone capsules, 100 mg; and 088602 for pseudoephedrine HCl; triprolidine HCl tablets, 60 mg/2.5 mg, held by Fosun Pharma USA Inc., 104 Carnegie Center, Suite 204, Princeton, NJ 08540. Additionally, ANDAs 075631 for ketorolac tromethamine injectable, 15 mg/mL and 30 mg/mL; 076427 for milrinone lactate injectable, EQ 1 mg base/mL; 076791 for haloperidol lactate injectable, EQ 5 mg base/mL; 076828

haloperidol lactate injectable, EQ 5 mg base/mL; 077947 for fluconazole injectable, 200 mg/100 mL (2 mg/mL) and 400 mg/200 mL (2 mg/mL); 078197 for granisetron HCl injectable, EQ 0.1 mg base/mL (EQ 0.1 mg base/mL); 091436 for levofloxacin injectable, EQ 500 mg/20 mL (EQ 25 mg/mL); 207101 for sumatriptan succinate injectable, EQ 6 mg base/0.5 mL (EQ 12 mg base/mL); and 215065 for methocarbamol solution, 1 gram/10 mL (100 mg/mL), held by Baxter Healthcare Corp., One Baxter Parkway, Deerfield, IL 60015; and the ANDAs 090367 for levofloxacin tablets, 250 mg, 500 mg, 750 mg; and 211959 for clobazam tablets, 10 mg and 20 mg, held by Celltrion USA, Inc., U.S. Agent for Celltrion, Inc., One Evertrust Plaza, Suite 1207, Jersey City, NJ 07302; and the ANDA 212053 for chlorzoxazone tablet, 375 mg and 750 mg, held by i3 Pharmaceuticals LLC, 200 Park Ave., Warminster, PA 18974. Before FDA withdrew the approval of these ANDAs, Fosun Pharma USA Inc.; Baxter Healthcare Corp.; Celltrion USA, Inc., U.S. Agent for Celltrion, Inc.; and i3 Pharmaceuticals LLC, 200 Park Ave., Warminster, PA 18974, informed FDA that they did not want the approval of the ANDAs withdrawn. Because Fosun Pharma USA Inc.; Baxter Healthcare Corp.; Celltrion USA, Inc., U.S. Agent for Celltrion, Inc.; and i3 Pharmaceuticals, LLC, timely requested that approval of their respective ANDAs not be withdrawn, the approvals are still in effect. This notice corrects these errors.

FOR FURTHER INFORMATION CONTACT: Martha Nguyen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1676, Silver Spring, MD 20993–0002, 301–796–3471, Martha.Nguyen@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of Monday, July 29, 2024 (89 FR 60902), appearing on page 60902 in FR Doc. 2024–16627, the following correction is made:

On page 60902, in the table, the entries for ANDA 073462, ANDA 073588, ANDA 074002, ANDA 075631, ANDA 076427, ANDA 076791, ANDA 076828, ANDA 077040, ANDA 077947, ANDA 078197, ANDA 085787, ANDA 086808, ANDA 087774, ANDA 088602, ANDA 090367, ANDA 091436 ANDA 207101, ANDA 211959, ANDA 212053, and ANDA 215065 are removed.

Dated: December 20, 2024.

P. Ritu Nalubola,

Associate Commissioner for Policy.

[FR Doc. 2024–31307 Filed 12–27–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Update to the Health Resources and Services Administration-Supported Women's Preventive Services Guidelines

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) published a **Federal Register** Notice on October 22, 2024, with proposed updates to the HRSA-supported Women's Preventive Services Guidelines (Guidelines). The proposed updates specifically relate to recommendations for Screening and Counseling for Intimate Partner and Domestic Violence, Breast Cancer Screening for Women at Average Risk, and Patient Navigation Services for Breast and Cervical Cancer Screening. Recommendations to update the Guidelines are developed by the Women's Preventive Services Initiative (WPSI) for consideration by HRSA. WPSI convenes expert health professionals to conduct rigorous reviews of the evidence following the National Academy of Medicine standards for establishing foundations for and rating strengths of recommendations, articulation of recommendations, and external reviews and it develops draft recommendations for HRSA's consideration. After consideration of public comment, HRSA has accepted the recommendations as revised and detailed in this notice. Under applicable law, non-grandfathered group health plans and health insurance issuers offering non-grandfathered group and individual health insurance coverage must include coverage, without cost sharing, for certain preventive services, including those provided for in the HRSA-supported Guidelines. The Departments of Labor, Health and Human Services, and the Treasury have previously issued regulations describing how group health plans and health insurance issuers apply the coverage requirements. Please see <https://www.hrsa.gov/womens-guidelines> for additional information.

FOR FURTHER INFORMATION CONTACT: Kimberly Sherman, HRSA, Maternal and Child Health Bureau, telephone: (301) 443–2170, email: wellwomancare@hrsa.gov.

SUPPLEMENTARY INFORMATION: Under the Patient Protection and Affordable Care Act, Public Law 111–148, the preventive care and screenings set forth in the HRSA-supported Women’s Preventive Services Guidelines (Guidelines) are required to be covered without cost-sharing by certain group health plans and health insurance issuers. HRSA established the Guidelines in 2011 based on expert recommendations by the Institute of Medicine, now known as the National Academy of Medicine, developed under a contract with the Department of Health and Human Services. Since 2016, HRSA has funded cooperative agreements with the American College of Obstetricians and Gynecologists for the Women’s Preventive Services Initiative (WPSI) to convene a coalition representing clinicians, academics, and consumer-focused health professional organizations to conduct a rigorous review of current scientific evidence, solicit and consider public input, and make recommendations to HRSA regarding updates to the Guidelines to improve adult women’s health across the lifespan. HRSA then determines whether to support, in whole or in part, the recommended updates to the Guidelines.

WPSI includes an Advisory Panel and two expert committees, the Multidisciplinary Steering Committee and the Dissemination and Implementation Steering Committee, which are comprised of a broad coalition of experts in disease prevention and women’s health issues. With oversight by the Advisory Panel, and with input from the Multidisciplinary Steering Committee, WPSI examines the evidence to develop new (and update existing) recommendations for women’s preventive services. WPSI’s Dissemination and Implementation Steering Committee takes HRSA-approved recommendations and disseminates them through the development of implementation tools and resources for both patients and practitioners.

For clarity, note that the Implementation Considerations of the WPSI documents address aspects of clinical and practical application of the Clinical Recommendations. Research Recommendations are provided to highlight areas where further research and clinical trials are needed to inform the development of Clinical Recommendations. The Implementation Considerations and Research Recommendations sections are not a part of the Clinical Recommendations accepted by the HRSA Administrator,

and therefore have no impact on health insurance coverage without cost-sharing.

WPSI bases its recommended updates to the Guidelines on review and synthesis of existing clinical guidelines and new scientific evidence, following the National Academy of Medicine standards for establishing foundations for and rating strengths of recommendations, articulation of recommendations, and external reviews. Additionally, HRSA requires that WPSI incorporate processes to assure opportunity for public comment, including participation by patients and consumers, in the development of the updated Guidelines.

Discussion of Recommended Updated Guidelines

As is standard practice, HRSA published a **Federal Register** Notice seeking public comment regarding the proposed updates to the Guidelines (89 FR 84354).¹ WPSI considered all public comments as part of its deliberative process, provided the comments to HRSA for its consideration, and submitted final recommended updates for Screening and Counseling for Intimate Partner and Domestic Violence, Breast Cancer Screening for Women at Average Risk, and Patient Navigation Services for Breast and Cervical Cancer Screening. A total of 28 comments were received and considered.

Screening and Counseling for Intimate Partner and Domestic Violence

WPSI largely recommended retaining the existing Guideline on Screening and Counseling for Intimate Partner and Domestic Violence with several minor updates. The first proposed change was a revision to the title of the Guideline, with corresponding revisions throughout, to better reflect current clinical terminology by replacing “Interpersonal and Domestic Violence” with “Intimate Partner and Domestic Violence.” WPSI also recommended adding the word “adult” prior to “women” in the recommendation, to clarify that both adolescent and adult women are included in the screening and counseling guidance. The words “referral to” were removed from the last sentence to improve clarity.

WPSI received eight comments on these proposed updates. One commenter suggested adding universal education as a mechanism to address intimate partner violence in health care settings. Based on this comment, WPSI

added universal education to the Implementation Considerations section for the recommendation. Another comment recommended an expansion of research into intimate partner violence, which WPSI added to the Research Recommendations. Another commenter suggested adding referral and consult to a forensic medical examiner to the recommendation, which was not accepted as it was not represented in the evidence review for this topic. Several commenters supported WPSI’s recommendations and one suggested the development of continuous care frameworks for follow-up services and the use of telehealth in support of those services. These comments were not accepted as they are already included in the implementation considerations of the recommendation or are beyond the scope of the review, which did not include the development of a continuous care frameworks. One comment suggested alignment with the U.S. Preventive Services Task Force (USPSTF), which describes specific populations, including vulnerable patients, and another suggested specifying the inclusion of “older adult women.” These comments were not accepted, as WPSI’s evidence review and recommendation supports screening of all women, not just certain vulnerable populations or age groups.

Breast Cancer Screening for Women at Average Risk

WPSI recommended several updates to the existing Guideline on Breast Cancer Screening for Women at Average Risk. WPSI recommended updates to the first sentence of this Guideline, replacing the phrase “average-risk women” with “women at average risk for breast cancer” to clarify the target population for this recommendation and to use person-first language that puts the individual before the diagnosis or screening modality. The title was also changed from “Breast Cancer Screening for Average-Risk Women” to “Breast Cancer Screening for Women at Average Risk” for similar reasons. Two new sentences were added following the first sentence: “Women may require additional imaging to complete the screening process or to address findings on the initial screening mammography. If additional imaging (e.g., MRI, ultrasound, mammography) and pathology exams are indicated, those services are also recommended to complete the screening process for malignancies.” These two sentences were added to ensure women who need additional screening to complete their initial screening receive it. Imaging in addition to initial screening

¹ See <https://www.federalregister.gov/documents/2024/10/22/2024-24445/notice-of-request-for-public-comments-on-draft-recommendations-for-the-hrsa-supported-womens>.

mammography, such as special mammography views, ultrasound, or MRI, may be needed in individual clinical situations when clinicians require an enhanced view of breast tissue to differentiate normal from abnormal findings. A tissue biopsy may also need to be performed to determine whether abnormal findings are cancer, normal tissue, or other type of lesion. WPSI also recommended removing the following sentence from the existing Guideline, “These screening recommendations are for women at average risk of breast cancer” as this information is now included in the revised first sentence of the updated Guideline.

WPSI received thirteen comments on this proposed update. One comment requested a definition for “women at average risk,” which is provided in the full evidence review and will be restated on WPSI’s website, as the 2016 evidence review defined “women at average risk” as those without risk factors indicating high risk (includes deleterious BRCA mutations and their untested first-degree relatives; other hereditary genetic syndromes; previously diagnosed high-risk breast lesions; and history of high dose radiation therapy to the chest between the ages of 10 to 30 years). Two commenters requested screening for women under age 40. No change was made as WPSI did not document new evidence changes in its review. Others requested screening for women of increased risk. No change was made in response to these comments as this specific guideline relates to women at average risk of breast cancer. Another comment requested edits to the recommendation related to racial disparities and gender inclusivity WPSI made no changes given that the proposed recommendation is intended to address all women at average risk. Three commenters requested that the recommendation address “annual screening” and one commenter opposed ending screening at age 74. No changes were made based on these comments as they were not supported by evidence that met WPSI’s inclusion criteria. One commenter suggested that the recommendation would be clearer if the phrase “pathology exams” was changed to “pathology tests.” In response to this comment, WPSI updated the recommendation to “pathology evaluation” to improve clarity. Multiple commenters requested language to address dense breast tissue, and one recommended using digital mammography for women with dense breast tissue. While there are currently

no randomized controlled trials to support separate recommendations for women with dense breasts, the updated clinical recommendation supports additional testing to complete initial screening, if needed, which may be more common for women with dense breasts. No changes were made in response to these comments. One comment recommended WPSI align with the U.S. Preventive Services Task Force (USPSTF) recommendations on breast cancer screening. No changes were made in response to this comment as WPSI’s charge differs from that of the USPSTF, with WPSI’s statutory authority including coverage of additional preventive care and screenings not described in evidence-based items or services that have a rating of “A” or “B” in the current recommendations of the USPSTF.

Patient Navigation Services for Breast and Cervical Cancer Screening

Based on clinical research, patient navigation services for breast and cervical cancer screening have been found to be effective in reducing barriers to screening and follow-up care, resulting in higher screening rates. WPSI recommended a new Guideline on Patient Navigation Services for Breast and Cervical Cancer Screening. Breast cancer screening rates were 14.1% higher for 35,752 patients randomized to patient navigation services versus usual care or active controls in a WPSI meta-analysis of 33 randomized control trials based in U.S. health care settings. The same meta-analysis showed rates for cervical cancer screening and follow-up were higher with patient navigation by 15.7%, based on 22 randomized control trials with 12,221 participants. In one study included in WPSI’s meta-analysis, prevention care managers working in federally qualified health centers (FQHCs) who employed patient navigation services increased breast cancer screening among patients without a mammogram in the past 18 months to 68% compared to 57% for patients in usual care.

Research also shows that reducing barriers to screening and follow-up care can result in earlier identification of breast and cervical cancer, enabling patients to enter into treatment earlier, preventing progression of these conditions, improving health outcomes and survival rates, and ultimately can reduce disparities in cancer morbidity and mortality. In the meta-analysis, patient navigation services increased screening and follow-up for breast cancer by 10.2% in populations described as low-income.

WPSI received seven comments on this proposed recommendation. Comments were generally supportive and WPSI appreciated the positive feedback. Two commenters recommended adding culturally appropriate components to patient navigation services and addressing relevant social determinants of health. No changes were made based on these comments as these considerations are outlined in the Implementation Considerations section. Three commenters requested including billing and coding guidance to support the implementation of the recommendation. One comment suggested it may be premature to release the guideline without such information. Under its cooperative agreement with HRSA, WPSI develops tools and resources for patients and providers that include information on billing and coding, which will be updated to address these patient navigation services. Another comment requested WPSI expand the Research Recommendations to include comparative effectiveness trials of patient navigation services. WPSI updated the Research Recommendations to include this suggestion. Two commenters questioned the level of evidence available to support the guideline and one of them requested the evidence review. The October 22, 2024, **Federal Register** notice provided data from the WPSI evidence review to detail the clinical effect of the proposed recommendation and the final evidence review includes a comprehensive listing of the clinical evidence considered by WPSI. A final comment requested cervical cancer screening guidelines be updated. WPSI will begin reviewing the evidence for cervical cancer screening in 2025, if funds are available to support the review.

Acceptance of Recommendation

On December 20, 2024, the HRSA Administrator accepted WPSI’s recommendations, which are revised as described above, and, as such, updated the HRSA-supported Women’s Preventive Services Guidelines. The final Guidelines for these topics read as follows:

(1) Screening and Counseling for Intimate Partner and Domestic Violence

The final Guideline for Screening and Counseling for Intimate Partner and Domestic Violence reads: “The Women’s Preventive Services Initiative recommends screening adolescent and adult women for intimate partner and domestic violence, at least annually, and, when needed, providing or referring to intervention services.

Intimate partner and domestic violence includes physical violence, sexual violence, stalking and psychological aggression (including coercion), reproductive coercion, neglect, and the threat of violence, abuse, or both. Intervention services include, but are not limited to, counseling, education, harm reduction strategies, and appropriate supportive services.”

(2) Breast Cancer Screening for Women at Average Risk

The final Guideline for Breast Cancer Screening for Women at Average Risk reads: “The Women’s Preventive Services Initiative recommends that women at average risk of breast cancer initiate mammography screening no earlier than age 40 years and no later than age 50 years. Screening mammography should occur at least biennially and as frequently as annually. Women may require additional imaging to complete the screening process or to address findings on the initial screening mammography. If additional imaging (e.g., magnetic resonance imaging (MRI), ultrasound, mammography) and pathology evaluation are indicated, these services also are recommended to complete the screening process for malignancies. Screening should continue through at least age 74 years, and age alone should not be the basis for discontinuing screening.

Women at increased risk also should undergo periodic mammography screening, however, recommendations for additional services are beyond the scope of this recommendation.”

(3) Patient Navigation Services for Breast and Cervical Cancer Screening

The final Guideline for Patient Navigation Services for Breast and Cervical Cancer Screening reads: “The Women’s Preventive Services Initiative recommends patient navigation services for breast and cervical cancer screening and follow-up, as relevant, to increase utilization of screening recommendations based on an assessment of the patient’s needs for navigation services. Patient navigation services involve person-to-person (e.g., in-person, virtual, hybrid models) contact with the patient. Components of patient navigation services should be individualized. Services include, but are not limited to, person-centered assessment and planning, health care access and health system navigation, referrals to appropriate support services (e.g., language translation, transportation, and social services), and patient education.”

Non-grandfathered group health plans and health insurance issuers offering group or individual health insurance coverage must cover without cost-sharing the services and screenings listed on the updated Women’s Preventive Services Guidelines for plan years (in the individual market, policy years) that begin 1 year after this date. Thus, for most plans, this update will take effect for purposes of the Section 2713 coverage requirement in 2026. Additional information regarding the Women’s Preventive Services Guidelines can be accessed at the following link: <https://www.hrsa.gov/womens-guidelines>.

Authority: Section 2713(a)(4) of the Public Health Service Act, 42 U.S.C. 300gg–13(a)(4).

Carole Johnson,

Administrator.

[FR Doc. 2024–31228 Filed 12–27–24; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Children’s Hospitals Graduate Medical Education Payment Program: Updated Methodology To Determine Full-Time Equivalent Resident Count

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Request for public comment.

SUMMARY: This notice seeks public comment on updating the Children’s Hospitals Graduate Medical Education (CHGME) Payment Program’s method of determining an eligible children’s hospital (as defined within the Public Health Service Act) weighted allopathic and osteopathic full-time equivalent (FTE) resident count when a children’s hospital’s weighted allopathic and osteopathic FTE resident count exceeds its direct graduate medical education (GME) FTE resident cap in order to be consistent with the methodology used by the Centers for Medicare & Medicaid Services (CMS) beginning in the fiscal year (FY) 2026 application cycle.

DATES: Comments on this notice should be received no later than January 29, 2025.

ADDRESSES: Written comments should be submitted to Robyn Duarte, Public Health Analyst, by email RDuarte1@hrsa.gov.

FOR FURTHER INFORMATION CONTACT: Robyn Duarte, Public Health Analyst,

Bureau of Health Workforce, Division of Medicine and Dentistry, HRSA, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3254.

SUPPLEMENTARY INFORMATION: The CHGME Payment Program is authorized by section 340E of the Public Health Service Act. For direct GME payments, section 340E(c)(1)(B) requires that the average number of FTE residents in the hospital’s approved residency programs be determined according to section 1886(h)(4) of the Social Security Act. As noticed in the March 1, 2001, **Federal Register** (66 FR 12940), section 1886(h)(4) has been implemented by regulations at 42 CFR 413.78 through 413.83 (formerly 42 CFR 413.86(f)–(i)), which HRSA has used to determine the total and weighted numbers of FTE residents. In the CMS FY 2023 inpatient prospective payment systems (IPPS) and long-term care hospital prospective payment system (LTCH PPS) final rule published in the **Federal Register** on August 10, 2022 (87 FR 48780, 49065–49072) (referred to as the “FY 2023 IPPS/LTCH PPS final rule”), CMS modified the Medicare direct GME payment methodology and amended section 413.79 by revising paragraphs (c)(2)(iii) and (d)(3). Through this notice, HRSA is seeking comment on its intent to adopt the same direct GME payment methodology as CMS when HRSA calculates FTE residents for the CHGME Payment Program beginning in the FY 2026 application cycle.

Background

To the extent feasible, HRSA has historically sought consistency with CMS regulations to minimize burden for children’s teaching hospitals participating in the CHGME Payment Program that must also comply with CMS regulations. Consistency reduces the potential challenges in reporting FTE resident counts to Medicare and CHGME.

Currently, the CHGME Payment Program methodology for determining the weighted allopathic and osteopathic FTE resident count applies the direct GME FTE resident cap when a hospital’s weighted allopathic and osteopathic FTE resident count is greater than its direct GME FTE resident cap. The current CHGME direct GME methodology reduces a hospital’s weighted direct GME resident count by a proportion equal to the ratio of its GME FTE resident cap to its unweighted direct GME resident count. The direct GME FTE resident cap is applied to reduce the weighting factor of residents who are beyond their initial residency

period to an amount less than 0.5. See 66 FR 12940.

CMS GME Final Regulation Change

In August 2022, CMS finalized a new methodology for applying the direct GME FTE resident cap when a hospital's weighted allopathic and osteopathic FTE resident count is greater than its direct GME FTE resident cap, in a way that does not reduce the weighting factor of residents that are beyond their initial residency period to an amount less than 0.5. Under the new method, if a hospital's unweighted allopathic and osteopathic FTE resident count exceeds its direct GME FTE resident cap, then the weighted allopathic and osteopathic FTE resident count is equal to the hospital's direct GME FTE resident cap or its actual weighted allopathic and osteopathic FTE resident count, whichever is lesser. The direct GME FTE resident cap reflects the maximum number of allopathic and osteopathic residents that a hospital may count for purposes of direct GME payment in a cost reporting period.

Alignment of CHGME and Medicare GME Policy

For more than two decades, HRSA has followed CMS's approach to calculating the FTE resident count. [See March 1, 2001, **Federal Register Notice** (66 FRN 12940), "*The Department follows Medicare rules regarding the use of the initial residency period. The Medicare rules reduce counts for all hospitals that train residents beyond their initial residency period (i.e., fellows) with regard to the [direct medical education] DME and [indirect Medical Education] IME portions of the GME reimbursement.*"] Therefore, HRSA proposes to adopt CMS's modified direct GME payment methodology with respect to determining the weighted number of allopathic and osteopathic FTE residents (i.e., fellows) for all eligible children's hospitals participating in the CHGME Payment Program beginning in FY 2026.

In this notice, we refer to the FTE adjusted cap (or 2013 CHGME Reauthorization cap pursuant to Pub. L. 113–98) reported on Line 4.06, 5.06, and 6.06 of the HRSA 99–1 Form as the "direct GME FTE resident cap" to correspond with CMS terminology.

HRSA proposes to modify its methodology to adopt the CMS methodology described in the amended 42 CFR 413.79 in whole. HRSA anticipates implementing the updated methodology for determining the weighted allopathic and osteopathic FTE resident count starting in the FY 2026 application cycle (project period

October 1, 2025, through September 30, 2026).

Direct GME Methodology in FY 2026—Proposal for Public Comment

Starting in FY 2026, where a CHGME participating hospital's unweighted allopathic and osteopathic FTE resident count exceeds the hospital's FTE resident cap, and the weighted allopathic and osteopathic FTE resident count also exceeds that FTE resident cap, the respective weighted allopathic and osteopathic FTE resident count is adjusted to make the total weighted allopathic and osteopathic FTE resident count equal the FTE resident cap. If the weighted allopathic and osteopathic FTE resident count does not exceed that FTE resident cap, then the allowable weighted allopathic and osteopathic FTE resident count for direct GME payment is the actual weighted allopathic and osteopathic FTE resident count.

This proposed update to the methodology for determining the weighted allopathic and osteopathic FTE resident count for the CHGME Program is intended to reconcile weighted FTE resident counts reported in Lines 4.13 (both Hospital Data columns), 5.13, and 6.13 of the HRSA Form 99–1 with Lines 9 and 22 of the CMS Form 2552–10, Worksheet E–4, respectively. Entries in Lines 4.13 (both Hospital Data columns), 5.13, and 6.13 report the weighted resident FTE count for allopathic and osteopathic programs following application of the direct GME FTE resident cap.

This updated methodology for determining weighted allopathic and osteopathic FTE resident count may result in adjustments to the weighted FTE resident 3-year rolling average used to determine direct medical education (DME) payment amounts for the eligible children's hospitals participating in the CHGME Payment Program.

The DME payment amounts for CHGME are impacted by many factors including the number of residents the hospital trained during the year, the hospital's wage index, as well as the overall appropriation. The updated methodology for determining the weighted FTE resident count will impact awardees that add more residents and fellows above their hospital's direct GME FTE resident cap. The updated methodology may also impact the DME payments for awardees overall as a hospital may receive a different relative share of the CHGME appropriation due to these shifts in the weighted FTE resident counts experienced by some hospitals.

The CHGME Payment Program proposes to implement this updated methodology beginning in FY 2026 to reduce burden on hospitals participating in CHGME and Medicare GME and to reduce the risk of potential audit discrepancies that may impact payments.

Diana Espinosa,

Principal Deputy Administrator.

[FR Doc. 2024–31240 Filed 12–27–24; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Final Scientific Integrity Policy of the U.S. Department of Health and Human Services

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, Office of the Secretary, HHS.

ACTION: Notice of final policy.

SUMMARY: The Department of Health and Human Services (HHS) is publishing its Scientific Integrity Policy to increase access to and raise awareness of the Policy.

DATES: The effective date of the Policy is October 16, 2024.

FOR FURTHER INFORMATION CONTACT: Karen Wehner, Ph.D., Scientific Integrity Officer, Office of Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation, Office of the Secretary, HHS at 240–453–8435 or scientificintegrity@hhs.gov.

SUPPLEMENTARY INFORMATION: Scientific integrity plays a vital role in the mission of HHS. Ensuring integrity in science throughout the Department allows HHS to foster and produce high-quality science, communicate effectively with the public, and base critical policy decisions on trustworthy and rigorous scientific findings. HHS has adopted a Department-wide scientific integrity policy to further strengthen scientific integrity and evidence-based policymaking throughout the Department.

The Scientific Integrity Policy of the U.S. Department of Health and Human Services (Policy) was approved on September 16, 2024. The finalized Policy was announced to the HHS community and posted on the HHS scientific integrity website, at <https://www.hhs.gov/programs/research/scientificintegrity/index.html>, on September 30, 2024. The effective date of the Policy is October 16, 2024.

The content of the finalized Policy, reformatted to conform to the requirements of the **Federal Register**, is

provided below. This content is also available in its original format on the HHS website, at <https://www.hhs.gov/sites/default/files/hhs-scientific-integrity-policy.pdf>.

The Scientific Integrity Policy of the U.S. Department of Health and Human Services

Purpose

The purpose of this policy is to promote a continuing culture of scientific integrity at the U.S. Department of Health and Human Services (HHS). This policy aims to ensure the integrity of all aspects of HHS scientific activities, including proposing, conducting, reviewing, managing, and communicating about science and scientific activities, and using the results of science to inform policy and program decision-making.

Core Values That Support Scientific Integrity at HHS

The success of HHS's mission to enhance the health and well-being of all Americans depends on the development and use of accurate, complete, and timely scientific and technical information. Scientific integrity requires that such information be developed under and subjected to well-established scientific processes, free from inappropriate interference that undermines impartiality, nonpartisanship, or professional judgment. HHS agencies work to maximize the quality, accuracy, objectivity, utility, and timeliness of the scientific and technological information they produce, use, and disseminate. In turn, this information enables HHS to employ innovative approaches to effectively address the many public health and human services challenges that our work targets. These efforts allow accurate, complete, and timely scientific and technical information to improve the design, delivery, and impact of HHS policies and programs, and support equity, justice, and trust. Responsibility for upholding scientific integrity lies with the entire scientific ecosystem, including all HHS employees, its contractors and grantees, and those engaged in science and scientific activities outside HHS.

Definition of Scientific Integrity and Scientific Integrity Official

HHS adopts the following Official Federal Definition of Scientific Integrity:

Scientific integrity is the adherence to professional practices, ethical behavior, and the principles of honesty and objectivity when conducting, managing, using the results of, and communicating about science and scientific activities. Inclusivity,

transparency, and protection from inappropriate influence are hallmarks of scientific integrity.¹

HHS designates a senior career employee as the HHS Scientific Integrity Official (HHS SIO)² to oversee implementation and iterative improvement of the HHS Scientific Integrity Policy and related processes. The roles and responsibilities of the HHS SIO are described in more detail on pages 17–18.

This policy empowers the HHS SIO with the independence necessary to gather and protect information to support the review and assessment of scientific integrity concerns and ensure implementation of corrective scientific actions such as policy changes or correction or retraction of published materials. The HHS SIO also advocates for appropriate engagement of scientific leadership in decision making.

Effective Date and Policy Amendments

This policy is effective 30 days after the date of finalization. This policy will be reviewed by HHS one year after its effective date and every two years thereafter. Proposals to amend this policy will be overseen by the HHS SIO, in collaboration with the HHS Scientific Integrity Council described below and communicated to the Director of the White House Office of Science and Technology Policy (OSTP) no later than 30 days after adoption.

Applicability & Scope

Scientific integrity is the responsibility of the entire HHS workforce. Covered individuals who are required to adhere to this policy include all HHS employees, including all Operating and Staff Division (OpDiv/StaffDiv) employees; Public Health Service Commissioned Corps officers; political appointees; HHS fellows, trainees, and interns; and advisory committee members in their capacity as special government employees, when in the course of their official duties they propose, conduct, review, or communicate about science and scientific activities, and all levels of employees who manage or supervise scientific activities and use scientific information in decision making.

HHS is composed of OpDivs/StaffDivs (hereinafter “Division”), some of which have division-specific scientific integrity policies and procedures. The HHS Scientific Integrity Policy applies to all covered individuals, as listed above; Division-specific Scientific Integrity policies apply to covered individuals within that division. Division-specific policies align with and support the HHS-wide policy at a

minimum but may institute additional requirements and responsibilities as appropriate for the mission of the division. In addition to Division-specific policies, Divisions may develop their own scientific integrity procedures (e.g., procedures for resolving differences of scientific opinion) at their discretion.

HHS contractors; partners; permittees; lessees; grantees; extramural trainees and fellows (*i.e.*, those supported by HHS grants to non-HHS organizations); and volunteers who engage or assist in HHS scientific activities are not considered covered individuals but are strongly encouraged to uphold the principles of scientific integrity described in this policy, particularly those described in the Protecting Scientific Processes, Ensuring the Free Flow of Scientific Information, Protections, and Professional Development sections. Specific requirements may be incorporated into the terms of their engagement with HHS. In addition, each institution that applies for or receives Public Health Service (PHS) support for biomedical or behavioral research, research training, or activities related to that research or research training must comply with 42 CFR part 93, PHS Policies on Research Misconduct, overseen by the HHS Office of Research Integrity (ORI), and may need to comply with other applicable laws, regulations, and policies. Research misconduct, which includes fabrication, falsification, and plagiarism, is one way in which scientific integrity can be compromised.

Authorities

Pursuant to the 2021 Presidential Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking,³ and consistent with the 2009 Presidential Memorandum on Scientific Integrity⁴ and the 2010 Memorandum from the White House Office of Science and Technology Policy on Scientific Integrity,⁵ all Federal agencies must establish a scientific integrity policy. The requirements of this policy are derived from the 2022 National Science and Technology Council (NSTC) Report of the Scientific Integrity Fast Track Action Committee (SI-FTAC), Protecting the Integrity of Government Science⁶ (SI-FTAC Report), and align with the 2021 NSTC Framework for Federal Scientific Integrity Policy and Practice.⁷

This policy is established in accordance with:

1. Public Law No 111–358—The America COMPETES Reauthorization Act of 2010, Section 103, as amended.
2. Public Law No 115–435—The Foundations

- for Evidence-based Policymaking Act of 2018.
3. Public Law No 106–554—The Information Quality Act of 2000.
 4. 67 FR 8451—OMB Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies.
 5. 70 FR 2664—OMB Final Information Quality Bulletin for Peer Review.
 6. 65 FR 76260–76264—Federal Policy on Research Misconduct.
 7. Pub. L. 101–12—The Whistleblower Protection Act (WPA) of 1989, as amended.
 8. 41 U.S.C. 4712—The National Defense Authorization Act, Enhancement of contractor protection from reprisal for disclosure of certain information.
 9. 5 U.S.C. 13103 *et seq.*—The Ethics in Government Act of 1978, as amended, and 5 CFR part 2635, Standards of Ethical Conduct for Employees of the Executive Branch.
 10. 18 U.S.C. 201–209—Statutes regarding Bribery, Gift, and Conflicts of Interest.
 11. 5 CFR parts 5501 and 5502—Supplemental Standards of Ethical Conduct for Employees of the Department of Health and Human Services.
 12. 5 U.S.C. Ch. 10—The Federal Advisory Committee Act of 1972.
 13. 45 CFR part 73—Standards of Conduct.
 14. 5 CFR part 735—Employee Responsibilities and Conduct.
 15. 45 CFR part 46—HHS Protection of Human Subjects Regulation.
 16. PPD 19—Protecting Whistleblowers with Access to Classified Information, 2012.
 17. M–20–12—OMB Phase 4 Implementation of the Foundations for Evidence-Based Policymaking Act of 2018: Program Evaluation Standards and Practices.
 18. 42 CFR part 93—Public Health Service Policies on Research Misconduct.
 19. 10 U.S.C. 1034, made applicable to the Public Health Service Commissioned Corps through 42 U.S.C. 213a(a)(18), and implemented by Commissioned Corps Directive (CCD) 121.06.
 20. Pub. L. No 117–328—Health Extenders, Improving Access to Medicare, Medicaid, and CHIP, and Strengthening Public Health Act of 2022, Division FF, Title II, Section 2321.
 21. Pub. L. No 117–167—CHIPS and Science Act of 2022, Title VI, Subtitle D, Section 10631.

Exceptions

This policy will be implemented consistent with applicable federal law and Executive Orders.

Definitions

For the purposes of this policy, HHS adopts the following definitions:

Allegation refers to a disclosure of a suspected loss of scientific integrity.

Corrective scientific action refers to actions taken to restore the accuracy of the scientific record after a loss of scientific integrity has been determined, consistent with this policy, such as

correction or retraction of published materials.

Covered individuals who are required to adhere to this policy include all HHS employees; Public Health Service Commissioned Corps officers; political appointees; HHS fellows, trainees, and interns; and advisory committee members in their capacity as special government employees, when in the course of their official duties they propose, conduct, review, or communicate about science and scientific activities, and all levels of employees who manage or supervise scientific activities and use scientific information in decision making.

Decision making refers to the (1) development of policies or making determinations about policy or management; (2) making determinations about expenditures of Federal agency funds; (3) implementing or managing activities that involve, or rely on, scientific activities.

Ethical behavior refers to activities that reflect norms for conduct that distinguish between acceptable and unacceptable behavior, such as honesty, lawfulness, equity, and professionalism, and adherence to statutes, regulations, policies, and guidelines governing employee conduct.

Federal agency refers to an Executive department, a Government corporation, or an independent establishment.

Inclusivity refers to the practice of providing equal access to opportunities for full participation of all people and all groups, including marginalized, underserved, and underrepresented contributors, without bias or prejudice. Full participation is enabled through implementation of strategies that promote equitable access and fair treatment in the organization.

Inappropriate influence refers to the attempt to shape or interfere in scientific activities or the communication about or use of scientific activities, against well-accepted scientific methods and theories and without scientific, legal, or security justification.^{8,9}

Interference refers to inappropriate, scientifically unjustified intervention in the conduct, management, communication, or use of science. It includes censorship, suppression, or distortion of scientific or technological findings, data, information, or conclusions; inhibiting scientific independence during clearance and review; scientifically unjustified intervention in research and data collection; and inappropriate engagement or participation in peer review processes or on Federal advisory committees.

Loss of scientific integrity refers to the failure to comply with this Scientific Integrity Policy or to adhere to objectivity, transparency, and ethical behavior when conducting, managing, using the results of, and communicating about science and scientific activities. This loss may include research misconduct or inappropriate influence in the conduct, communication, management, and use of science.

Policy refers to laws, regulations, procedures, administrative requirements or actions, incentives, or voluntary practices of governments and other institutions.

Political interference is inappropriately shaping or interfering in the conduct, management, communication, or use of science for political advantage or such that it undermines impartiality, nonpartisanship, or professional judgment.

Research integrity refers to the use of honest and verifiable methods in proposing, performing, and evaluating research; reporting research results with particular attention to adherence to rules, regulations, and guidelines; and following commonly accepted professional codes or norms.

Research misconduct refers to fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest error or differences of opinion.¹⁰

Research security refers to safeguarding the research enterprise against the misappropriation of research and development to the detriment of national or economic security, related violations of research integrity, and foreign government interference.

Retaliation refers to taking or failing to take or threatening to take or fail to take a personnel action with respect to any employee or applicant for employment because of any disclosure of information that the employee or applicant reasonably believes evidences any violation of any law, rule, or regulation or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs. An employee or applicant is protected from retaliation for the disclosure of information the employee or applicant reasonably believes is evidence of censorship

related to research, analysis, or technical information.^{11 12}

Science refers to the full spectrum of scientific endeavors, including basic science, applied science, evaluation, engineering, technology, economics, social sciences, and statistics, as well as the scientific and technical information derived from these endeavors.

Scientific activities refer to activities that involve the application of well-accepted scientific methods and theories in a systematic manner, and includes, but is not limited to, data collection, inventorying, monitoring, evaluation, statistical analysis, surveying, observations, experimentation, study, research, integration, economic analysis, forecasting, predictive analytics, modeling, technology development, and scientific assessment, as well as any findings derived from these activities.

Scientific integrity is the adherence to professional practices, ethical behavior, and the principles of honesty and objectivity when conducting, managing, using the results of, and communicating about science and scientific activities. Inclusivity, transparency, and protection from inappropriate influence are hallmarks of scientific integrity.

Scientific record refers to published information resulting from scientific activities. HHS is responsible for ensuring the accuracy of elements of the scientific record that are published by HHS.

Scientist refers to an individual whose responsibilities include collection, generation, use, or evaluation of scientific and technical data, analyses, or products. HHS scientists are HHS employees and other covered individuals who conduct these activities. It does not refer to individuals with scientific and technical training whose primary job functions are in non-scientific roles (e.g., policymakers, communicators).

Policy Requirements

Promoting a Culture of Scientific Integrity

HHS leadership at all levels recognizes, supports, and promotes this policy and its underlying principles, and models behavior consistent with a strong culture of scientific integrity.

HHS works to promote a culture of scientific integrity by creating an empowering environment for innovation and protecting scientists and the process of science from inappropriate interference. Scientific findings and products must not be suppressed, delayed, or altered for political purposes and must not be

subjected to political interference or inappropriate influence.

A strong culture of scientific integrity begins with ensuring a professional environment that is safe, equitable, and inclusive. Issues of diversity, equity, inclusion, and accessibility are an integral component of the entire scientific process. Attention to these issues can improve the representativeness and eminence of the scientific workforce, foster innovation in the conduct and use of science, and provide for more equitable participation in science by diverse communities. The responsible and ethical conduct of research and other scientific activities requires an environment that is equitable, inclusive, safe, and free from harassment, and discrimination.

To instill and enhance a culture of scientific integrity, HHS has posted this policy prominently on its website, at <https://www.hhs.gov/programs/research/scientificintegrity/index.html>, and educates all covered individuals, as well as contractors who perform scientific activities for HHS, on their rights and responsibilities related to scientific integrity. Training will be made available to all covered individuals to make them aware of their responsibilities under the HHS Scientific Integrity Policy upon hiring, and some covered individuals may be required to complete role-specific training or refresher training as appropriate. Training will be tracked to ensure covered entities have received appropriate training.

HHS also works to apply scientific integrity practices in ways that are inclusive of non-traditional modes of science, such as citizen science, community-engaged research, participatory science, and crowdsourcing. This may include expanded scientific integrity practices and expectations, such as granting communities more autonomy over research questions and research design, recognition of data and knowledge sovereignty, and inclusion of multiple forms of evidence, such as Indigenous Knowledge, as applicable.

To promote a culture of scientific integrity at HHS, this policy outlines seven specific areas:

- I. Protecting Scientific Processes
- II. Ensuring the Free Flow of Scientific Information
- III. Supporting Decision Making Processes
- IV. Ensuring Accountability
- V. Protections
- VI. Professional Development for Government Scientists, and
- VII. Federal Advisory Committees

I. Protecting Scientific Processes

Scientific integrity fosters “honest scientific investigation, open discussion, refined understanding, and a firm commitment to evidence” (OSTP 2010). It also enables consideration and documentation of differing scientific opinions. Practices that support scientific integrity may include peer review and open science. Science, and public trust in science, thrives in an environment that prevents political interference and inappropriate influence from impacting scientific data and analyses and their use in decision making.

It is the policy of HHS to:

1. Prohibit political interference or other inappropriate influence in the design, proposal, conduct, review, management, evaluation, communication about, and use of scientific activities and scientific information.
2. Prohibit inappropriate restrictions on resources and capacity that limit and reduce the availability of science and scientific products (e.g., manuscripts for scientific journals, presentations for workshops, conferences, and symposia) outside of normal budgetary or priority-setting processes or without scientific, legal, or security justification.
3. Require that leadership and management ensure that covered individuals engaged in scientific activities can conduct their work objectively, free from political interference or other inappropriate influence, and free from retaliation.
4. Require reasonable efforts by covered individuals to ensure the fidelity of the scientific record and to correct identified inaccuracies that pertain to their contribution to any scientific records.
5. Require that covered individuals represent their contributions to scientific work fairly and accurately and neither accept nor assume unauthorized and/or unwarranted credit for another's accomplishments. To be named as an author, contributors should, at a minimum, have (1) made a substantial contribution to the scientific product or provided editorial revisions that include critical intellectual content, (2) approved the final version, and (3) agreed to be accountable for all aspects of the work to which they contributed. Prior consent should be obtained from each author to be represented on a particular work. Obtaining prior consent for acknowledgements is also a good practice. This policy sets a minimum requirement for authorship attribution, and HHS OpDivs/StaffDivs may have additional authorship criteria. Different

scientific disciplines use a range of strategies to attribute scientific work to individuals, and documents may be published without authorship attributions.

6. Ensure independent review of scientific facilities, methodologies, and other scientific activities as appropriate to ensure scientific integrity.

7. Require that covered individuals comply with HHS policies and procedures for planning and conducting scientific activities and show appropriate diligence toward protecting and conserving Federal research resources, such as equipment and other property, and records of data and results that are entrusted to them.

8. Prohibit research misconduct, the deliberate or reckless use of improper or inappropriate research methods or processes, and noncompliance with practices that safeguard the quality of research and other scientific activities or enhance research security.

9. Require that covered individuals design, conduct, manage, evaluate, and communicate about scientific research and other scientific activities honestly and thoroughly, and disclose any conflicts of interest to their supervisor or other appropriate HHS official(s) for their determination as to whether a recusal, disclaimer, or other action is appropriate, consistent with HHS ethics policies and procedures.

10. Require that research involving the participation of human subjects and the use of non-human animals is conducted in accordance with applicable, established laws, regulations, policies, and ethical considerations.

11. Support and enhance scientific integrity with the understanding that violations of scientific integrity can have a disproportional impact on underrepresented groups or weaken the equitable delivery of Federal Government programs.

12. Consistent with OSTP guidance and relevant HHS policy, prohibit HHS personnel engaged in intramural research from participating in foreign talent recruitment programs, unless participation is in an international conference or other international exchange, partnership, or program for which such participation has been approved by the appropriate authority in HHS.¹³

13. Consistent with OSTP guidance and relevant HHS policy, require disclosure of participation in foreign talent recruitment programs, including the provision of copies of all grants, contracts, or other agreements related to such programs, and other supporting documentation related to such

programs, as a condition of receipt of Federal extramural research funding awarded through HHS.¹⁰

14. Prohibit the suspension or early termination of a grant except as consistent with applicable law and grants policies.^{14 15 16}

II. Ensuring the Free Flow of Scientific Information

Open and timely communication of HHS science plays a valuable role in building public trust and understanding of HHS work. HHS facilitates the free flow of scientific and technological information and supports scientific integrity in the communication of scientific activities, findings, and products.

It is the policy of HHS to:

1. Facilitate the free flow of scientific and technological information, to the extent permissible by federal laws and regulations. Consistent with open government requirements, HHS will expand and promote access to scientific and technological information by making it available freely and without embargo to the public in an online digital format.^{17 18}

2. Ensure that scientific findings and products are not unduly suppressed, delayed, or altered for political purposes and are not subjected to inappropriate influence.

3. Require that technical review and clearance processes include provisions for timely clearance and expressly forbid censorship, unreasonable delay, and suppression of objective communication of data and results without valid scientific, legal, or security justification. Deviations from clearance policies or procedures that result in suppression, delay, or alteration of scientific and technological information without scientific, legal, or security justification may constitute violations of the HHS Scientific Integrity Policy and may be treated under the Procedures: Addressing Scientific Integrity Concerns section in this document.

4. Prohibit HHS officials, including communications officers, from altering, or directing HHS scientists and technology experts to alter, scientific and technological research findings or presentation of research findings in a manner that may compromise the objectivity or accurate representation of those findings.

5. Ensure that scientific information is accurately represented in responses provided by HHS to Congressional inquiries, testimony, and other requests.

6. Ensure that the work and conclusions of HHS scientists and the work and conclusions of scientists

funded or supported by the federal government are accurately represented in HHS communications. If communication documents significantly rely on a scientist's research, identify them as an author, or represent their scientific opinion, the scientist will be given the option to review the scientific content of proposed communication documents prior to publication or public release.

7. Accurately represent the work and conclusions of scientists in HHS social media communications and provide appropriate guidance to HHS scientists on the use of HHS social media. If scientists whose work is represented in HHS social media identify any errors in those representations, HHS social media managers are responsible for making appropriate corrections expeditiously.

8. Require HHS or its OpDivs/StaffDivs, when offering spokespersons in response to media requests, to offer knowledgeable spokespersons who can, in an objective and nonpartisan manner, describe the relevant scientific or technological aspects of their work.

9. Ensure that HHS scientists may communicate their scientific activities objectively without political interference or other inappropriate influence, consistent with HHS and OpDivs/StaffDivs communication and media policies. Scientific products must adhere to relevant HHS technical review procedures.

10. Encourage, but not require, HHS scientists to communicate with the media in their official capacities regarding their scientific activities and areas of expertise, subject to limitations of government ethics rules.¹⁹ In communicating with the media, HHS scientists are encouraged to seek advice from career HHS communications experts.

11. Allow covered individuals to communicate their personal or individual views to the media or the public in their personal capacities, including on social media, subject to the limitations of government ethics rules, HHS supplemental ethics regulations, social media regulations, and obligation to protect nonpublic information.²⁰ HHS scientists and other covered individuals presenting their personal views may name HHS as their employer as one biographical fact among several; however, their title and position cannot receive more prominence than any other biographical fact and they must make clear that they are presenting their personal and/or individual views—not the views of HHS—and they should not be sourced by the media as an HHS representative.

III. Supporting Decision Making Processes

It is the policy of HHS to:

1. Ensure the quality, accuracy, and transparency of scientific information used to support policy and decision making, including by:
 - a. Using scientific information that is subject to well-established scientific processes.
 - b. Ensuring that scientific data and research used to support policy decisions undergo review by qualified experts, where feasible and appropriate, and consistent with law.
 - c. Adhering to the Office of Management and Budget Final Information Quality Bulletin for Peer Review.²¹ For example, as described in the Bulletin, when independent peer reviews of scientific information products are conducted by contractors, a conflict-of-interest review will be conducted.
 - d. Reflecting scientific information appropriately and accurately and making scientific findings or conclusions considered or relied on in policy decisions publicly available online and in open formats, to the extent practicable.
2. Where legally permissible and appropriate, directly consult with scientists whose work is being used in policy and management decisions to ensure that the science is accurately represented and interpreted.
3. Ensure, to the extent possible, the accuracy of HHS communication of the science upon which a policy decision is based.
4. Ensure that the HHS SIO, with input from the HHS Scientific Integrity Council, develops a transparent mechanism for covered individuals to express differing scientific opinions free from political interference or inappropriate influence.

IV. Ensuring Accountability

It is the policy of HHS to:

1. Ensure correction of the scientific record and implementation of corrective scientific actions when allegations of a loss of scientific integrity are substantiated. Corrective scientific actions may include correction or retraction of published scientific work or related media releases, release of inappropriately suppressed scientific materials, monitoring or supervision of future scientific activities, or required validation of data sources.
2. Encourage and facilitate early informal or formal consultation between employees and scientific integrity officials to advise on preventing loss of scientific integrity, to determine

whether a loss of scientific integrity has potentially occurred, and to ascertain whether an allegation should be referred elsewhere for resolution.

3. Provide clear guidance on how to formally and confidentially report concerns and allegations of loss of scientific integrity. Those who report concerns and allegations need not be directly involved or witness a violation.
4. Ensure that the HHS SIO, together with other Scientific Integrity Council members, as applicable, draft procedures to respond to allegations of loss of scientific integrity at HHS in a timely, objective, and thorough manner. These procedures will include an initial assessment and review, a fact-finding process, an adjudication or determination including description of remedies and preventative measures to safeguard the science, an appeals process, follow-up to track implementation of remedies, and reporting. OpDivs/StaffDivs may develop and implement division-specific procedures for handling allegations within their Divisions.
5. These procedures will document the necessary aspects for each step of the process including burden of proof, any necessary determination of intentionality, and reporting, as well as the roles of the HHS SIO and HHS staff in the process.
6. Ensure that relevant HHS OpDivs/StaffDivs have scientific integrity policies that are consistent and in alignment with this policy.

V. Protections

HHS assures the protection of covered individuals as appropriate from retaliation in implementation of this policy.

It is the policy of HHS to:

1. Select and retain candidates for scientific and technical positions based on the candidate's scientific and technical knowledge, credentials, experience, and integrity, and hold them and their supervisors to the highest standards of professional and scientific ethics.
2. Promote diversity, equity, inclusion, and accessibility in the scientific workforce and create safe workspaces that are free from harassment and discrimination. Support scientists and researchers including, but not limited to, Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, queer, intersex, and asexual (LGBTQIA+) persons; persons with disabilities; persons who live in rural

areas; and persons otherwise adversely affected by persistent poverty or inequality; and advance the equitable delivery of Federal programs.

3. Protect from retaliation those individuals who report in good faith allegations of loss of scientific integrity. Efforts will be made to protect the privacy of individuals involved in allegations.

4. Prevent HHS employees from intimidating or coercing scientists to alter scientific data, findings, or professional opinions or from inappropriately influencing scientific advisory boards.

5. Comply with whistleblower protections, specifically:

a. The requirements of the Whistleblower Protection Act of 1989, and its expanded protections enacted by Public Law 103-424 and the Whistleblower Protection Enhancement Act of 2012. 5 U.S.C. part 2302(b)(8)–(9).

b. The National Defense Authorization Act's expansion of certain whistleblower protections to employees of federal government contractors, subcontractors, and grant recipients. 41 U.S.C. part 4712.

c. Presidential Policy Directive 19, which prohibits supervisors from taking, failing to take, or threatening to take or fail to take any action affecting an employee's eligibility for access to classified information in retaliation for making a protected disclosure.

d. The Military Whistleblower Protection Act (codified at 10 U.S.C. 1034), which is made applicable to the Public Health Service Commissioned Corps (PHSCC) officers through 42 U.S.C. 213a(a)(18), and implemented by Commissioned Corps Directive (CCD) 121.06.

6. The HHS SIO and OpDiv/StaffDiv SIOs are protected by all applicable employee rights as required by law. An SIO or other scientific integrity staff may only be terminated or reassigned for reasons consistent with applicable law.^{22 23}

VI. Professional Development for Government Scientists

HHS encourages its scientists and other covered individuals involved in HHS scientific activities to interact with the broader scientific community, in a manner that is consistent with Federal rules of ethics, employment responsibilities, and to the extent that is practical, given the availability of funding to support such interactions.²⁴

It is the policy of HHS to:

1. Encourage timely publication of research such as in peer-reviewed, professional, scholarly journals, HHS

technical reports and publications or other appropriate outlets.

2. Encourage the sharing of scientific activities, findings, and materials through appropriate avenues including digital repositories.

3. Encourage participation in and presentation of research at professional meetings including workshops, conferences, and symposia.

4. When appropriate, permit service on editorial boards, as peer reviewers, or as editors of professional or scholarly journals.

5. When appropriate, permit participation in professional societies, committees, task forces, and other specialized bodies of professional societies, including removing barriers to serving as officers or on governing boards of such societies, to the extent allowed by law.

6. Permit government scientists to receive honors and awards for contributions to scientific activities and discoveries to the extent allowed by law, and to accrue the professional recognition of such honors or awards.

7. Permit HHS scientists to perform outreach and engagement activities, such as speaking to community and student groups, as part of their official duties, as appropriate.

VII. Federal Advisory Committees (FACs)

Federal Advisory Committees (FACs), as defined by the Federal Advisory Committee Act, at <https://www.gsa.gov/policy-regulations/policy/federal-advisory-committee-management/legislation-and-regulations/the-federal-advisory-committee-act>, are an important tool within HHS for ensuring the credibility, quality, and transparency of HHS science. HHS will adhere to the Federal Advisory Committee Act and develop policies in coordination with the General Services Administration and consistent with the guidance on lobbyists serving on FACs when convening FACs tasked with giving scientific advice.

Consistent with all applicable laws and guidance regarding FACs, it is the policy of HHS to:

1. Promote transparency in the recruitment of new FAC members, including, when practical and appropriate, announcing vacancies with a notification in the **Federal Register**.

2. Select members to serve on a scientific or technical FAC based on expertise, knowledge, and contribution to the relevant subject area. Additional factors that may be considered are availability of the member to serve, alignment with relevant Federal Advisory Committee Membership

Balance Plan, and the ability to work effectively on advisory committees. Ensure committee membership is fairly balanced in terms of points of view represented with respect to the functions to be performed by the FAC.²⁵

3. Comply with current standards governing conflict of interest as defined in statutes and implementing regulations.

4. Except when prohibited by law and to the extent practical, agencies should appoint members of scientific and technical FACs as Special Government Employees.

5. Treat all reports, recommendations, and products produced by FACs solely as the reports, recommendations, and products of such committees rather than of the U.S. Government, and thus not subject to intra- or inter-agency revision. The role of the FACs is to provide advice or recommendations to the agency. The agency may then craft policy based on the FACs' advice or recommendations if it chooses to adopt those recommendations.

Scientific Integrity Council

HHS will establish a Scientific Integrity Council (Council) comprising one senior career employee from each relevant HHS OpDiv/StaffDiv. Relevant HHS divisions include those that conduct, manage, use, and communicate about scientific activities, as defined by the HHS Scientific Integrity Policy. The Council may engage with other HHS divisions as needed to support its responsibilities. The Council will be chaired by the HHS SIO. Where an OpDiv/StaffDiv has established a division SIO, that person will represent the division; where an OpDiv/StaffDiv has not established a division SIO, a similarly high-ranking career official with the appropriate scientific expertise, stature, and authority will represent the division.

Council members will ensure consistent implementation of the Scientific Integrity Policy at HHS, act as liaisons for their respective OpDivs/StaffDivs, assist with training and policy assessment, updates, and amendments, and be available to address any questions or concerns regarding this policy. The HHS SIO, together with the Council, will draft a Scientific Integrity Council Charter outlining criteria for selection as a member, other duties of members, and the frequency of meetings. The primary responsibilities of the Council are to:

1. Ensure that a well-informed and high-level group of experts supports scientific integrity at HHS.

2. Ensure that the HHS Scientific Integrity Policy is implemented consistently across the Department.

3. Review, assess, and revise the HHS Scientific Integrity Policy every two years, or more frequently as needed.

4. Serve on scientific integrity review panels and adjudicate allegations of losses of scientific integrity originating at HHS divisions that do not have their own scientific integrity policy, originating from more than one HHS division, or originating within the Office of the Secretary.

5. Determine handling of investigation and adjudication proceedings from which the HHS SIO is recused.

6. Engage HHS and division leadership in upholding the principles of scientific integrity, and maintain leadership awareness of scientific integrity issues as necessary and appropriate.

7. Support the education of all Department employees on their rights and responsibilities related to scientific integrity.

Procedures

The HHS SIO, in conjunction with the Scientific Integrity Council, has developed the following procedures for addressing scientific integrity concerns, handling differing scientific opinions, and clearance of scientific products and communications.

Addressing Scientific Integrity Concerns

The HHS SIO has primary responsibility for addressing scientific integrity concerns raised to the Department. The Scientific Integrity Council will support and assist the HHS SIO as needed. Full policies and procedures for handling scientific integrity concerns will be made available on the HHS website, at <https://www.hhs.gov/programs/research/scientificintegrity/index.html>. HHS OpDivs/StaffDivs may have their own procedures for addressing scientific integrity concerns that arise in their own divisions. For information about rights and remedies against retaliation, employees may contact the HHS OIG Whistleblower Protection Coordinator.²⁶ In general:

1. Concerns about a potential loss of scientific integrity at HHS may be reported to the HHS SIO by any individual who has knowledge of the situation. Reporting may be done anonymously.

2. Employees of HHS or its OpDivs/StaffDivs are encouraged to seek an informal consultation with the HHS SIO or the relevant division SIO to discuss whether a concern constitutes a potential loss of scientific integrity

before submitting a formal complaint. Employees ultimately have the discretion to submit a formal complaint as they see fit without reprisal.

3. If an OpDiv/StaffDiv has its own procedures in place for handling scientific integrity concerns, formal complaints submitted to HHS that involve actions and outcomes specific to that division will be directed to that division for follow up. For divisions without their own procedures, formal complaints will be handled by the HHS Scientific Integrity Council.

4. The HHS SIO, with the help of the Scientific Integrity Council as needed, will complete an initial assessment of each reported concern and determine whether to request additional information from the complainant or others and to determine whether a formal investigation is warranted.

5. Should an investigation be opened, an investigation committee consisting of the HHS SIO and at least two other Scientific Integrity Council members, or their delegates, will be convened. The committee will develop a factual record by exploring the allegation(s) in detail and consulting with subject matter experts, interviewing witnesses, and reviewing documentation as needed. This record will be documented in a report from the committee to the HHS SIO.

6. Once the investigation is complete and a report has been submitted to the HHS SIO, the HHS SIO will determine whether scientific integrity was lost, and if so, what corrective scientific actions are recommended.

7. The complainant and respondent will be given the opportunity to appeal a finding or any corrective scientific actions taken.

Handling Differing Scientific Opinions

Science and decisions based on science are strengthened by vigorous discussion and debate and by considering all available evidence. The process of challenging and improving ideas helps to guard against inadequate science and flawed analysis. Scientists can hold differing opinions without violating scientific integrity, and HHS encourages its scientists to respectfully express and engage with differing views as an integral part of the scientific process. Differing scientific opinions are diverging views held by researchers who are substantively engaged in the science subject area. In some cases, such as when a scientific dispute has a significant impact on public health or policy, a formal scientific dispute resolution process may be necessary. The goal of scientific dispute resolution should be to ensure that all perspectives

are heard and documented in an unbiased way. A satisfactory resolution may involve adopting one opinion over another, deciding to conduct additional studies, formulating an alternate theory reconciling the differing opinions, or documenting the disagreement for the benefit of policymakers and fellow scientists. HHS OpDivs/StaffDivs may have dispute resolution policies in place; employees of these divisions must follow any such policies and guidelines. If a division does not have a dispute resolution process already in place, the following steps may be used as a guide. These steps may be completed in any order and are not necessarily an exhaustive list of dispute resolution measures. In general:

- A team member or group of team members with a differing opinion may engage with their colleagues to resolve the issue as soon as the difference of opinion is known. HHS recommends this type of internal discussion as a first step in most dispute resolution proceedings.

- A team may choose to consult a manager. First-level managers may defer to an appropriate higher-level manager if the first-level manager has a conflict of interest or cannot offer an impartial opinion for any reason.

- If the matter cannot be satisfactorily resolved by other means, a team may request assistance from their division's SIO. The HHS SIO may be consulted if the division SIO requests their assistance, if there is no division SIO, or if there is a conflict of interest or perceived conflict of interest with the division SIO. The HHS SIO will review the dispute history and may recommend additional internal discussion, peer review, or involvement of subject matter experts. The HHS SIO may also serve as a mediator or engage the services of a professional mediator to help end the dispute. The HHS SIO acting in this capacity serves to uphold scientific integrity and will not advocate for a particular scientific position.

Roles and Responsibilities

Scientific Integrity is everyone's responsibility. The following individuals have specific scientific integrity roles and responsibilities under this policy:

I. The Secretary of Health and Human Services

1. Provides leadership for HHS on scientific integrity, by leading through example, upholding scientific integrity principles, and regularly communicating the importance of scientific integrity.

2. Ensures that all HHS activities associated with scientific and technological processes are conducted in accordance with this policy.

3. Ensures that all supervisors and managers comply with this policy and ensures accountability for those who do not.

4. Ensures that violations of this policy are investigated to the full extent that is described herein, and that appropriate corrective scientific and/or administrative actions are taken as a result of such investigations.

5. Ensures that HHS scientific integrity efforts support HHS plans for making evidence-based policies, including the evidence-building plans required by 5 U.S.C. 312(a) and the annual evaluation plans required by 5 U.S.C. 312(b).

6. Provides adequate resources and funding to implement this policy including staffing, monitoring, evaluation, reporting, and training.

7. Ensures that SIOs are afforded all applicable career employee rights and appeals and are protected against retaliation of any kind.

8. Supports and respects the HHS SIO's independence, recommendations, and designation of and HHS compliance with corrective scientific actions when violations of this policy are substantiated. Assistance may be sought from the National Science and Technology Council (NSTC) Subcommittee on Scientific Integrity (SOSI) in cases of disagreement.

9. In cooperation with the HHS SIO, oversees the implementation and iterative improvement of policies and processes affecting the integrity of scientific activities funded, conducted, or overseen by HHS, as well as policies affecting the Federal and non-Federal scientists who support the scientific activities of HHS, including scientific-integrity policies.

10. Ensures that HHS establishes as necessary clear administrative actions for substantiated violations of this policy, designating responsibility for each aspect of accountability.

II. HHS Scientific Integrity Official

1. Is a designated, full-time equivalent, career employee who holds a permanent appointment and has appropriate scientific credentials and is designated at a senior level.

2. Oversees implementation and iterative improvement of scientific-integrity policies and processes, provides leadership on matters of scientific integrity, and serves as the primary HHS-level contact for questions regarding scientific integrity.

3. Leads training and outreach initiatives to facilitate employee awareness and understanding of this policy.

4. Serves as a neutral point of contact for receiving allegations of loss of scientific integrity, provides informal consultation for employees who have scientific integrity concerns, and adheres to privacy and confidentiality policies, as applicable.

5. Conducts an initial assessment of all formal complaints and submitted materials, following established procedures, to determine whether the allegations pertain to loss of scientific integrity and the appropriate handling of said allegations. Provides independent oversight of HHS responses to allegations of loss of scientific integrity referred for an inquiry or investigation, including:

a. Reviewing HHS-submitted reports of allegations and their disposition.

b. Maintaining a status report of responses to allegations as a means of monitoring the progress toward resolution.

6. Leads efforts to update this policy and any accompanying guidance, as appropriate.

7. Reports to the HHS Deputy Assistant Secretary for Science and Data Policy on matters involving scientific integrity.

8. Coordinates as necessary with the HHS Offices of Research Integrity (ORI), Human Research Protections (OHRP), Inspector General (OIG), the General Counsel (OGC), Human Resources, Civil Rights, the Assistant Secretary for Public Affairs, and the Chief Information Officer, among others.

9. Reports any potentially criminal behavior related to waste, fraud, abuse, or potential employee misconduct to OIG that is uncovered while responding to an allegation of loss of scientific integrity and coordinates as appropriate related to the referral provided to OIG.

10. Keeps the HHS Secretary informed on the status of the implementation of this policy and any compliance concerns, as warranted.

11. Publishes an annual scientific integrity report as described below.

12. Leads efforts for the iterative improvement of this policy and scientific integrity initiatives overall including development and implementation of an evaluation plan to regularly monitor and evaluate ongoing scientific integrity activities and outcomes.

13. To the extent possible, is involved in high level discussions and strategic planning on the recruitment, retention, development, and advancement of scientists—including scientists from

underrepresented communities—to help ensure that scientific integrity is appropriately and carefully considered.

III. HHS Scientific Integrity Council Members

1. As delegated by the HHS SIO, oversees implementation and iterative improvement of scientific integrity policies and processes.

2. Coordinates with the HHS SIO in implementing scientific-integrity policies and processes.

3. Provides oversight for the implementation of the Scientific Integrity Policy at HHS.

4. Acts as liaisons for their respective HHS OpDivs/StaffDivs.

5. Assists with training and policy assessment, updates, and amendments.

6. Is available to address any questions or concerns regarding this policy.

7. Other duties as delegated.

IV. HHS Managers and Supervisors

1. Comply with and ensure HHS and employee compliance with the scientific integrity policy, including reporting or advising others on reporting allegations of loss of scientific integrity.

2. Make themselves aware of and uphold the principles contained in this policy. Lead through example by upholding scientific integrity principles and communicating the importance of doing so.

3. Report any knowledge of potential loss of scientific integrity to the HHS SIO or OpDiv/StaffDiv scientific integrity officials without reprisal.

4. Consult, as appropriate, with the HHS SIO or relevant OpDiv/StaffDiv SIOs, human resources officers, contracting and grant personnel, ethics officers, ORI, OIG, OGC, and the Office for Civil Rights.

V. HHS Employees and Other Covered Individuals

1. Make themselves aware of the principles contained in this policy and how the policy applies to their duties.

2. Comply with this policy.

3. Adhere to accepted professional values and practices of the relevant research/scientific communities to which they belong.

4. Are encouraged to report to the HHS SIO or OpDiv/StaffDiv SIO any concern of loss of scientific integrity and are encouraged to report retaliation or potential criminal activity to the HHS OIG Hotline.²⁷

Monitoring and Evaluating Scientific Integrity Activities and Outcomes

HHS will develop and implement an evaluation plan to regularly measure,

monitor, and evaluate ongoing scientific integrity activities and outcomes. The plan will include a roadmap of activities, evaluation metrics, and methods of measurement for the purpose of ongoing improvement of SI processes, procedures, and policies. The plan will include expected metrics and measurement methods for evaluating the HHS Scientific Integrity Policy; workforce training; scientific integrity leadership, staffing, and communication; and reporting mechanisms. As part of the monitoring and evaluation plan, HHS will publish an annual report on the number and outcomes of investigations and appeals involving allegations of loss of scientific integrity. To the extent possible, all descriptions of investigations and appeals will be anonymized.

The plan shall also include a timeline for implementation and frequency of data collection, analysis, review, recommendations, and implementing recommendations. Monitoring and evaluation results, recommendations, and policy/procedure changes based on results will be reported to HHS leadership and will be made available to HHS staff and the public in a timely manner.

Reporting

The HHS SIO, with input from the Scientific Integrity Council, is responsible for developing and making prominently available on HHS's public facing website, at <https://www.hhs.gov/programs/research/scientificintegrity/index.html>, an annual report to HHS leadership on the status of scientific integrity within HHS. The report shall highlight scientific integrity successes, accomplishments, or progress across HHS and identify areas for improvement and plans for addressing critical weaknesses, if any. The report shall describe progress toward achieving key metrics, including comparisons to the same metrics from prior years to show trends over time, whenever feasible. It will also include the number of investigations and appeals involving alleged or actual violations of this scientific integrity policy, including pending investigations and appeals. For investigations that have been resolved, the report will include an aggregate summary of the types of corrective actions recommended by the investigation panel to restore scientific integrity, and a summary of the types of actions ultimately taken.

Related Policies and Statutes

Involving SIOs at HHS and its OpDivs/StaffDivs in the writing and updating of related policies can help

provide needed perspectives before such policies are issued and better ensure they support scientific integrity. Officials should consider the scientific integrity-related components of other policies (e.g., professional development of scientists, science-related communications, etc.) and determine where those other policies should be referenced, or perhaps reinforced, within the agency scientific integrity policy to help ensure their longevity. Violations of related and supporting policies may result in a loss of scientific integrity and it is appropriate for SIOs to coordinate with their agency counterparts in these matters.

SIOs should have an awareness of policies and programs that intersect with the development of the culture of scientific integrity within the agency. SIOs, where possible, shall be involved in the development or revision of the broader set of policies and practices that affect the culture and applicability of scientific integrity within HHS.

Research Misconduct

Federal Research Misconduct Policy: <https://www.federalregister.gov/documents/2000/12/06/00-30852/executive-office-of-the-president-federal-policy-on-research-misconduct-preamble-for-research>
Public Health Service Policies on Research Misconduct: <https://www.federalregister.gov/d/05-9643>

Diversity, Equity, Inclusion, and Accessibility (DEIA) in Addressing and Strengthening Scientific Integrity and the Disproportional Impact of Scientific Integrity Policy Violations on Underrepresented Groups

HHS Equal Employment Opportunity and Anti-Harassment Policy: <https://www.hhs.gov/about/agencies/asa/eoo/policy/index.html>

Government-Wide Strategic Plan to Advance Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce: <https://www.whitehouse.gov/wp-content/uploads/2021/11/Strategic-Plan-to-Advance-Diversity-Equity-Inclusion-and-Accessibility-in-the-Federal-Workforce-11.23.21.pdf>

HHS Diversity, Equity, Inclusion, and Accessibility Strategic Plan 2022: <https://www.hhs.gov/sites/default/files/2022-hhs-deia-strategic-plan.pdf>

Public Access

NIH Public Access Policy: <https://publicaccess.nih.gov/policy.htm>
OSTP Memorandum on Increasing Access to the Results of Federally Funded Research (2013): <https://obamawhitehouse.archives.gov/sites/>

[default/files/microsites/ostp/ostp_public_access_memo_2013.pdf](https://www.whitehouse.gov/wp-content/uploads/2022/08/08-2022-OSTP-Public-Access-Memo.pdf)
OSTP Memorandum on Ensuring Free, Immediate, and Equitable Access to Federally Funded Research (2022): <https://www.whitehouse.gov/wp-content/uploads/2022/08/08-2022-OSTP-Public-Access-Memo.pdf>
5 U.S.C. Part 552—Freedom of Information Act: <https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-5>

Human and Animal Subject Protections

Federal Policy for Protection of Human Research Subjects (the Common Rule): [https://www.hhs.gov/ohrp/regulations-and-policy/regulations/common-rule/index.html#:~:text=Consent%20Posting%20Guidance-,Federal%20Policy%20for%20the%20Protection%20of%20Human%20Subjects%20\('Common,of%20Biomedical%20and%20Behavioral%20Research](https://www.hhs.gov/ohrp/regulations-and-policy/regulations/common-rule/index.html#:~:text=Consent%20Posting%20Guidance-,Federal%20Policy%20for%20the%20Protection%20of%20Human%20Subjects%20('Common,of%20Biomedical%20and%20Behavioral%20Research)

FDA Policy for the Protection of Human Subjects: <https://www.fda.gov/science-research/clinical-trials-and-human-subject-protection/fda-policy-protection-human-subjects>

Animal Welfare Act and Regulations: <https://www.aphis.usda.gov/animal-welfare/downloads/bluebook-ac-awa.pdf>

Public Health Service Policy on Humane Care and Use of Laboratory Animals: <https://olaw.nih.gov/policies-laws/phs-policy.htm>
Guide for the Care and Use of Laboratory Animals: <https://grants.nih.gov/grants/olaw/guide-for-the-care-and-use-of-laboratory-animals.pdf>

Research Security

National Security Presidential Memorandum 33 (NSPM 33): <https://trumpwhitehouse.archives.gov/presidential-actions/presidential-memorandum-united-states-government-supported-research-development-national-security-policy/>
Guidance for Implementing NSPM 33: <https://www.whitehouse.gov/wp-content/uploads/2022/01/010422-NSPM-33-Implementation-Guidance.pdf>

Whistleblower Protections

5 U.S.C. Part 2302—Prohibited personnel practices: <https://uscode.house.gov/view.xhtml?req=29&f=treesort&num=125>
Whistleblower Protection Act of 1989: <https://www.govinfo.gov/content/pkg/STATUTE-103/pdf/STATUTE-103-Pg16.pdf>
Public Law 103—424—Expansion of Whistleblower Protection Act of 1989:

<https://www.govinfo.gov/content/pkg/STATUTE-108/pdf/STATUTE-108-Pg4361.pdf#page=3>

Whistleblower Protection Enhancement Act of 2012: <https://www.congress.gov/112/statute/STATUTE-126/STATUTE-126-Pg1465.pdf>

41 U.S.C. Part 4712—Enhancement of contractor protection from reprisal for disclosure of certain information: [https://uscode.house.gov/view.xhtml?req=\(title:41%20section:4712%20edition:prelim\)](https://uscode.house.gov/view.xhtml?req=(title:41%20section:4712%20edition:prelim))

Presidential Policy Directive 19—Protecting Whistleblowers with Access to Classified Information: <https://www.usda.gov/sites/default/files/documents/ppd.pdf>

US Office of Special Counsel: <https://osc.gov/>

10 U.S.C. Part 1034, made applicable to the Public Health Service Commissioned Corps through 42 U.S.C. 213a(a)(18), and implemented by Commissioned Corps Directive (CCD) 121.06: <https://dcp.psc.gov/ccmis/ccis/documents/CCD12106.pdf#:~:text=CCD%20121.06%20EFFECTIVE%20DATE%3A%2010%20February%202022%20By,and%20Human%20Services%3A%20Xavier%20Becerra%20SUBJECT%3A%20Protected%20Communications>

Foundations for Evidence-Based Policymaking Act (“Evidence Act”): <https://www.congress.gov/bill/115th-congress/house-bill/4174/text>

Notification and Federal Employee Antidiscrimination and Retaliation Act (“No FEAR Act”): <https://www.govinfo.gov/content/pkg/PLAW-107publ174/html/PLAW-107publ174.htm>

Dual Use Research of Concern: <https://www.phe.gov/s3/dualuse/documents/durc-policy.pdf>

The Federal Advisory Committee Act: <https://www.gsa.gov/policy-regulations/policy/federal-advisory-committee-management/legislation-and-regulations/the-federal-advisory-committee-act>

Paperwork Reduction Act: <https://www.govinfo.gov/content/pkg/PLAW-104publ13/html/PLAW-104publ13.htm>

HHS Grants Policy Statement: <https://www.hhs.gov/sites/default/files/grants/grants/policies-regulations/hhsgrs107.pdf>

ASPA’s Guidelines on the Provision of Information to the News Media: https://www.hhs.gov/sites/default/files/media_policy.pdf

Endnotes

¹ Guidance by the Scientific Integrity Framework Interagency Working Group of the National Science and Technology Council “A Framework for Federal Scientific Integrity Policy and Practice.” January 12, 2023. Available at: <https://www.whitehouse.gov/wp-content/uploads/2023/01/01-2023-Framework-for-Federal-Scientific-Integrity-Policy-and-Practice.pdf>.

² Some HHS Operating and Staff Divisions have or may designate their own Scientific Integrity Officials. This document uses “HHS SIO” to refer to the official designated by HHS to coordinate department-wide implementation of this Policy and “SIO” to refer to all Scientific Integrity Officials, including those at Operating and Staff Divisions.

³ Presidential Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policy Making, January 27, 2021. Available at: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/memorandum-on-restoring-trust-in-government-through-scientific-integrity-and-evidence-based-policy-making/>.

⁴ Presidential Memorandum for the Heads of Executive Departments and Agencies on Scientific Integrity, March 9, 2009. The White House. Available at: <https://obamawhitehouse.archives.gov/the-press-office/memorandum-heads-executive-departments-and-agencies-3-9-09>.

⁵ Presidential Memorandum for the Heads of Executive Departments and Agencies on Scientific Integrity, December 17, 2010. Office of Science and Technology Policy. Available at: <https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/scientific-integrity-memo-12172010.pdf>.

⁶ A report by the Scientific Integrity Fast-Track Action Committee of the National Science and Technology Council. “Protecting the Integrity of Government Science.” January 11, 2022. Available at: https://www.whitehouse.gov/wp-content/uploads/2022/01/01-22-Protecting_the_Integrity_of_Government_Science.pdf.

⁷ Guidance by the Scientific Integrity Framework Interagency Working Group of the National Science and Technology Council “A Framework for Federal Scientific Integrity Policy and Practice.” January 12, 2023. Available at: <https://www.whitehouse.gov/wp-content/uploads/2023/01/01-2023-Framework-for-Federal-Scientific-Integrity-Policy-and-Practice.pdf>.

⁸ Examples may include (1) suppressing a decisionmaker’s ability to offer the best judgment based on scientific information; (2) preventing the use of best available science; (3) insisting on preclearance of a scientific product for purposes other than providing advance notification or opportunity to review for technical merit; (4) suppressing, altering or delaying the release of a scientific product for any reason other than technical merit or providing advance notification; (5) removing or reassigning scientific personnel for any reason other than performance, conduct or budgetary constraints; (6) using scientific products that are not representative of the current state of scientific knowledge and research (for example because of a lack of

appropriate peer review, poor methodology, or flawed analyses) to inform decision making and policy formulation; or (7) misrepresenting the underlying assumptions, uncertainties, or probabilities of scientific products. This is not intended to be an exhaustive list.

⁹ Differences of scientific opinion are not necessarily inappropriate influence.

¹⁰ See Federal Research Misconduct Policy, 65 FR 76260, 76262 (Dec. 6, 2000); see also <https://ori.hhs.gov/definition-research-misconduct>.

¹¹ Public Law 112–199 § 110.

¹² 5 U.S.C. 2302(b)(8).

¹³ See Health Extenders, Improving Access to Medicare, Medicaid, and CHIP, and Strengthening Public Health Act of 2022, Public Law 117–328, Division FF, Title II, Section 2321 (Jan 3, 2023) and Chips and Science Act, Public Law 117–167, Title VI, Subtitle D, Section 10631 (Aug 9, 2022). OSTP guidance and relevant HHS policies to implement this legislation are forthcoming at the time of publication of this policy.

¹⁴ HHS Grants Policy Statement, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Resources and Technology, Office of Grants. January 1, 2007. Available at: <https://www.hhs.gov/sites/default/files/grants/grants/policies-regulations/hhsgrps107.pdf>.

¹⁵ HHS Grants Policy Administration Manual Version 1.02. November 13, 2023.

¹⁶ 45 CFR 75.372.

¹⁷ Presidential Memorandum for the Heads of Executive Departments and Agencies on Increasing Access to the Results of Federally Funded Scientific Research. Available at: https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/ostp_public_access_memo_2013.pdf.

¹⁸ Presidential Memorandum for the Heads of Executive Departments and Agencies on Ensuring Free, Immediate, and Equitable Access to Federally Funded Research. Available at: <https://www.whitehouse.gov/wp-content/uploads/2022/08/08-2022-OSTP-Public-Access-Memo.pdf>.

¹⁹ This provision is further outlined in the United States Office of Government Ethics Standards of Conduct and 18 U.S.C. 208 as Applied to Official Social Media Use. Available at: [https://oge.gov/web/oge.nsf/News_Releases/EAE37A7DA3C38BF38525894700775339/\\$FILE/LA-23-03%20The%20Standards%20of%20Conduct%20and%2018%20U.S.C.%20C2%A7%20208%20as%20Applied%20to%20Official%20Social%20Media%20Use.pdf](https://oge.gov/web/oge.nsf/News_Releases/EAE37A7DA3C38BF38525894700775339/$FILE/LA-23-03%20The%20Standards%20of%20Conduct%20and%2018%20U.S.C.%20C2%A7%20208%20as%20Applied%20to%20Official%20Social%20Media%20Use.pdf).

²⁰ Memorandum to Designated Agency Ethics Officials on The Standards of Conduct as Applied to Personal Social Media Use. Available at: [https://www.oge.gov/web/oge.nsf/0/195DAE83D38EF6A9852585BA005BEC69/\\$FILE/LA-15-03-2.pdf](https://www.oge.gov/web/oge.nsf/0/195DAE83D38EF6A9852585BA005BEC69/$FILE/LA-15-03-2.pdf).

²¹ Office of Management and Budget. “Final Information Quality Bulletin for Peer Review.” *Federal Register*. Doc. 05–769. Available at: <https://www.federalregister.gov/documents/2005/01/14/05-769/final-information-quality-bulletin-for-peer-review>.

²² 5 U.S.C. 7513, 4303.

²³ Commissioned Corps Directive 111.02.

²⁴ Subject to the limitations and requirements as to participation in foreign

talent programs outlined in I.12–13 of this policy.

²⁵ 2010 Memorandum from the White House Office of Science and Technology Policy on Scientific Integrity. Available at: <https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/scientific-integrity-memo-12172010.pdf>.

²⁶ See <https://oig.hhs.gov/fraud/whistleblower/>. Employees can also contact their OpDiv/StaffDiv’s office of Equal Employment Opportunity (“EEO”) for information regarding retaliation based on protected EEO activity or discrimination, or the Office of Special Counsel for information regarding retaliation based on whistleblowing. Additionally, although encouraged to use the process detailed herein, employees may also disclose wrongdoing to their supervisor or another individual higher up in management, the HHS OIG, the Office of Special Counsel, or to Congress. PHSCC officers should also refer to CCD 121.06, “Protected Communications,” CCD 111.01, “Equal Opportunity,” and CCI 211.03, “Equal Opportunity.”

²⁷ <https://oig.hhs.gov/fraud/report-fraud/before-you-submit/>.

Dated: December 16, 2024.

Katherine N. Bent,

Associate Deputy Assistant Secretary, Office of Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services.

[FR Doc. 2024–30934 Filed 12–27–24; 8:45 a.m.]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Information Technology Advisory Committee Schedule of Meetings

AGENCY: Assistant Secretary for Technology Policy (ASTP), HHS.

ACTION: Notice of meetings.

SUMMARY: The Health Information Technology Advisory Committee (HITAC) was established in accordance with the 21st Century Cures Act and the Federal Advisory Committee Act. The HITAC, among other things, identifies priorities for standards adoption and makes recommendations to the Assistant Secretary for Technology Policy/National Coordinator for Health Information Technology. The HITAC will hold public meetings throughout 2025. See list of public meetings below.

FOR FURTHER INFORMATION CONTACT: Seth Pazinski, Designated Federal Officer, at Seth.Pazinski@hhs.gov, (202) 384–2246.

SUPPLEMENTAL INFORMATION: Section 4003(e) of the 21st Century Cures Act (Pub. L. 114–255) establishes the Health Information Technology Advisory

Committee (referred to as the “HITAC”). The HITAC will be governed by the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended, (5 U.S.C. app.), which sets forth standards for the formation and use of federal advisory committees.

Composition: The HITAC is comprised of at least 25 members, of which:

- No fewer than 2 members are advocates for patients or consumers of health information technology;
- 3 members are appointed by the HHS Secretary
 - 1 of whom shall be appointed to represent the Department of Health and Human Services; and
 - 1 of whom shall be a public health official;
- 2 members are appointed by the majority leader of the Senate;
- 2 members are appointed by the minority leader of the Senate;
- 2 members are appointed by the Speaker of the House of Representatives;
- 2 members are appointed by the minority leader of the House of Representatives;
- Other members are appointed by the Comptroller General of the United States.

Members serve for one-, two-, or three-year terms. All members may be reappointed for a subsequent three-year term. Each member is limited to two three-year terms, not to exceed six years of service. Members serve without pay but will be provided per-diem and travel costs for committee services, if warranted.

Recommendations: The HITAC recommendations to the Assistant Secretary for Technology Policy/ National Coordinator for Health Information Technology are publicly available at <https://www.healthit.gov/topic/federal-advisory-committees/recommendations-national-coordinator-health-it>.

Public Meetings: All HITAC meetings will be virtual. Please note that some HITAC meetings may also have an in-person meeting option. For web conference instructions and the most up-to-date information, including in-person meeting location (if applicable), please visit the HITAC calendar on the ONC website, www.healthit.gov/topic/federal-advisory-committees/hitac-calendar.

The schedule of meetings to be held in 2025 is as follows:

- February 13, 2025, from approximately 10:00 a.m. to 3:00 p.m./ Eastern Time
- March 20, 2025, from approximately 10:00 a.m. to 3:00 p.m./ Eastern Time

- April 10, 2025, from approximately 10:00 a.m. to 3:00 p.m./Eastern Time
- May 8, 2025, from approximately 10:00 a.m. to 3:00 p.m./Eastern Time
- June 12, 2025, from approximately 10:00 a.m. to 3:00 p.m./Eastern Time
- July 17, 2025, from approximately 10:00 a.m. to 3:00 p.m./Eastern Time
- August 14, 2025, from approximately 10:00 a.m. to 3:00 p.m./ Eastern Time
- September 18, 2025, from approximately 10:00 a.m. to 3:00 p.m./ Eastern Time
- October 16, 2025, from approximately 10:00 a.m. to 3:00 p.m./ Eastern Time
- November 13, 2025, from approximately 10:00 a.m. to 3:00 p.m./ Eastern Time

All meetings are open to the public. Additional meetings may be scheduled as needed.

Contact Person for Meetings: Seth Pazinski, Seth.Pazinski@hhs.gov. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Please email Seth Pazinski for the most current information about meetings.

Agenda: As outlined in the 21st Century Cures Act, the HITAC will develop and submit recommendations to the Assistant Secretary for Technology Policy/National Coordinator on Health Information Technology on the topics of interoperability, privacy and security, patient access to information, use of technologies that support public health, design and use of technologies that advance health equity, and use of artificial intelligence that improves health and health care. In addition, the committee will also address any administrative matters and hear periodic reports from ASTP. ASTP intends to make background material available to the public no later than 24 hours prior to the meeting start time. If ASTP is unable to post the background material on its website prior to the meeting, the material will be made publicly available on ASTP’s website after the meeting, at www.healthit.gov/hitac.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person prior to the meeting date. An oral public comment period will be scheduled at each meeting. Time allotted for each commenter will be limited to three minutes. If the number of speakers requesting to comment is

greater than can be reasonably accommodated during the scheduled public comment period, ASTP will take written comments after the meeting.

ASTP welcomes the attendance of the public at its HITAC meetings. If you require special accommodations due to a disability, please contact Seth Pazinski at least seven (7) days in advance of the meeting.

Notice of these meetings are given under the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App. 2).

Dated: November 22, 2024.

Stanley S. Pazinski,

Designated Federal Officer, Assistant Secretary for Technology Policy/Office of the National Coordinator for Health Information Technology.

[FR Doc. 2024–31076 Filed 12–27–24; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Organization, Functions, and Delegations of Authority; Part G; Indian Health Service; Headquarters, Office of the Director, Office of Quality

AGENCY: Indian Health Service, Department of Health and Human Services.

ACTION: Final notice.

SUMMARY: Part G of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS) is hereby amended to reflect a reorganization of the Indian Health Service (IHS). The purpose of this reorganization proposal is to update the current approved IHS, Office of the Director (GA), Congressional and Legislative Affairs Staff (GA1) and the Office of Quality (GAP) in their entirety and replace with the following:

SUPPLEMENTARY INFORMATION: The IHS is an Operating Division within the Department of Health and Human Services (HHS) and is under the leadership and direction of a Director who is directly responsible to the Secretary of Health and Human Services. The IHS Headquarters is proposing to reorganize the following major component: Office of Quality (OQ).

Part G of the Statement of Organization, Functions, and Delegations of Authority was most recently amended at 89 FR 61126, July 30, 2024.

Office of the Director, IHS (GA)

Congressional and Legislative Affairs Staff (CLAS) (GA1)

(1) Serves as the principal advisor to the IHS Director on all legislative and congressional relations matters; (2) advises the IHS Director and other IHS officials on the need for changes in legislation and manages the development of IHS legislative initiatives; (3) serves as the IHS liaison office for congressional and legislative affairs with Congressional offices, the HHS, the Office of Management and Budget (OMB), the White House, and other federal agencies; (4) tracks all major legislative proposals in the Congress that would impact Indian health; (5) ensures that the IHS Director and appropriate IHS and HHS officials are briefed on the potential impact of proposed legislation; (6) develops legislative strategy for key policy and legislative initiatives; (7) provides technical assistance and advice relative to the effect that initiatives/implementation would have on the IHS; (8) provides support and collaborates with the Office of Finance and Accounting relative to IHS appropriations efforts; (9) directs the development of IHS briefing materials for congressional hearings, testimony, and bill reports; (10) analyzes legislation for necessary action within the IHS; (11) develops appropriate legislative implementation plans; (12) coordinates with IHS HQ and Area Offices as appropriate to provide leadership, advocacy, and technical support to respond to requests from the public, including tribal governments, tribal organizations, and Indian community organizations regarding IHS legislative issues.

Office of Quality (GAP)

The Office of Quality (OQ) provides leadership and direction for quality improvement and patient safety activities and oversees compliance and risk management throughout the agency. Specifically, the office (1) advises the Indian Health Service (IHS) Director on assuring quality health care, maximizing the patient experience, and systematizing quality improvement activities to improve clinical outcomes and administrative processes; (2) develops and implements a strategic quality framework; (3) oversees accreditation readiness activities and compliance with accreditation requirements at all IHS Direct Service facilities; (4) conducts performance improvement, quality assurance, innovative thinking, and risk management trainings; (5) oversees IHS

facilities and staff in intra-agency quality improvement activities; (6) advises on development and monitoring of quality assurance and governance metrics for health care delivery processes and outcomes; (7) develops programs to assess, address, and improve systems and processes to improve health care quality; (8) advises on compliance with relevant federal regulations and accreditation and professional standards; (9) provides guidance for standardization of health care delivery policies, protocols, and governance; (10) advises and guides IHS patient-centered care processes, ensuring engagement of patients as partners in care; (11) oversees the IHS Enterprise Risk Management (ERM) vision, culture, strategy, and framework and clinical risk management; (12) oversees and coordinates the agency's efforts to establish and maintain proper internal controls; (13) ensures requirements are met under OMB Circular A-123; (14) develops programs to promote patient safety management and reporting systems and processes, sentinel event investigations/root cause analysis; and (15) participates in cross-cutting issues and processes, including but not limited to, emergency preparedness/security, quality assurance, recruitment, budget formulation, self-determination issues, and resolution of audit findings as may be needed and appropriate.

Division of Quality Assurance and Patient Safety (GAPA)

(1) Develops and implements programs to promote sustained compliance with relevant federal regulations related to accreditation and professional standards for health care facilities; (2) manages and coordinates continuous accreditation compliance programs using multidisciplinary integration of survey readiness activities; (3) coordinates health care accreditation resource management; (4) tracks health care accreditation and certification survey reports; (5) develops and implements programs to manage credentialing standards and policy, acquires and maintains centralized credentialing software system, promotes unification of medical staff professionals (MSP), and promotes standardized training and support resources for MSP; (6) develops and implements policies and procedures to promote patient safety, infection control practices, and environment of care and life safety practices; (7) establishes policies and guidelines to reduce adverse events; (8) develops education and training related to the application of established patient safety and adverse

event reporting systems and metrics; (9) establishes and maintains oversight mechanisms for incident identification and reporting, adverse events and good catches, comprehensive systemic analysis/root cause analysis process and documentation; (10) implements strategies to improve patient and workforce safety; (11) enhances collaborative communication to facilitate the sharing of best practices and learning related to identified risks and mitigation actions across the agency; (12) identifies IHS and National patient safety trends and investigates positive and negative patient safety outcomes across the agency; and (13) provides patient safety consultation regarding industry standards, best practices, and development of policy, processes, and procedures.

Division of Enterprise Risk Management (GAPB)

(1) Oversees and coordinates the IHS ERM vision, culture, strategy, and framework; (2) develops goals and objectives for the ERM program, integrated with broader IHS-wide strategic goals/objectives, and tracks progress toward achieving them; (3) coordinates the development of risk policy, including a risk appetite statement, to guide Agency decision-making and documentation related to risk; (4) advises and collaborates in the development of the IHS ERM portfolio of enterprise risks and ensures appropriate and effective management by accountable individual risk owners; (5) integrates risk assessment activities across the IHS risk portfolio; (6) advises on ERM and provides expertise, advice, and assistance to the agency leadership on compliance matters; (7) provides guidance and training on the risk management process and prioritization; (8) facilitates the governance policy, process, and reporting to establish consistency and quality of documentation of fiduciary responsibilities of governing bodies; (9) oversees tracking of high-risk administrative, clinical, or personnel incidents to ensure appropriate local and agency-wide response, timely closure, assessment of internal controls, and review of case studies to promote a safety culture based on risk-awareness; (10) collaborates with key HQ Offices to ensure consistency in cross-cutting agency strategic planning, ERM, and management of internal controls across IHS; (11) collaborates with strategic planning process to integrate risk management and strategic thinking; (12) reviews tort claims files; (13) represents the IHS when claims are presented for review by the Malpractice Claims

Review Panel chartered by the HHS, and assists providers with Malpractice Claims Review Panel interactions; (14) submits payment reports to the National Practitioner Data Bank; (15) maintains case files and a malpractice claims database; (16) provides case summaries, peer review, outcome information, and feedback of risk management recommendations; (17) disseminates information about the review process; (18) responds to outside organizations requesting tort claim-involvement histories on former employees; and (19) responds to Tort Claims inquiries from governmental agencies, media, Tribal and Urban Indian organizations, and advocacy groups with the Office of General Council guidance.

Division of Innovation and Improvement (GAPC)

(1) Provides trainings on innovative thinking and performance improvement techniques; (2) provides training on empathy and relational intelligence to better understand colleagues and stakeholders and maximize teamwork; (3) integrates innovative thinking into quality improvement and policy formation processes to stimulate rapid idea generation; (4) oversees training programs to increase quality improvement capacity and standardize improvement methodology to test small-scale changes at the local level; (5) reviews use of health information technology and data to improve performance, quality and service; (6) monitors patient and staff satisfaction with health care service delivery; (7) leads change management for practice transformation to embrace new models of care delivery and to enhance efficiency of the care delivery process; (8) develops programs to promote the implementation of patient-centered care models; (9) coordinates sharing of best practices between Area Quality Managers and Service Unit Quality Assurance and Performance Improvement officers; and (10) supports and promotes patient-centered care including Patient and Family Engagement, and promotes unification of Area Quality Managers and Service Unit Quality Assurance and Performance Improvement Officers.

Division of Compliance (GAPD)

(1) Coordinates the IHS's compliance program; (2) administers the agency's internal control program in accordance with the Federal Managers' Financial Integrity Act, OMB Circular No. A-123, GAO Green Book, and other applicable requirements; (3) oversees and coordinates the agency's efforts to establish and maintain proper internal

controls; (4) oversees and institutionalizes a continuous compliance review process; (5) manages goals and objectives for the Compliance program, integrates them with broader IHS-wide strategic goals/objectives, and tracks progress toward achieving them; (6) evaluates and monitors systems of internal control across IHS and uses the assessments of the internal control program as an integral part of ERM to effectively manage risks across IHS; (7) Serves as the IHS liaison office to the Government Accountability Office (GAO) and Office of Inspector General (OIG); (8) coordinates the development, clearance, and transmittal of IHS responses and follow-up to reports issued by the OIG, the GAO, and other federal internal and external authorities reviewing risk management and internal controls; (9) provides leadership and direction on activities for continuous improvement of management accountability and administrative systems for effective and efficient program support services IHS-wide; and (10) oversees and coordinates the annual development and submission of the agency's federal Activities Inventory Reform Act report to the HHS.

Section GA-30, Indian Health Service—Delegations of Authority

All delegations of authority and re-delegations of authority made to IHS officials that were in effect immediately prior to this reorganization, and that are consistent with this reorganization, shall continue in effect pending further re-delegation.

Roselyn Tso,

Director, Indian Health Service.

[FR Doc. 2024-31273 Filed 12-27-24; 8:45 am]

BILLING CODE 4166-14-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; NHP Review.
Date: January 31, 2025.

Time: 10:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institute on Aging, 5601 Fishers Lane, Suite 8B, Rockville, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Bitu Nakhai, Ph.D., Scientific Review Officer, National Institute on Aging, National Institutes of Health, 5601 Fishers Lane, Suite 8B, Rockville, MD 20852, (301) 402-7701, nakhaib@nia.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 19, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-30880 Filed 12-27-24; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group Training and Workforce Development Study Section—C Training & Workforce Development Study Section C (TWD-C) Review of applications for the B2B & IRACDA Programs and Scientific Meetings & Conferences.

Date: February 20-21, 2025.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892.

Meeting Format: Virtual Meeting.

Contact Person: Sonia Ivette Ortiz-Miranda, Ph.D., Scientific Review Officer,

Scientific Review Branch, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, MSC 6200, Bethesda, Maryland 20892, 301-402-9448, sonia.ortiz-miranda@nih.gov.

Name of Committee: National Institute of General Medical Sciences, Initial Review Group Training and Workforce Development Study Section—B.

Date: February 24–25, 2025.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892.

Meeting Format: Virtual Meeting.

Contact Person: Latarsha J. Carithers, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12C, Bethesda, Maryland 20892, 301-594-4859, latarsha.carithers@nih.gov.

Name of Committee: National Institute of General Medical Sciences Initial Review Group Training and Workforce Development Study Section—A.

Date: March 6–7, 2025.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892.

Meeting Format: Virtual Meeting.

Contact Person: Adam Lawrence Heuberger, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, MSC 6200, Bethesda, Maryland 20892, 301-480-4151, adam.heuberger@nih.gov.

Name of Committee: National Institute of General Medical Sciences, Special Emphasis Panel; Review of ARC F99 and Mosaic K99 applications.

Date: March 11–12, 2025.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892.

Meeting Format: Virtual Meeting.

Contact Person: Lee Warren Slice, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, Maryland 20892, 301-435-0807, sliselw@mail.nih.gov.

Name of Committee: National Institute of General Medical Sciences, Special Emphasis Panel; Review of Support for Research Excellence (SuRE) Award (R16).

Date: March 11–12, 2025.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical

Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892.

Meeting Format: Virtual Meeting.

Contact Person: Jason M. Chan, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, MSC 6200, Bethesda, Maryland 20892, 301-594-3663, jason.chan2@nih.gov.

Name of Committee: National Institute of General Medical Sciences, Special Emphasis Panel; Review of UE5 applications.

Date: March 18, 2025.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892.

Meeting Format: Virtual Meeting.

Contact Person: Lee Warren Slice, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, Maryland 20892, 301-435-0807, sliselw@mail.nih.gov.

Name of Committee: National Institute of General Medical Sciences, Special Emphasis Panel; Review of SuRE and SuRE-First applications.

Date: March 24–25, 2025.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892.

Meeting Format: Virtual Meeting.

Contact Person: John J. Laffan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN18J, Bethesda, Maryland 20892, 301-594-2773, laffanjo@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program No. 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: December 20, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-31148 Filed 12-27-24; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Board on Medical Rehabilitation Research.

This will be a hybrid meeting held in-person and virtually and will be open to the public as indicated below.

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: National Advisory Board on Medical Rehabilitation Research.

Date: May 5–6, 2025.

Time: May 05, 2025, 10:00 a.m. to 5:00 p.m.

Agenda: NICHD Director's Report, NCMRR Director's Report, Scientific Research Updates.

Address: Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710 B Rockledge Drive, Bethesda, MD 20817.

Meeting Format: In Person and Virtual Meeting.

Time: May 06, 2025, 10:00 a.m. to 5:00 p.m.

Agenda: NIH Rehabilitation Research Conference Follow-up and Other Relevant Policy and Research Issues.

Address: Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710 B Rockledge Drive, Bethesda, MD 20817.

Meeting Format: In Person and Virtual Meeting.

Contact Person: Ralph M. Nitkin, Ph.D., Deputy Director, National Center for Medical Rehabilitation, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6710B Rockledge Drive, Room 2116, Bethesda, MD 20892-7510, (301) 402-4206, nitkinr@mail.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Persons 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.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of an organization may submit a letter of intent, a brief description of the organization represented and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, 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 NABMRR website: <https://www.nichd.nih.gov/about/advisory/nabmrr>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: December 19, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–30958 Filed 12–27–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Dominantly Inherited Alzheimer Network

Date: February 10, 2025

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications

Address: National Institute on Aging, 5601 Fishers Lane, Suite 8B, Rockville, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Joshua Jin-Hyouk Park, Ph.D., Scientific Review Officer,

National Institute on Aging, National Institutes of Health, 5601 Fishers Lane, Suite 8B Rockville, MD 20852, (301) 496–6208, joshua.park4@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 19, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–30877 Filed 12–27–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The 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 Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: May 14–15, 2025.

Open: May 14, 2025, 8:30 a.m. to 12:00 p.m.

Agenda: Call to order; Announcements; Consideration of Summary Minutes for September 2024 Council, Future Council Dates; Report from the Director; Speakers; Concept Clearance.

Address: National Institutes of Health, Building 31, C Wing 6th Floor Conf. Room F&G, 31 Center Drive, Bethesda, MD 20892, (In Person and Virtual Meeting).

Open: May 14, 2025, 1:00 p.m. to 2:30 p.m.

Agenda: KUH Open session.

Address: National Institutes of Health, Building 31, C Wing 6th Floor Conf. Room

B (KUH), 31 Center Drive, Bethesda, MD 20892, (In Person and Virtual Meeting).

Open: May 14, 2025, 1:00 p.m. to 2:30 p.m.

Agenda: DEM Open session.

Address: National Institutes of Health, Building 31, C Wing 6th Floor Conf. Room F&G (DEM), 31 Center Drive, Bethesda, MD 20892, (In Person and Virtual Meeting).

Open: May 14, 2025, 1:00 p.m. to 2:30 p.m.

Agenda: DDN Open session.

Address: National Institutes of Health, Building 31, C Wing 6th Floor Conf. Room A (DDN), 31 Center Drive, Bethesda, MD 20892, (In Person and Virtual Meeting).

Closed: May 14, 2025, 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Building 31, C Wing 6th Floor Conf. Room A (DDN), 31 Center Drive, Bethesda, MD 20892, (In Person and Virtual Meeting).

Closed: May 14, 2025, 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Building 31, C Wing 6th Floor Conf. Room B (KUH), 31 Center Drive, Bethesda, MD 20892, (In Person and Virtual Meeting).

Closed: May 14, 2025, 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Building 31, C Wing 6th Floor Conf. Room F&G (DEM), 31 Center Drive, Bethesda, MD 20892, (In Person and Virtual Meeting).

Closed: May 14, 2025, 3:45 p.m. to 4:00 p.m.

Agenda: To review and evaluate reports of Subcommittees and Consideration of Applications.

Address: National Institutes of Health, Building 31, C Wing 6th Floor Conf. Room F&G, 31 Center Drive, Bethesda, MD 20892, (In Person and Virtual Meeting).

Contact Person: Karl F. Malik, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Room 7329, MSC 5452, Bethesda, MD 20892, (301) 594–4757, malikk@niddk.nih.gov.

Information is also available on the Institute's/Center's home page: www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 19, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–30872 Filed 12–27–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 Mental Health Special Emphasis Panel; BRAIN Initiative: Engineering and Optimization of Molecular Technologies for Functional Dissection of Neural Circuits (UM1).

Date: February 4, 2025.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Meeting Format: Virtual Meeting.

Contact Person: Rebecca Steiner Garcia, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Bethesda, MD 20892-9608, 301-443-4525, email: steinerr@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: December 20, 2024.

Bruce A. George,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-30956 Filed 12-27-24; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Integrative Health Special Emphasis Panel; Feasibility Trials of the NIH Music-based Interventions Toolkit for Brain Disorders of Aging (R34 Clinical Trial Required).

Date: February 14, 2025.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Center for Complementary and Integrative Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Baila S. Hall, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH/NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 443-9285, baila.hall@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: December 20, 2024.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-31209 Filed 12-27-24; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis

Panel; Review of Support for Research Excellence (SuRE) Award and Support for Research Excellence—First Independent Research (SuRE-First) Award (R16).

Date: March 27, 2025.

Time: 9:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892.

Meeting Format: Virtual Meeting.

Contact Person: Kimberly Hammer, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, MSC 6200, Bethesda, Maryland 20892, 301-594-2849, kimberly.hammer@nih.gov.

(Catalogue of Federal Domestic Assistance Program No. 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: December 20, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-31147 Filed 12-27-24; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Final Revised Human Immunodeficiency Virus (HIV) Organ Policy Equity Act Safeguards and Research Criteria for Transplantation of Organs From Donors With HIV

AGENCY: National Institutes of Health, Department of Health and Human Services.

ACTION: Final notice.

SUMMARY: Kidney and liver transplants from donors with HIV no longer require institutional review board (IRB)-approved research protocols or compliance with HHS research criteria per a November 27, 2024, final rule. Through this notice, the U.S. Department of Health and Human Services (HHS) announces the publication of this accompanying Final Revised Safeguards and Research Criteria for Transplantation of Organs from Donors with HIV to apply to non-kidney and non-liver organs from donors with HIV for transplantation in recipients with HIV. Under the HOPE Act, these transplants must still occur under an IRB-approved research protocol that is compliant with federal regulations governing human subjects' research. The goal of this research is to increase knowledge about the safety, efficacy, and effectiveness of transplants

other than liver and kidney, from donors with HIV, thereby expanding access to organs for patients with HIV in need of transplants. HHS published Draft Revised Safeguards and Research Criteria on December 12, 2024. A summary of the public comments and HHS' responses follows. As explained below, NIH adopts revised research criteria as proposed except that NIH removed residual stigmatizing language from the title of the Research Criteria.

FOR FURTHER INFORMATION CONTACT: Dr. Jonah Odum, Chief Clinical Transplantation Section, Transplantation Branch, 5601 Fishers Lane, Room 6B21, MSC 9827, Rockville, MD 20892–9827; by email at odimj@niaid.nih.gov; by telephone at (301) 828–7220.

SUPPLEMENTARY INFORMATION:

Background

A. HHS Oversight of Organ Allocation and Transplantation

HHS is responsible for overseeing the operation of the nation's OPTN, including assisting in the equitable allocation of donor organs for transplantation. 42 U.S.C. 274(b)(2)(D). The OPTN is a network of transplant centers, organ procurement organizations, and other providers who work collectively to develop, implement, and monitor organ allocation policy and performance of the organ transplant system. The OPTN is also charged with developing policies on many subjects related to organ donation and transplantation, which include establishing standards of quality pertaining to organs procured for use in transplantation. 42 U.S.C. 274(b)(2)(E).

B. HOPE Act Requirements and Implementation

The enactment of the HOPE Act in 2013, Public Law 113–51, eliminated the prohibition in the United States on transplantation of organs from persons with HIV, allowing transplantation of these organs if certain requirements are satisfied. Under the HOPE Act, organs from donors with HIV may be transplanted only in recipients living with HIV prior to receiving such an organ. 42 U.S.C. 274(b)(3)(A). Further, the HOPE Act requires that transplants of HIV-positive organs occur only in recipients with HIV who are participating in institutional review board (IRB)-approved research protocols that adhere to certain criteria, standards, and regulations. 42 U.S.C. 274(b)(3)(B)(i). However, the Secretary may lift the research and IRB requirements if the Secretary has determined that participation in such

clinical research, as a requirement for such transplants, is no longer warranted. 42 U.S.C. 274(b)(3)(B)(ii).

The HOPE Act outlines the process by which the Secretary may make such a determination under 42 U.S.C. 274(b)(3)(B)(ii). Specifically, the Secretary must routinely review the results of scientific research, in conjunction with the OPTN, to determine whether the results warrant revision of the OPTN standards of quality regarding organs from donors with HIV. If the Secretary determines that those standards of quality should be revised, the Secretary must direct the OPTN to revise the standards. 42 U.S.C. 274f–5(c)(2). The Secretary is also required to revise the regulatory provision implementing the HOPE Act, 42 CFR 121.6, upon determining that revisions to the OPTN standards of quality are warranted. 42 U.S.C. 274f–5(c)(3).

C. Research Criteria for HOPE Act Transplants

In 2015, NIH published proposed research criteria for HOPE Act transplants in the **Federal Register** and solicited public comment. 80 FR 34912 (June 18, 2015). After consideration of public comments received, NIH published the “Final Human Immunodeficiency Virus (HIV) Organ Policy Equity (HOPE) Act Safeguards and Research Criteria for Transplantation of Organs Infected With HIV” (“2015 Research Criteria”). 80 FR 73785 (November 25, 2015). The goals of the 2015 Research Criteria were to ensure that research using organs from donors with HIV was conducted under conditions protecting the safety of research participants and the public and that the results of this research provide a basis for evaluating the safety of transplants of organs from donors with HIV in recipients with HIV. 80 FR 73785.

Introduction

The HOPE Act requires the Secretary of Health and Human Services (the Secretary) to develop and publish criteria for research involving transplantation of organs from donors with HIV to recipients with HIV. In 2015, the National Institutes of Health (NIH), U.S. Department of Health and Human Services (HHS) published the initial Research Criteria applicable to such transplants, which was in effect for all transplants involving organs from donors with HIV as authorized by the HOPE Act. Through a final rule published in the **Federal Register** on November 27, 2024 (89 FR 93484), the Secretary determined that participation

in clinical research should no longer be a requirement for transplantation of kidneys and livers from donors with HIV to recipients with HIV and amended the HHS regulations governing the operation of the Organ Procurement and Transplantation Network (OPTN) to reflect this determination. As a result, HOPE Act transplants involving kidneys and livers from donors with HIV no longer need to comply with the NIH Research Criteria. Given this regulatory change, NIH proposed revised Research Criteria and solicited public comments on such revisions by publication in the **Federal Register** on November 27, 2024 (89 FR 93616). NIH proposed deleting aspects of the Research Criteria that are specific to kidney and liver transplantation. NIH made additional proposed changes to the Research Criteria based on its review of scientific evidence and in consideration of prior public feedback concerning the criteria, including comments provided in the recent rulemaking procedure that modified the OPTN regulations. There were 4 public comments to the Draft Revised HOPE Safeguards and Research Criteria. After considering the public comments, NIH now finalizes the Revised HOPE Safeguards and Research Criteria. As explained below, NIH adopts revised research criteria as proposed except that NIH removed residual stigmatizing language from the title of the 2015 Research Criteria.

Overview of and Response to Comments

Recipient Eligibility Criteria

One commenter supported eliminating the organ-specific experience criteria of 5 HIV D – /R+ transplants over 4 years. Per the commenter, this benchmark was too high a bar for U.S. heart and lung transplant programs to satisfy; thereby, prohibiting participation in HOPE Act transplantation. This commenter proposed eliminating the recipient eligibility criteria of an HIV viral load <50 copies/mL in deference to investigator clinical judgement. NIH chose to maintain the undetectable viral load threshold (<50 copies/mL) that aligns with strong expert opinion from the Guidelines for the use of antiretroviral agents in adults and adolescents with HIV: Transplantation in people with HIV current as of 24 September 2024, <https://clinicalinfo.hiv.gov/en/guidelines/hiv-clinical-guidelines-adult-and-adolescent-arv/transplantation>. This criteria, which applies to transplants involving donors with HIV, does not preclude transplant programs from

listing suitable recipients for organs from donors without HIV.

Removal of Clinical Research Criteria for Living Donors With HIV

One commenter raised concerns over removal of clinical research criteria for living donors with HIV given needs for longer term outcome data. As described above, the final rule issued by the Secretary has removed the mandated IRB-approved research protocol requirements for HOPE Act kidney and liver transplantation. Living heart and lung donors with HIV are rare occurrences in today’s transplant practice. In the event of an intended living donation other than liver and kidney from a person with HIV, we include protections for living donors in the Revised Research Criteria. The revised criteria provide that for such transplants, the deceased donor eligibility criteria will apply. Further, the OPTN collects data on all living donors and transplants, which allows for additional oversight.

Removal of Stigmatizing Language (e.g., Donors Infected With HIV)

One commenter requested the removal of residual stigmatizing language from the title of the 2015 Research Criteria, which has been modified in this final document.

Elimination of Mandatory Pre-Implantation Donor Biopsies

This commenter endorsed the elimination of mandatory pre-implantation donor biopsies, since this is not routinely required for solid organ transplants, and the trend towards standardizing the evaluation of donors with HIV to that of donors without HIV.

A final commenter supported the proposed changes to Research Criteria for HOPE Act kidney and liver transplants and applauded measures taken to improve kidney transplant access for people with HIV.

Conclusion

HHS appreciates the time and effort responding to the Request for Comments. The comments represented the efforts of truly dedicated individuals and organizations in transplantation. The deliberations over the last 3 years and the responses surrounding the NPRM and the Draft Revised Research Criteria were helpful in completing the Final Revised Human Immunodeficiency Virus (HIV) Organ Policy Equity (HOPE) Act Safeguards and Research Criteria for Transplantation of Organs from Donors with HIV.

Changes to the 2015 Research Criteria

NIH has made several changes to the 2015 Research Criteria to reflect the Secretary’s determination, published by regulation on November 27, 2024 that HOPE Act kidney and liver transplants are no longer required to be conducted as research subject to the 2015 Research Criteria, and to continue to further the goals shared in 2015 with respect to HOPE Act transplants of other organs from donors with HIV that remain subject to the Research Criteria. NIH has removed the requirements from the 2015 Research Criteria applicable to HOPE Act kidney and liver transplants.

NIH has also made other changes to the 2015 NIH Research Criteria for conducting HOPE Act transplants of organs other than kidneys and livers (primarily heart and lung transplants) in

IRB-approved research. These changes are intended to accelerate research, ensure research participant safety, and maintain stakeholder confidence in clinical research conducted under the HOPE Act. Notable revisions include the elimination of (i) the transplant program experience requirement of five organ-specific transplants of organs from a donor without HIV in a recipient with HIV conducted over 4 years; (ii) mandated pre-implant biopsies; and (iii) the requirement for HIV independent advocates for living donors with HIV and recipients with HIV. Other organs (including multi visceral organs such as small intestine, stomach, liver, pancreas and colon) and multi organ transplants (e.g., heart-kidney) must comply with the Revised Research Criteria for inclusion of any non-kidney or non-liver organs from donors with HIV and subject to IRB approval.

The revisions to the 2015 Research Criteria are as follows:

Final Revised Human Immunodeficiency Virus (HIV) Organ Policy Equity (HOPE) Act Safeguards and Research Criteria for Transplantation of Organs From Donors With HIV

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Abbreviations	

AIDS	Acquired Immunodeficiency Syndrome.
ART	Antiretroviral Therapy.
CD4	Cluster of differentiation 4.
D–	Donor Human Immunodeficiency Virus negative.
D+	Donor Human Immunodeficiency Virus positive.
HBV	Hepatitis B virus.
HCT/Ps	Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps).
HCV	Hepatitis C virus.
HIV	Human Immunodeficiency Virus.
HIV–	Human Immunodeficiency Virus negative (using serology and/or nucleic acid testing using FDA-licensed, approved or cleared devices).
HIV+	Human Immunodeficiency Virus positive (using serology and/or nucleic acid testing using FDA-licensed, approved or cleared devices).
HOPE Act	HIV Organ Policy Equity Act.
HRSA	Health Resources and Services Administration.
IRB	Institutional review board.
NIH	National Institutes of Health.
NPRM	Notice of proposed rule making.
OI	Opportunistic infection.
OPO	Organ procurement organization.
PML	Progressive multifocal leukoencephalopathy.
R–	Recipient HIV negative.
R+	Recipient HIV positive.
RNA	Ribonucleic acid.
SOPs	Standard operating procedures.

Definitions

Antiretroviral therapy (ART) resistance.	When an HIV strain develops drug resistance and/or genetic mutations associated with drug resistance.
HIV superinfection	Systemic HIV superinfection is defined as the detection of HIV viral sequences that phylogenetically cluster with the donor's viral population at two or more time points in circulating blood cells, plasma, or recipient tissues other than the allograft.
Suppressed viral load	HIV RNA below 50 copies per mL with current technology at time of publication of this research criteria document.

The NIH Research Criteria are set forth in six broad categories (Donor Eligibility, Recipient Eligibility, Transplant Hospital Criteria, Organ Procurement Organization (OPO)

Responsibilities, Prevention of Inadvertent Transmission of HIV, and Study Design/Required Data Elements and Outcome Measures). Table 1 summarizes the Final Revised HOPE

Act Research Criteria in each category and compares them to the 2015 Research Criteria.

TABLE 1—FINAL REVISED HUMAN IMMUNODEFICIENCY VIRUS (HIV) ORGAN POLICY EQUITY (HOPE) ACT SAFEGUARDS AND RESEARCH CRITERIA FOR TRANSPLANTATION OF ORGANS FROM DONORS WITH HIV ¹

Category	Previous criteria	Revised criteria [No longer pertains to kidney and liver transplants ¹]
Donor Eligibility: <i>All deceased donors with HIV</i>	No evidence of invasive opportunistic complications of HIV infection. Pre-implant donor organ biopsy	No evidence of invasive opportunistic complications of HIV infection. There is no requirement for a pre-implantation biopsy.*
<i>Deceased donor with known history of HIV and prior antiretroviral therapy (ART).</i>	Viral load: no requirement	Viral load: no requirement.
<i>Living donor with HIV</i>	The study team must describe the anticipated post-transplant antiretroviral regimen(s) to be prescribed for the recipient and justify its conclusion that the regimen will be safe, tolerable, and effective. Well-controlled HIV infection defined as: • Cluster of Differentiation 4 (CD4) + T-cell count $\geq 500/\mu\text{L}$ for the 6-month period before donation. • HIV-1 ribonucleic acid (RNA) < 50 copies/mL • No evidence of invasive opportunistic complications of HIV infection. Pre-implant donor organ biopsy.	The study team must describe the anticipated post-transplant antiretroviral regimen(s) to be prescribed for the recipient and justify its conclusion that the regimen will be safe, tolerable, and effective. <i>Thoracic Organs Exception:</i> The living donor standards are not relevant for thoracic organ transplant except in the rare instances of living donor lung transplant or "domino" heart transplant. In such circumstances, the deceased donor eligibility criteria should be followed. <i>Other Organs:</i> If a living donor with HIV donates another type or organ (other than kidney and liver), the deceased donor eligibility criteria should be followed.*
Recipient Eligibility	CD4+ T-cell count $\geq 200/\mu\text{L}$ (kidney) CD4+ T-cell count $\geq 100 \mu\text{L}$ (liver) within 16 weeks prior to transplant and no history of opportunistic infection (OI); or $\geq 200 \mu\text{L}$ if history of OI is present. HIV-1 RNA < 50 copies/mL and on a stable antiretroviral regimen. No evidence of active opportunistic complications of HIV infection. No history of primary central nervous system (CNS) lymphoma or progressive multifocal leukoencephalopathy (PML).	CD4+ T-cell count: no minimum threshold when all other recipient eligibility criteria are met.* HIV-1 RNA < 50 copies/mL and on a stable antiretroviral regimen. No evidence of active opportunistic complications of HIV infection. No history of primary central nervous system (CNS) lymphoma or progressive multifocal leukoencephalopathy (PML).
Transplant Hospital Criteria	Transplant hospital with established program for care of subjects with HIV. HIV program expertise on the transplant team Organ-specific experience with transplants of organs from donors without HIV to recipients with HIV (5 D-/R+ transplant cases over 4 years). Standard operating procedures (SOPs) and training for the organ procurement, implanting/operative, and post-operative care teams for handling subjects with HIV, and organs and tissues from individuals with HIV. IRB-approved research protocol for transplantation of organs from donors with HIV in recipients with HIV.	Transplant hospital with established program for care of patients with HIV. HIV program expertise on the transplant team. There is no longer a center specific case experience requirement with transplants of organs from donors without HIV to recipients with HIV.* Transplant patients with organs from donors with HIV must be managed with a multidisciplinary team before, during, and after transplant. The multidisciplinary team must include transplant surgeons, physicians, HIV specialists, nurses, social workers, and pharmacists capable of therapeutic drug monitoring to minimize drug-drug interactions. Standard operating procedures (SOPs) and training for the organ procurement, implanting/operative, and post-operative care teams for handling HIV-infected subjects with HIV, and organs and tissues from individuals with HIV. IRB-approved research protocol for transplantation of organs from donors with HIV in recipients with HIV for the applicable organs.*

¹ Consistent with the final rule amending the OPTN regulations, transplants using kidneys and livers from donors with HIV no longer need to comply with the HOPE Act Research Criteria. When multiple organs from donors with HIV are implanted simultaneously (e.g., dual heart-kidney or dual lung-kidney), the Research Criteria apply to such multiple organ transplants if the transplant of

any of the organs are subject to the revised Research Criteria. For example, while a kidney transplant from a donor with HIV no longer is required to be conducted in accordance with the Research Criteria, a dual heart-kidney or dual lung-kidney transplant with organs from donors with HIV is required to be conducted in accordance with the Research Criteria and in accordance with an IRB-approved research

protocol. A dual liver-kidney transplant with from donors with HIV is not required to be conducted in accordance with the Research Criteria, as neither liver transplants nor kidney transplants from donors with HIV are required to be conducted as research.

TABLE 1—FINAL REVISED HUMAN IMMUNODEFICIENCY VIRUS (HIV) ORGAN POLICY EQUITY (HOPE) ACT SAFEGUARDS AND RESEARCH CRITERIA FOR TRANSPLANTATION OF ORGANS FROM DONORS WITH HIV ¹—Continued

Category	Previous criteria	Revised criteria [No longer pertains to kidney and liver transplants ¹]
OPO Responsibilities	Institutional biohazard plan outlining measures to prevent and manage inadvertent exposure to and/or transmission of HIV. Provide each living donor with HIV and recipient with HIV with an “independent advocate”. Policies and SOPs governing the necessary knowledge, experience, skills, and training for independent advocates. SOPs and staff training procedures for working with deceased donors with HIV and their families in pertinent history taking; medical chart abstraction; the consent process; and handling blood, tissues, organs, and biospecimens. Biohazard plan to prevent and manage HIV exposure and/or transmission.	Institutional biohazard plan outlining measures to prevent and manage inadvertent exposure to and/or transmission of HIV. There is no longer a requirement to provide an HIV independent advocate beyond standard site practices.* Policies and SOPs governing the necessary knowledge, experience, skills, and training for independent advocates. SOPs and staff training procedures for working with deceased donors with HIV and their families in pertinent history taking; medical chart abstraction; the consent process; and handling blood, tissues, organs, and biospecimens. Biohazard plan to prevent and manage HIV exposure and/or transmission.
Prevention of Inadvertent Transmission of HIV.	Each participating Transplant Program and OPO shall develop an institutional biohazard plan for handling organs from HIV-positive donors that is designed to prevent and/or manage inadvertent transmission or exposure to HIV. Procedures must be in place to ensure that human cells, tissues, and cellular and tissue-based products (HCT/Ps) are not recovered from donors with HIV for implantation, transplantation, infusion, or transfer into a human recipient; however, HCT/Ps from a donor determined to be ineligible may be made available for non-clinical purposes.	Each participating Transplant Program and OPO shall develop an institutional biohazard plan for handling organs from HIV-positive donors that is designed to prevent and/or manage inadvertent transmission or exposure to HIV. Procedures must be in place to ensure that human cells, tissues, and cellular and tissue-based products (HCT/Ps) are not recovered from donors with HIV for implantation, transplantation, infusion, or transfer into a human recipient; however, HCT/Ps from a donor determined to be ineligible may be made available for non-clinical purposes.
Required Data Elements and Outcome Measures**		
Wait List Candidates	HIV status CD4+ T-cell counts Co-infection (hepatitis C virus [HCV], hepatitis B virus [HBV]). HIV viral load ART resistance Removal from wait list (death or other reason) Time on wait list	HIV status. CD4+ T-cell counts. Co-infection: • Hepatitis C (HCV RNA). • Hepatitis B (HBV deoxyribonucleic acid, HBV antibody). • Cytomegalovirus (CMV immunoglobulin G [IgG]).* HIV viral load. ART resistance. Removal from wait list (death or other reason). Time on wait list. Renal dysfunction.* Liver dysfunction.* Indication for transplant.* Use of mechanical circulatory devices.* Use of extracorporeal membrane oxygenation, intra-aortic balloon pump, ventricular assist device.*
Donors (all)	Type (Living or deceased) HIV status (new diagnosis of HIV, or known diagnosis of HIV). CD4+ T-cell count Co-infection (HCV, HBV) HIV viral load ART resistance	Type Donation after Brain Death vs. Donation after Circulatory Death vs. Living Donor.* HIV status (new diagnosis of HIV, or known diagnosis of HIV). CD4+ T-cell count. Co-infection (HCV, HBV). HIV viral load. ART resistance. Ex-vivo perfusion.* • Duration. • Warm and cold ischemia time. • Normothermic regional perfusion.* • Duration. • Warm and cold ischemia time.
Living Donors	Progression to renal insufficiency in kidney donors Progression to hepatic insufficiency in liver donors. Change in ART regimen as a result of organ dysfunction Progression to acquired immunodeficiency syndrome (AIDS). Failure to suppress viral replication (persistent HIV viremia). Death Rejection rate (annual up to 5 years) Progression to AIDS New OI Failure to suppress viral replication (persistent HIV viremia). HIV-associated organ failure Malignancy Graft failure	These data elements no longer apply since kidney or liver donation from a living donor with HIV no longer falls under the Research Criteria except that these data elements apply to simultaneous multiple organ transplants. Change in ART regimen as a result of organ dysfunction. Progression to AIDS. Failure to suppress viral replication (persistent HIV viremia). Death. Rejection rate (annual through 5 years). Progression to AIDS. New OI. Failure to suppress viral replication (persistent HIV viremia). HIV-associated organ failure. Malignancy. Graft failure.
Transplant Recipients		

TABLE 1—FINAL REVISED HUMAN IMMUNODEFICIENCY VIRUS (HIV) ORGAN POLICY EQUITY (HOPE) ACT SAFEGUARDS AND RESEARCH CRITERIA FOR TRANSPLANTATION OF ORGANS FROM DONORS WITH HIV ¹—Continued

Category	Previous criteria	Revised criteria [No longer pertains to kidney and liver transplants ¹]
	Mismatched ART resistance versus donor Death	Mismatched ART resistance versus donor. Death. Type of rejection (antibody mediated versus cellular rejection). Chronic heart allograft vasculopathy.* Chronic lung allograft dysfunction.* Hospitalized infections.* Estimated glomerular filtration rate.* HIV superinfection.* Re-transplantation.* Simultaneous multiple organ transplants.

* Denotes a revision of the 2015 Research Criteria.

** The previous category of outcome measures (from the original 2015 Research Criteria) is modified to also include data elements.

A summary of the revisions in each category of the Research Criteria is provided below as compared with the 2015 Research Criteria.

Donor Eligibility

The only change to this category applies to all deceased donors with HIV. NIH has removed the requirement for a pre-implantation donor organ biopsy. Although pre-implantation biopsies for kidneys and livers have occurred regularly, pre-implant donor heart and lung biopsies are not routinely performed. Likewise, donor biopsies for other organs are not routine. Given that kidney and liver transplants are no longer subject to the Research Criteria, NIH has removed the requirement for pre-implantation biopsies. Any pre-implant biopsies obtained, as part of future IRB-approved research protocols, should be stored in accordance with local institutional requirements and the federal regulations applicable to slides, tissues and blocks, if applicable. 42 CFR 493.1105 (<https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-G/part-493/subpart-J/section-493.1105>).

With respect to living donors with HIV, the 2015 Research Criteria defined a well-controlled HIV infection and required pre-implant donor organ biopsies. The last living lobar lung transplant procedure in the U.S. was performed in 2013. NIH has removed this element as not relevant for heart and lung transplantation except in the rare instances of living donor lung transplant or “domino” heart transplants. In such circumstances, the deceased donor eligibility criteria apply. If another type of organ is donated by a living donor with HIV, the deceased donor eligibility criteria apply.

Recipient Eligibility

The only change in this category concerns CD4+ T-cell counts. The 2015 Research Criteria imposed requirements with respect to the CD4+ T-cell counts

specific to livers and kidneys. Given that kidney and liver transplants are no longer required to comply with the Research Criteria, there is no minimum threshold CD4+ T-cell counts for other organs when all other eligibility criteria are met.

Transplant Hospital

NIH made several changes to this category. The requirement for prior experience with transplantation of organs from donors without HIV in recipients with HIV. The 2015 Research Criteria required experience with five transplants over the four preceding years involving organs from donors without HIV transplanted into recipients with HIV. NIH has removed this requirement, which was perceived by many as burdensome and a barrier to entry to transplant hospitals wishing to perform HOPE Act transplants. To maximize favorable outcomes and effectively prevent and manage adverse events, NIH has specified that all patients with transplants involving donors with HIV be managed by multidisciplinary teams before, during, and after transplantation. NIH outlines specific members of this multidisciplinary team.

NIH has removed the requirement that each living donor with HIV and each transplant recipient with HIV be provided with an HIV independent advocate. NIH advises that standard site practices apply. Based on a decade of HOPE Act clinical experience, stakeholder surveys have indicated that a requirement for an independent advocate is widely perceived as a redundant layer of consent and a potential barrier for some HIV patients who would otherwise benefit from an HIV donor transplant. The NIH notes that per current OPTN policy and guidance, all living donors, including those with HIV, have an independent advocate. NIH’s change to the 2015 Research Criteria will not alter that.

Organ Procurement Organization (OPO) Responsibilities

NIH did not make any changes to this category.

Prevention of Inadvertent Transmission of HIV

NIH did not make any changes to this category.

Required Outcome Measures and Data Elements

The 2015 Research Criteria referenced required outcome measures. NIH is using the more precise “Required Data Elements and Outcome Measures.” NIH notes that data on these existing and new outcome measures is collected by the OPTN as specified by the Secretary. NIH does not intend to incorporate data collection requirements beyond those collected by the OPTN.

Waitlist Candidates: NIH has added several data elements for waitlist candidates. NIH has added cytomegalovirus (CMV immunoglobulin G [IgG]) as a required outcome measure for co-infection. NIH also included the following additional data elements and outcome measures: renal dysfunction, liver dysfunction, indication for transplant, use of mechanical circulatory devices, and use of extracorporeal membrane oxygenation, intra-aortic balloon pump, and ventricular assist device.

Donors (All): First, NIH included additional elements related to type of deceased donation: after brain death (DBD) or after circulatory death (DCD) given the increasing use of the latter technique in the U.S. In addition, NIH has added the following data elements for all donors (if applicable): *ex-vivo* perfusion and normothermic regional perfusion including durations of warm and cold ischemia.

Living Donors: The 2015 Research Criteria included as required outcome measures progression to renal insufficiency in kidney living donors.

Because kidney and liver transplants are no longer subject to the Research Criteria, NIH plans to retain these outcomes only where applicable (e.g., for deceased donor heart-living donor kidney transplants, deceased donor heart-living donor liver transplants, and for other organs subject to the Research Criteria).

Transplant Recipients: NIH has added several additional data elements and outcome measures to those included for transplant recipients in the 2015 Research Criteria. NIH has added the following outcome measures: type of rejection (antibody mediated versus cellular rejection), chronic allograft vasculopathy (heart), chronic lung allograft dysfunction (lung), hospital infections, estimated glomerular filtration rate (heart and lung), HIV superinfection, graft failure (heart and lung), re-transplantation, and simultaneous multiple organ transplants.

While not included as a requirement of the Research Criteria, NIH has included the following recommendation regarding patient management:

NIH recommends that transplant programs and healthcare providers follow current and updated practice management guidelines. For specific guidance, transplant programs and healthcare providers should consult vaccination guidance (<https://www.cdc.gov/acip-recs/hcp/vaccine-specific/index.html>) and expert guidance for the management of patients with HIV pre-, during-, and post-transplant summarized in: Transplantation in people with HIV (<https://clinicalinfo.hiv.gov/en/guidelines/hiv-clinical-guidelines-adult-and-adolescent-arv/whats-new>).

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Dated: December 20, 2024.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2024–31265 Filed 12–27–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Review of Centers of Biomedical Research Excellence (COBRE) Phase III-Translational Centers (P30) Applications

Date: March 18–19, 2025

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications

Address: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892.

Meeting Format: Virtual Meeting.

Contact Person: Manas Chattopadhyay, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12N, Bethesda, Maryland 20892, 301–827–5320, manasc@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program No. 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: December 19, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–30873 Filed 12–27–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Secretary; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting of Interagency Autism Coordinating Committee.

The meeting will be virtually held and is open to public viewing. The connection information and how to access the meeting will be available on the IACC website <https://iacc.hhs.gov/meetings/iacc-meetings/2025/summary-of-advances/january14/>. Advanced registration is recommended. Individuals wishing to participate virtually that need special assistance or other reasonable accommodations should submit a request to the Contact Person listed on this notice at least seven (7) business days prior to the meeting.

The purpose of the IACC meeting is to discuss the committee's nominations of articles for the 2024 IACC *Summary of Advances in Autism Research* report. The final report will summarize the top 20 advances in autism biomedical and services research, as selected by the IACC.

Name of Committee: Interagency Autism Coordinating Committee 2024 IACC Summary of Advances in Autism Research.

Date: January 14, 2025.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To discuss the committee's nominations of articles for the 2024 IACC Summary of Advances in Autism Research report.

Address: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Meeting Format: Virtual Meeting.

Cost: The meeting is free and open to the public.

Registration: A registration web link will be posted on the IACC website (www.iacc.hhs.gov) prior to the meeting. Pre-registration is recommended.

Contact Person: Ms. Rebecca Martin, Office of National Autism Coordination, National Institute of Mental Health, NIH, Phone: 301-435-0886, Email: IACCPublicInquiries@mail.nih.gov.

Technical issues: If you experience any technical problems with the zoom webcast, please email IACCPublicInquiries@mail.nih.gov.

Disability Accommodations: All IACC Full Committee Meetings provide Closed Captioning through the Zoom platform. Individuals whose full participation in the meeting will require special accommodations (e.g., sign language or interpreting services, etc.) must submit a request to the Contact Person listed on the notice at least seven (7) business days prior to the meeting. Such requests should include a detailed description of the accommodation needed and a way for the IACC to contact the requester if more information is needed to fill the request. Special requests should be made at least seven (7) business days prior to the meeting; last-minute requests may be made but may not be possible to accommodate. Meeting schedule subject to change.

More Information: Information about the IACC is available on the website: <http://www.iacc.hhs.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.

Dated: December 20, 2024.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-31064 Filed 12-27-24; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of 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: Center for Scientific Review Special Emphasis Panel; PAR Panel: Fogarty HIV Research Training Program for Low- and Middle-Income Country Institutions.

Date: January 23, 2025.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Emily Foley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402-3016, emily.foley@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 20, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-31149 Filed 12-27-24; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Clinical Trials in Neurology (III).

Date: January 17, 2025.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Address: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Meeting Format: Virtual Meeting.

Contact Person: Shanta Rajaram, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Boulevard, Rockville, MD 20852, 301-435-6033, rajarams@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: December 20, 2024.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024-31195 Filed 12-27-24; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Integrative Health

Special Emphasis Panel; Early Phase Clinical Trials of Natural Products (NP).

Date: February 21, 2025.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Center for Complementary and Integrative, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Jessica M. McKlveen, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892—547, jessica.mcklveen@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: December 20, 2024.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–31213 Filed 12–27–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2796–25; DHS Docket No. USCIS–2022–0011]

Termination of Trial Testing of Redesigned Naturalization Test for Naturalization Applications

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

ACTION: Notice.

SUMMARY: On December 15, 2022, DHS published a **Federal Register** Notice entitled “*Trial Testing of Redesigned Naturalization Test for Naturalization Applications*,” which announced it intended to conduct a nationwide trial of planned changes to the naturalization test, including a standardized English-speaking test, as part of the requirement to demonstrate an understanding of the English language, and a civics test with updated content and format. Most comments received on the proposed trial test, including those from immigrant advocacy organizations and external stakeholders, expressed concerns about the trial test. Therefore, USCIS will no longer pursue the announced trial test.

DATES: As of December 30, 2024, USCIS will no longer pursue the trial test as described in 87 FR 76634 (Dec. 15, 2022).

FOR FURTHER INFORMATION CONTACT:

Mary Flores, Office of Citizenship, U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS), 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone 240–721–3000 or email natzredesign22@uscis.dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On December 15, 2022, USCIS issued a notice indicating its plan to conduct a trial of both a standardized English-speaking test (use of photographs which the applicant would be asked to describe) as part of the requirement to demonstrate an understanding of the English language and a civics test with updated content and format (multiple choice test).¹ The Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans,² directed DHS to eliminate barriers in and otherwise improve the existing naturalization process including the civics and English language tests. Along with the Executive Order and feedback from stakeholders about the standardization and structure of the naturalization test, USCIS developed the trial test for the naturalization test redesign. USCIS announced conducting the trial as part of its effort to redesign the naturalization test to better ensure that the English-speaking part of the English Language requirements is standardized and sufficiently tests the ability to understand words in ordinary usage in the English language.³ Furthermore, USCIS intended to update the civics test content to reflect current best practices in test design and to redesign the civics test.⁴

II. Rationale for Termination

USCIS hosted virtual public engagements on the naturalization test redesign trial tests on January 12, 2023, March 3, 2023, April 28, 2023, and May 31, 2023.⁵ Additionally, USCIS and the Department of Homeland Security (DHS) Office of the CIS Ombudsman

hosted a webinar on July 19, 2023.⁶ These engagements provided an overview of the proposed changes and next steps, including seeking volunteer community-based organizations (CBOs) that work with immigrant English language learners and lawful permanent residents preparing for naturalization to take the trial test, and utilizing the results of the trial to support changes to the naturalization test. During these engagements, USCIS invited all interested parties to submit written data, views, comments, and arguments on all aspects of the proposed trial testing. At these engagements, some comments USCIS received were in opposition to the trial test. USCIS also received comments through email or submitted letters that opposed the trial test or had positive comments. USCIS received more than 1300 comments from stakeholders from engagements, emails and submitted letters. The majority of comments opposed the trial testing.

USCIS received some positive comments about the trial English Test which indicated an appreciation for a revised test, a focus of analysis-driven approach, and attempt to make the test fairer and more efficient, and that the trial test may be easier for lower-level students. Most of the public feedback, however, expressed concerns about the proposed changes to the English-speaking naturalization test. These commenters stated the change:

- Would create new barriers to naturalization rather than improve the naturalization process in keeping with Executive Order 14012 on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans.⁷
- Would be adding a testing requirement, creating an additional task for the naturalization interview and a new exam for the applicant to prepare for, and would not elicit an applicant's English proficiency in as relevant or accurate a manner as the current speaking evaluation.⁸

USCIS received some positive comments on the announcement of the multiple-choice format of the trial test, including that it would level the test

¹ See Trial Testing Redesigned Naturalization Test for Naturalization Applications, 87 FR 76634 (Dec. 15, 2022).

² See Executive Order 14012 (February 2, 2021), available at <https://www.govinfo.gov/content/pkg/FR-2021-02-05/pdf/2021-02563.pdf>.

³ See Trial Testing Redesigned Naturalization Test for Naturalization Applications, 87 FR 76634 (Dec. 15, 2022).

⁴ *Id.*

⁵ See Naturalization Test Redesign Development 2022 available at <https://www.uscis.gov/citizenship-resource-center/naturalization-test-and-study-resources/naturalization-test-redesign-development-2022> (last visited Nov. 20, 2024).

⁶ See The CIS Ombudsman's Webinar: Engagement with U.S. Citizenship and Immigration Services (USCIS) on the Naturalization Test Redesign Initiative, available at <https://www.dhs.gov/publication/cis-ombudsmans-webinar-naturalization-test-redesign-initiative> (last visited Nov. 20, 2024).

⁷ See, for example, Bill Bliss, *Citizenship Test Revision Will Create New Barrier to Naturalization* (Mar. 2, 2023), <https://bill-bliss.medium.com/citizenship-test-revision-will-create-new-barriers-to-naturalization-aab015cbf277> (last visited Nov. 20, 2024).

⁸ *Id.*

better for English as a second language students at all levels. Most feedback, however, opposed changing the civics test to a multiple-choice format. These commenters stated the change:

- Would require reading comprehension skills at a significantly higher level of English proficiency and reading vocabulary knowledge than is currently required for naturalization.⁹
- Would require test-taking skills in multiple choice format that is not currently required of naturalization applicants.¹⁰
- Would create new challenges for adult learners because it requires a higher level of reading ability that cannot be met by low-literacy adults who learn orally.¹¹
- Would pose a barrier to those without formal education.¹²

The objective of the trial was to determine an efficient way to reduce undue barriers¹³ to taking the naturalization test and the majority of the feedback received revealed concerns that the trial version of the test may increase burdens on applicants. Therefore, USCIS has decided to terminate the previously proposed trial test altogether.

III. Termination Is Immediately Effective

The proposed trial test is terminated effective immediately. USCIS continues to use the current 2008 version of the English and civics test.¹⁴

Ur M. Jaddou,

Director, U.S. Citizenship and Immigration Services, Department of Homeland Security.
[FR Doc. 2024–30213 Filed 12–27–24; 8:45 am]

BILLING CODE 9111–97–P

⁹ *Id.*

¹⁰ See, for example, Immigration Legal Resource Center (ILRC), *Naturalization Test Redesign* (Sept. 8, 2023), <https://www.ilrc.org/resources/naturalization-test-redesign> (last visited Nov 20, 2024).

¹¹ *Id.*

¹² *Id.*

¹³ See Executive Order 14012 (February 2, 2021), available at <https://www.govinfo.gov/content/pkg/FR-2021-02-05/pdf/2021-02563.pdf>.

¹⁴ See USCIS Policy Manual, Volume 12, Citizenship and Naturalization, Part E, English and Civics Testing and Exceptions, Chapter 2, English and Civics Testing [12 USCIS–PM E.2], available at <https://www.uscis.gov/policy-manual/volume-12-part-e-chapter-2> (last visited Nov. 20, 2024). See also Study for the Test, available at <https://www.uscis.gov/citizenship/find-study-materials-and-resources/study-for-the-test> (last visited Nov. 20, 2024).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6505–N–01]

Request for Information Regarding Resilience Measures and Insurance Coverage

AGENCY: Office of Policy Development and Research, Department of Housing and Urban Development (HUD).

ACTION: Request for information.

SUMMARY: Homeowners and housing providers have experienced significant increases in property insurance premiums and deductibles in the past several years, along with reductions in insurance coverage, added requirements, and withdrawals of insurance companies from certain markets. In July 2024, HUD convened an insurance summit to address challenges in the property insurance market. The insurance summit highlighted the need to increase property resilience to natural hazards and to clarify the relationship between resilience measures and costs to property owners, including the cost of insurance. Through this Request for Information (RFI), HUD seeks public input regarding how best to assess measures to increase the resilience of residential properties to natural hazards and extreme weather. This information will allow HUD to develop policies that better support HUD's program participants in increasing resilience to natural hazards, including extreme weather, and accessing affordable insurance for their properties.

DATES: *Comment Due Date:* February 28, 2025. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Interested persons are invited to submit comments responsive to this RFI. All submissions must refer to the docket number and title of the RFI. Commenters are encouraged to identify the number of the specific question or questions to which they are responding. Responses should include the name(s) of the person(s) or organization(s) filing the comment; however, because any responses received by HUD will be publicly available, responses should not include any personally identifiable information or confidential commercial information.

There are two methods for submitting public comments.

1. **Electronic Submission of Comments.** Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>.

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. HUD strongly encourages commenters to submit their feedback and recommendations electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a response, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All comments and communications properly submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled 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 from 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>.

FOR FURTHER INFORMATION CONTACT: Todd Richardson, General Deputy Assistant Secretary, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW, Room 8100, Washington, DC 20410–0500; telephone number 202–402–5706 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

SUPPLEMENTARY INFORMATION:

I. Background

Homeowners and housing providers have experienced significant increases in property insurance premiums and deductibles in the past several years, along with reductions in insurance coverage, added requirements, and withdrawals of insurance companies from certain markets. Increased insurance costs and the unavailability of coverage are negatively impacting HUD's program participants, including public housing authorities (PHAs), multifamily property owners, and Tribal communities, as well as borrowers of FHA insured mortgages. In July 2024, HUD convened an insurance summit to address challenges in the property insurance market. The insurance summit highlighted the need to increase property resilience to natural hazards, including extreme weather, and to clarify the relationship between resilience measures and costs to property owners, including the cost of insurance.

Increasing insurance costs and lack of insurance availability pose unique challenges to HUD's program participants. Unlike owners who provide market-rate housing, affordable housing providers generally cannot pass their insurance cost increases on to tenants through increased rents. Currently, some affordable housing properties faced with suddenly higher insurance costs report that they are coping in short-term ways, including reducing insurance coverage or cutting back on providing services or amenities to cut costs. Owners and PHAs have also reported that they may have to resort to delaying capital repairs or consider the sale of properties and further consolidation of their portfolios. Additionally, financing deals for the development of new properties are becoming more difficult to pencil out or close.

Difficulty obtaining sufficient insurance coverage at a reasonable price also affects both new and existing FHA borrowers in all property types, including site-built single family, manufactured housing, and multifamily housing. For existing FHA borrowers, rising insurance costs increase monthly housing expenses, causing financial stress on the borrower and affecting their ability to maintain monthly mortgage payments. Some cash-strapped borrowers resort to canceling their insurance policies, taking them out of compliance with mortgage requirements and potentially affecting their ability to receive federal assistance in the case of a disaster. In many instances, companies simply are not renewing

existing insurance policies, leaving consumers searching for new, and often more expensive, policies that often provide less coverage. Additionally, the lack of affordable and available insurance coverage can also make it more challenging for individuals to sell their home. For potential borrowers, increasing insurance costs may limit affordable housing options or participation in the market altogether.

These challenges are occurring at the same time the nation faces a housing supply shortage, and they could further decrease housing affordability and availability across the nation.

Improving resilience measures for properties can reduce their damage from natural disasters and extreme weather, and, therefore, reduce costs to insurers. HUD's insurance summit highlighted examples of state programs such as those in Alabama and Louisiana connecting resilience standards to reduced insurance costs. Following the summit, HUD is releasing this RFI to better understand the challenges facing property owners and determine what more HUD can be doing to promote and encourage resilience investments in communities and reduced insurance costs for property owners.

II. Purpose of This Request for Information

The purpose of this RFI is to solicit information regarding resilience measures to mitigate damage from natural hazards, including extreme weather, to allow HUD to develop policies that better support HUD's program participants in increasing resilience and their ability to access affordable insurance coverage for their properties.

III. Specific Information Requested

While HUD welcomes all comments relevant to increasing resilience of HUD-supported housing and reducing insurance costs, HUD is particularly interested in receiving input from interested parties on the questions outlined below.

Single Family and Multifamily Housing, Public Housing and Insurance Risk Pools

Question for comment #1: What are the financial savings (e.g., insurance premiums or avoided casualty loss) and other benefits associated with modifications to existing single family or multifamily properties, including public housing, to mitigate damage from natural hazards or increase resilience in the event of a natural hazard? How do these savings compare to the costs associated with those modifications?

Please list modifications and each of their damage mitigation benefits as well as financial and time costs. Distinguish by peril type (earthquake, hurricane, floods, hail, drought, wildfire, extreme heat, landslide, etc.) or geography as appropriate, as well as by building and construction type.

Question for comment #2: What are the financial savings (e.g., insurance premiums or avoided casualty loss) and other benefits associated with building new construction properties with building and design features that mitigate damage from natural hazards or increase resilience in the event of a natural hazard? How do these savings compare to the costs associated with those features? Please list building and design features and each of their damage mitigation benefits as well as financial and time costs. Distinguish by peril type (earthquake, hurricane, floods, hail, drought, wildfire, extreme heat, landslide, etc.) or geography as appropriate, as well as by building and construction type.

Question for comment #3: What data exist around the additional time or financial costs, if any, of rebuilding to or above code post-disaster instead of waiving requirements? Is there information on the longer-term costs (e.g., financial or damage-related) related to waiving building requirements when rebuilding post-disaster?

Question for comment #4: Are there local or state statutes, regulations, or incentives that help property owners reduce costs or save on expenses, including insurance costs, when they invest in resilience (e.g., reduced insurance premiums, tax abatements, subsidies/discounts)? If possible, please provide data on how successful these measures have been in saving on expenses.

Question for comment #5: Please identify any industry standards related to resilience that you have used or referenced in your work. If possible, please document where the standard has been applied, at what scale, and to what effect.

Question for comment #6: Are there local, state, or regional outreach or education efforts that have been successful in helping homeowners and housing providers understand the direct and indirect benefits of investing in resilience measures?

Question for comment #7: What data would be useful for insurers (including risk pools) and reinsurers on efforts to mitigate damage from natural hazards or increase resilience to natural hazards, such as housing elevations, home

resilience upgrades, and infrastructure improvements?

Tribal Communities

Question for comment #8: What unique challenges do Tribal communities face when implementing housing resilience measures? How can HUD support Tribal communities in addressing these challenges?

Question for comment #9: What partnerships between Tribal governments, local authorities, and other organizations exist to enhance housing resilience on Tribal lands? Are there ways in which these partnerships can be expanded or improved? Please explain and provide specific recommendations, successes, and challenges as well as any supporting data as applicable.

Question for comment #10: How can Tribes or organizations in remote locations with limited options for resilience investments better access or incorporate resilience strategies, resources, or methods? What resources can HUD provide in partnership with groups in these areas?

Question for comment #11: What Traditional Knowledge and Indigenous Knowledge about building practices can be integrated with modern resilience measures in tribal communities? Please explain and provide specific recommendations, as well as any supporting data.

Manufactured Housing

Question for comment #12: In addition to addressing manufactured housing in the above questions where relevant, how else can manufactured home resilience be enhanced during all types of natural disasters (e.g., hurricanes, floods, earthquakes, wildfires, or tornadoes)? Please provide relevant research as well as any supporting data as applicable.

Solomon Greene,

Principal Deputy Assistant Secretary.

[FR Doc. 2024-30936 Filed 12-27-24; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX25GK009970000]

Public Meetings of the Advisory Committee on Landslides

AGENCY: Geological Survey, Department of the Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act

(FACA) of 1972, the U.S. Geological Survey (USGS) is publishing this notice to announce that Federal Advisory Committee meetings of the Advisory Committee on Landslides (ACL) will take place and are open to members of the public.

DATES:

Meeting: The ACL will meet via web conference on Thursday, January 16, 2025, from 2:00 p.m. to 6:00 p.m. Eastern Standard Time.; and in-person on Tuesday, April 1, 2025, from 9:00 a.m. to 5:00 p.m. and Wednesday, April 2, 2025, from 9:00 a.m. to 1:00 p.m. Eastern Standard Time.

Registration: Registration to attend or participate in the meetings is required. To register, please contact the Designated Federal Officer (DFO) (see **FOR FURTHER INFORMATION CONTACT**).

ADDRESSES: The meeting on January 16, 2025, will be held via web conference. Meetings on April 1, 2025, and April 2, 2025, will be held in the Stewart Lee Udall Department of the Interior Building, 1849 C Street NW, Washington, District of Columbia, 20240. Members of the public may attend the meeting in-person or can attend via web conference. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice. Comments can be sent to the DFO (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Godt, Landslide Hazards Program Coordinator, Geological Hazards Science Center, USGS, by email at jgodt@usgs.gov; or by telephone at (303) 905-9468.

Individuals in the United States who are deaf, blind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside of 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: This meeting is being held under the provisions of the FACA of 1972 (5 U.S.C. ch. 10), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR part 102-3.

The ACL is composed of no fewer than 11 members, appointed by the Secretary of the Interior, who are selected for their established qualifications in landslide hazard and risk or related fields, records of distinguished service in their professional community, knowledge of issues affecting the National Landslide Hazards Reduction Program (NLHRP),

and to represent a cross-section of views and expertise, including a range of geographies and communities impacted by landslide hazards in the United States.

Purpose of the Meeting: The ACL provides advice and recommendations to the Secretary of the Interior through the Interagency Coordinating Committee on Landslide Hazards on implementation of NLHRP. Additional information about the ACL is available at Advisory Committee on Landslides (ACL) | U.S. Geological Survey.

The purpose of the meetings is for the ACL to establish its business; complete required ethics and FACA briefings; receive an overview of the USGS, the USGS Landslide Hazards Program, and the National Landslide Preparedness Act (Pub. L. 116-323); consider appointments of a Chair and Vice-Chair; and discuss agency activities under the NLHRP. Agendas may change to accommodate ACL business. Final agendas will be posted on the ACL website at Advisory Committee on Landslides (ACL) | U.S. Geological Survey.

Members of the public wishing to participate in the web conference meeting should contact the DFO (see **FOR FURTHER INFORMATION CONTACT**) at least three (3) business days prior to the meeting. After pre-registering, participants will be provided with instructions on how to join via web conference. Any member of the public wishing to attend the in-person meeting in person must pre-register to be admitted into the building. Please contact the DFO (see **FOR FURTHER INFORMATION CONTACT**) at least five (5) business days prior to the meeting. Non-U.S. citizens may need to submit additional information. Seating for in-person attendees may be limited due to room capacity. Please note that federal agencies, including DOI, can only accept a state-issued driver's license or identification card for access to federal facilities if such license or identification card is issued by a state that is compliant with the REAL ID Act of 2005 (Pub. L. 109-13), or by a state that has an extension for REAL ID compliance. DOI currently accepts other forms of federal-issued identification in lieu of a state-issued driver's license. For detailed information please email Jonathan Godt (see **FOR FURTHER INFORMATION CONTACT**).

Meeting Accessibility/Special Accommodations: Please make requests in advance for sign language interpreter services, assistive listening devices, language translation services, or other reasonable accommodations. We ask that you contact the DFO (see **FOR**

FURTHER INFORMATION CONTACT) at least seven (7) business days prior to the meeting to give the USGS sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Public Disclosure of Comments: There will be an opportunity for public comment during each day of the meetings. Depending on the number of people who wish to speak and the time available, the time for individual oral comments may be limited. Written comments may also be sent to the ACL for consideration. To allow for full consideration of information by the ACL members, written comments must be provided to Jonathan Godt (see **FOR FURTHER INFORMATION CONTACT**) at least three (3) business days prior to the meeting. Individuals who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated, and those who were unable to participate are invited to submit written statements by email to at Jonathan Godt (see **FOR FURTHER INFORMATION CONTACT**).

Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, be aware that your entire comment—including your PII—may be made publicly available at any time. While you may ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. ch. 10.

Gary Latzke,

*Chief of Staff, Natural Hazards Mission Area,
U.S. Geological Survey.*

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BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[256A2100DD/AAKC001030/
A0A501010.999900]

Land Acquisitions; Hopi Tribe, Coconino County and Navajo County, Arizona

AGENCY: Bureau of Indian Affairs,
Interior.

ACTION: Notice.

SUMMARY: Under the Navajo-Hopi Land Dispute Settlement Act of 1996 (Act), Congress approved a final settlement of multiple claims the Hopi Tribe had against the United States. Under the Act, Congress authorized the Hopi Tribe to acquire up to 500,000 acres of land in northern Arizona to be taken into trust, including private land purchased

from willing sellers and interspersed State trust land held by the State of Arizona located within the exterior boundaries of the purchased private land. The Hopi Tribe purchased 161,423.58 acres of private land from willing sellers, which are held in trust by the United States. Additionally, together with the State of Arizona, the Hopi Tribe has identified for acquisition an additional 110,759.17 acres of interspersed State trust lands. At the request of the Department of the Interior, the Department of Justice has initiated proceedings to condemn the interspersed State trust lands identified by the Hopi Tribe and the State of Arizona under the authority of section 6 of the Act and applicable Federal law. The parcels to be condemned and then taken into trust are described below.

DATES: The decision takes effect on December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Jessie H. Durham, Regional Director, Western Region, Bureau of Indian Affairs 2600 N Central Ave., Phoenix, Arizona 85004, jessie.durham@bia.gov, (480) 535–2247.

SUPPLEMENTARY INFORMATION: The Assistant Secretary—Indian Affairs, on behalf of the Secretary of the Interior, will immediately acquire the title to the lands described below in the name of the United States of America in trust for the Hopi Tribe, upon title vesting in the name of the United States pursuant to section 6 of the Navajo-Hopi Land Dispute Settlement Act of 1996 and 40 U.S.C. 3114(b).

Legal Description of Property

Gila and Salt River Meridian, Arizona

T. 15 N., R. 15 E.,
Sec. 2, lots 1 thru 4, S $\frac{1}{2}$ N $\frac{1}{2}$, and S $\frac{1}{2}$;
Sec. 4;
Sec. 8;
Sec. 10.
T. 16 N., R. 13 E.,
Sec. 2, lots 1 thru 16, and S $\frac{1}{2}$;
Sec. 4;
Sec. 8;
Sec. 10;
Sec. 12;
Sec. 14.
T. 16 N., R. 14 E.,
Sec. 2, lots 1 thru 20, and S $\frac{1}{2}$;
Sec. 4, lots 1 thru 20, and S $\frac{1}{2}$;
Sec. 6, lots 1 thru 22, E $\frac{1}{2}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$;
Sec. 8.
T. 16 N., R. 15 E.,
Sec. 2, lots 1 thru 20, and S $\frac{1}{2}$;
Sec. 4, lots 1 thru 20, and S $\frac{1}{2}$;
Sec. 6, lots 1 thru 15, lots 18 thru 22,
E $\frac{1}{2}$ SW $\frac{1}{4}$, and W $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 8;
Sec. 10;
Sec. 12;
Sec. 14;
Sec. 16;
Sec. 20;

Sec. 22;
Sec. 24;
Sec. 26;
Sec. 28;
Sec. 32;
Sec. 34.
T. 16 N., R. 16 E.,
Sec. 4, lots 1 thru 16, and S $\frac{1}{2}$;
Sec. 6;
Sec. 8;
Sec. 16;
Sec. 18;
Sec. 30.
T. 17 N., R. 13 E.,
Sec. 2;
Sec. 4;
Sec. 8;
Sec. 10;
Sec. 12;
Sec. 14;
Sec. 16;
Sec. 20;
Sec. 22;
Sec. 24;
Sec. 26;
Sec. 28;
Sec. 32, lots 1 thru 8, N $\frac{1}{2}$ S $\frac{1}{2}$, and N $\frac{1}{2}$;
Sec. 34, lots 1 thru 4, N $\frac{1}{2}$ S $\frac{1}{2}$, and N $\frac{1}{2}$;
Sec. 36, lots 1 thru 4, N $\frac{1}{2}$ S $\frac{1}{2}$, and N $\frac{1}{2}$.
T. 17 N., R. 14 E.,
Sec. 2;
Sec. 4;
Sec. 6, lots 1 thru 4, E $\frac{1}{2}$ W $\frac{1}{2}$, and E $\frac{1}{2}$;
Sec. 8;
Sec. 10;
Sec. 12;
Sec. 14;
Sec. 16;
Sec. 18, lots 1 thru 4, E $\frac{1}{2}$, and E $\frac{1}{2}$ W $\frac{1}{2}$;
Sec. 20;
Sec. 22;
Sec. 24;
Sec. 26;
Sec. 28;
Sec. 30, lots 1 thru 4, E $\frac{1}{2}$ W $\frac{1}{2}$, and E $\frac{1}{2}$;
Sec. 32, lots 1 thru 4, N $\frac{1}{2}$ S $\frac{1}{2}$, and N $\frac{1}{2}$;
Sec. 34, lots 1 thru 4, N $\frac{1}{2}$ S $\frac{1}{2}$, and N $\frac{1}{2}$;
Sec. 36, lots 1 thru 4, N $\frac{1}{2}$ S $\frac{1}{2}$, and N $\frac{1}{2}$.
T. 17 N., R. 15 E.,
Sec. 4;
Sec. 6, lots 1 thru 4, E $\frac{1}{2}$ W $\frac{1}{2}$, and E $\frac{1}{2}$;
Sec. 8;
Sec. 10;
Sec. 12;
Sec. 14;
Sec. 16;
Sec. 18, lots 1 thru 4, E $\frac{1}{2}$ W $\frac{1}{2}$, and E $\frac{1}{2}$;
Sec. 20;
Sec. 24;
Sec. 26;
Sec. 28;
Sec. 30, lots 1 thru 4, E $\frac{1}{2}$ W $\frac{1}{2}$, and E $\frac{1}{2}$;
Sec. 32, lots 1 thru 4, N $\frac{1}{2}$, and N $\frac{1}{2}$ S $\frac{1}{2}$;
Sec. 34, lots 1 thru 4, N $\frac{1}{2}$, and N $\frac{1}{2}$ S $\frac{1}{2}$;
Sec. 36, lots 1 thru 4, N $\frac{1}{2}$, and N $\frac{1}{2}$ S $\frac{1}{2}$.
T. 17 N., R. 16 E.,
Sec. 2, lots 1 thru 4, S $\frac{1}{2}$ N $\frac{1}{2}$, and S $\frac{1}{2}$;
Sec. 6, lots 1 thru 4, S $\frac{1}{2}$ N $\frac{1}{2}$, and S $\frac{1}{2}$;
Sec. 8;
Sec. 10;
Sec. 12, lots 1 thru 4, W $\frac{1}{2}$ E $\frac{1}{2}$, and W $\frac{1}{2}$;
Sec. 14;
Sec. 16;
Sec. 18;
Sec. 20;
Sec. 22;

Sec. 28;
 Sec. 30;
 Sec. 32.
 T. 17 N., R. 17 E.,
 Sec. 4, lots 1 thru 4, S $\frac{1}{2}$ N $\frac{1}{2}$, and S $\frac{1}{2}$;
 Sec. 6, lots 1 thru 7, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$,
 E $\frac{1}{2}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$;
 Sec. 8.
 T. 18 N., R. 13 E.,
 Sec. 24;
 Sec. 26;
 Sec. 34;
 Sec. 36.
 T. 18 N., R. 14 E.,
 Sec. 2, lots 2 thru 4, SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$,
 SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, and W $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 4, lots 1 thru 4, S $\frac{1}{2}$ N $\frac{1}{2}$, and S $\frac{1}{2}$;
 Sec. 6, lots 1 thru 4, S $\frac{1}{2}$ N $\frac{1}{2}$, and S $\frac{1}{2}$;
 Sec. 8;
 Sec. 10;
 Sec. 14;
 Sec. 16;
 Sec. 18;
 Sec. 20;
 Sec. 22;
 Sec. 24, W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$,
 SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$,
 SW $\frac{1}{4}$, and W $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 26;
 Sec. 28;
 Sec. 30;
 Sec. 32;
 Sec. 34;
 Sec. 36, lots 1 thru 4, W $\frac{1}{2}$ E $\frac{1}{2}$, and W $\frac{1}{2}$.
 T. 18 N., R. 15 E.,
 Sec. 30, W $\frac{1}{2}$ W $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$,
 NW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$,
 NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, and
 S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 32, S $\frac{1}{2}$ S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$,
 NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$,
 S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$,
 W $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, and
 E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$.
 T. 18 N., R. 16 E.,
 Sec. 24, E $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$,
 NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, and S $\frac{1}{2}$;
 Sec. 26;
 Sec. 28, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$,
 S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$;
 Sec. 32, NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$,
 S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$,
 S $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$,
 NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 34;
 Sec. 36.
 T. 18 N., R. 17 E.,
 Sec. 18, NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$,
 E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$,
 E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$;
 Sec. 20;
 Sec. 28;
 Sec. 30, lots 1 thru 4, E $\frac{1}{2}$, and E $\frac{1}{2}$ W $\frac{1}{2}$;
 Sec. 32.
 T. 19 N., R. 11 E.,
 Sec. 2;
 Sec. 4;
 Sec. 8;
 Sec. 12, W $\frac{1}{2}$ W $\frac{1}{2}$;
 Sec. 14;
 Sec. 16;
 Sec. 20, SE $\frac{1}{4}$ SW $\frac{1}{4}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$.
 T. 19 N., R. 12 E.,
 Sec. 4, lots 1 thru 4, S $\frac{1}{2}$ N $\frac{1}{2}$, and S $\frac{1}{2}$;
 Sec. 6, lots 1 thru 7, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$,
 E $\frac{1}{2}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$.

T. 19 N., R. 14 E.,
 Sec. 22, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$,
 W $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$,
 and SE $\frac{1}{4}$;
 Sec. 28;
 Sec. 32;
 Sec. 34.
 T. 20 N., R. 10 E.,
 Sec. 24.
 T. 20 N., R. 11 E.,
 Sec. 8;
 Sec. 10, except that portion described as
 "AREA #15" in Arizona State Land
 Department Record No. 95-98643,
 situated within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$,
 being more particularly described as
 follows:
Beginning at the Northeast corner of said
 Section 10;
Thence S. 0°28'50" W., along the East line
 of said Section 10, a distance of 55.68 feet to
 the Northeasterly right-of-way line of U.S.
 Highway 66;
Thence N. 65°21'45" W., along said
 Highway right-of-way line, a distance of
 110.10 feet to the North line of said Section
 10;
Thence S. 89°19'50" E., along said North
 Section line, a distance of 125.07 feet to the
 Point of Beginning;
 And, except that portion of Interstate
 Highway 40 right-of-way according to the
 State of Arizona Department of
 Transportation (State Highway Department)
 Right of Way Plan of the Flagstaff-Holbrook
 Hwy. Canyon Padre-Buffalo Range Rd. State
 Highway Project No. I-40-4(38)214. Right of
 Way Map No. D-3-T-537;
 And also, except that portion described as
 "PUE-3" in Arizona State Land Department
 Record No. 16-121651, situated within the
 NE $\frac{1}{4}$, being more particularly described as
 follows:
Commencing at the East $\frac{1}{4}$ corner of said
 Section 10 (being marked by a found
 U.S.G.L.O. Brass Cap), from which the North
 $\frac{1}{4}$ corner of said Section 10 (being marked
 by a U.S.G.L.O Brass Cap), bears N. 45°19'22"
 W., a distance of 3,736.19 feet;
Thence N. 0°28'32" W. (calced) along the
 East line of the Northeast quarter of said
 Section 10, a distance of 2,311.33 feet to a
 point on the Southeasterly right-of-way line
 of Interstate 40, said point being the Point of
 Beginning;
Thence departing said East line, N.
 66°20'49" W. along said right-of-way line, a
 distance of 808.60 feet to a point on the
 North line of the Northeast quarter of said
 Section 10;
Thence N. 89°44'13" E. along said North
 line of the Northeast quarter, a distance of
 123.34 feet;
Thence departing said North line S.
 66°20'49" E., along a line that is parallel with
 and 50.00 feet Northeasterly of said right-of-
 way line, a distance of 673.46 feet to a point
 on the East line of the Northeast quarter of
 said Section 10;
Thence S. 0°28'32" E. (calced) along said
 East line, a distance of 54.79 feet to the Point
 of Beginning;
 Sec. 12, that portion being more
 particularly described as follows:

Parcel 1

Beginning at the Southwest corner of said
 Section 12;
Thence North, along the West line of said
 Section 12, to the Southerly line of the 50
 foot wide utility easement described in R/W
 No. 16-121651-00 of the Arizona State Land
 Department records;
Thence Southeasterly, along said Southerly
 line, to the East line of the West half of the
 Northwest quarter of the Southwest quarter
 of said Section 12;
Thence South, along said East line, to the
 Northerly line of the 30 foot wide buried
 communications cables right of way
 described in R/W No. 71-3434 of the Arizona
 State Land Department records;
Thence Southeasterly, along said Northerly
 line, to the North line of the Southwest
 quarter of the Southwest quarter of said
 Section 12;
Thence East, along said North line, to the
 Northwest corner of the Southeast quarter of
 the Southwest quarter;
Thence South, along the West line of said
 Southeast quarter of the Southwest quarter,
 to the Southwest corner of said Southeast
 quarter of the Southwest quarter;
Thence West, along the South line of said
 Section 12, to the Point of Beginning;

Parcel 2

Beginning at the Southeast corner of said
 Section 12;
Thence West, along the South line of said
 Section 12, to the Southeast corner of the
 Southeast quarter of the Southwest quarter of
 said Section 12;
Thence North, along the East line of said
 Southeast quarter of the Southwest quarter to
 the Southerly line of the 50 foot wide utility
 easement described in R/W No. 16-121651-
 00 of the Arizona State Land Department
 records;
Thence Southeasterly, along said Southerly
 line, to the East line of said Section 12;
Thence South, along said East line, to the
 Point of Beginning;
 Except any portion(s) of Parcel 1 or Parcel
 2 lying within the Interstate Highway 40
 right-of-way, according to the State of
 Arizona Department of Transportation (State
 Highway Department) Right of Way Plan of
 the Flagstaff-Holbrook State Highway
 Project No. I-40-4(41)220. Right of Way Map
 No. D-3-T-538;
 Sec. 14;
 Sec. 16;
 Sec. 18, lots 1 thru 4, E $\frac{1}{2}$, and E $\frac{1}{2}$ W $\frac{1}{2}$;
 Sec. 22, E $\frac{1}{2}$, SW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, and
 N $\frac{1}{2}$ NW $\frac{1}{4}$;
 Sec. 24;
 Sec. 26;
 Sec. 28;
 Sec. 30, lots 1 thru 4, E $\frac{1}{2}$, and E $\frac{1}{2}$ W $\frac{1}{2}$;
 Sec. 32;
 Sec. 34;
 Sec. 36.
 T. 20 N., R. 12 E.,
 Sec. 8;
 Sec. 10;
 Sec. 16, except that portion described as
 "AREA #19" in Arizona State Land
 Department Record No. 95-98643, being
 more particularly described as follows:

Commencing at the Northwest corner of said Section 16;

Thence S. 0°30'45" W., along the West line of said Section 16, a distance of 2,478.30 feet to the Point of Beginning;

Thence S. 83°00'15" E., a distance of 5,332.19 feet to the East line of said Section 16;

Thence S. 0°29'15" W., along said East line, a distance of 56.32 feet to the existing Northerly right-of-way line of the Flagstaff-Holbrook Highway;

Thence Westerly, along said existing right-of-way line, 5,332 feet, more or less, to the West line of Section 16;

Thence N. 0°30'45" E., along said Section line, 56.32 feet to the Point of Beginning.

And, except that portion of Interstate Highway 40 right-of-way, and that 50'x150' Drainage Easement (Sta. 1642+03 to Sta. 1642+53), according to the State of Arizona Department of Transportation (State Highway Department) Right of Way Plan of the Flagstaff-Holbrook State Highway Project No. I-40-4(41)220. Right of Way Map No. D-3-T-538;

And also, except that portion described as "PUE-6" in Arizona State Land Department Record No. 16-121651, being more particularly described as follows:

Commencing at the Southeast corner of said Section 16 (being marked by a found U.S.G.L.O. Brass Cap), from which the East $\frac{1}{4}$ corner of said Section 10 (being marked by a U.S.G.L.O. Brass Cap), bears N. 0°29'39" W., a distance of 2,640.78 feet;

Thence N. 0°29'39" W. along the East line of the Southeast quarter of said Section 16, a distance of 1,908.63 feet to an A.D.O.T. brass cap (1686+21.80) on the Southerly right-of-way line of Interstate 40, said brass cap being the Point of Beginning;

Thence departing said East line, N. 83°59'21" W. along said Southerly right-of-way line, a distance of 5,332.05 feet to a found A.D.O.T. aluminum cap (1632+89.57) on the West line of the Southwest quarter of said Section 16, from which the Southwest corner of said Section 16 (being marked by a pile of limestone rocks) bears S. 0°32'30" E., a distance of 2,512.93 feet;

Thence departing said Southerly right-of-way line, N. 0°28'36" W., along the West line of the Southwest quarter of said Section 16, a distance of 50.32 feet;

Thence departing said West line, S. 83°59'21" E., along a line 50.00 feet Northerly of and Parallel with said right-of-way line, a distance of 5,332.03 feet to a point on the East line of the Southeast quarter of said Section 16;

Thence S. 0°29'39" E., along the East line of the Southeast quarter of said Section 16, a distance of 50.32 feet to the Point of Beginning;

Sec. 18, lots 1 thru 4, E $\frac{1}{2}$, and E $\frac{1}{2}$ W $\frac{1}{2}$, except that portion described as "AREA #18" in Arizona State Land Department Record No. 95-98643, being more particularly described as follows:

Commencing at the Northwest corner of said Section 18;

Thence S. 0°31'15" W., along the West line of said Section 18, a distance of 208.43 feet to the Point of Beginning;

Thence from a local tangent bearing of S. 65°51'55" E., along a curve concave to the

Northeast, with a radius of 22,712.31 feet, a distance of 5,451.72 feet to the East line of said Section 18;

Thence S. 0°27'45" W., along said East Section line, 20 feet, more or less, to the existing Northerly right-of-way line of the Flagstaff-Holbrook Highway;

Thence Westerly, along said existing right-of-way line, 5,440 feet, more or less, to the West line of Section 18;

Thence North 0°31'15" E., along said West line, 116.10 feet to the Point of Beginning;

And, except that portion of Interstate Highway 40 right-of-way according to the State of Arizona Department of Transportation (State Highway Department) Right of Way Plan of the Flagstaff-Holbrook State Highway Project No. I-40-4(41)220. Right of Way Map No. D-3-T-538;

And also, except that portion described as "PUE-5" in Arizona State Land Department Record No. 16-121651, being more particularly described as follows:

Commencing at the East quarter corner of said Section 18 (being marked by a found U.S.G.L.O. brass cap), from which the Northeast corner of said Section 18 (being marked by a U.S.G.L.O. brass cap) bears N. 0°32'00" W., a distance of 2,641.11 feet;

Thence N. 0°32'00" W. along the East line of the Northeast quarter of said Section 18, a distance of 507.79 feet to an A.D.O.T. aluminum cap (1579+65.56) on the Southerly right-of-way line of Interstate 40, said aluminum cap being the Point of Beginning;

Thence departing said East line, along said Southerly right-of-way line, along the arc of a non-tangent curve, concave Northerly, with a radius of 23,129.63 feet, a radial bearing of S. 9°16'06" W., through a delta angle of 13°28'53", an arc length of 5,442.32 feet to a point on the West line of said Section 18, from which the Northwest corner of said Section 18 (being marked by a found U.S.G.L.O. brass cap) bears N. 0°32'42" W., a distance of 595.34 feet;

Thence departing said right-of-way, N. 0°32'42" W., along the West line of the Northwest quarter of said Section 18, a distance of 54.45 to the point of curvature for a non-tangent curve, concave Northerly, with a radius of 23,079.63 feet, a radial bearing of S. 22°46'55" W.;

Thence departing said West line, Southeasterly along the arc of said curve, through a delta angle of 13°30'49", an arc length of 5,443.44 feet to a point on the East line of the Northeast quarter of said Section 18;

Thence S. 0°32'16" E., along said East line, a distance of 50.74 feet to the Point of Beginning;

Sec. 20;

Sec. 22;

Sec. 26;

Sec. 28;

Sec. 30, lots 1 thru 4, E $\frac{1}{2}$, and E $\frac{1}{2}$ W $\frac{1}{2}$;

Sec. 32;

Sec. 34.

The areas described aggregate 110,759.17 acres.

Subsurface Interests Excluded

Gila and Salt River Meridian, Arizona

T. 17 N., R. 16 E.,

Sec. 10;

Sec. 12, lots 1 thru 4, W $\frac{1}{2}$ E $\frac{1}{2}$, and W $\frac{1}{2}$;

Sec. 14;

Sec. 22.

T. 17 N., R. 17 E.,

Sec. 6, lots 1 thru 7, S1/2NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E1/2SW $\frac{1}{4}$, and SE $\frac{1}{4}$;

Sec. 8.

T. 18 N., R. 16 E.,

Sec. 24, E $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, and S $\frac{1}{2}$;

Sec. 26;

Sec. 28, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, S1/2SW $\frac{1}{4}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$;

Sec. 34.

T. 18 N., R. 17 E.,

Sec. 18, NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$;

Sec. 28;

Sec. 30, lots 1 thru 4, E $\frac{1}{2}$, and E $\frac{1}{2}$ W $\frac{1}{2}$.

The areas described aggregate 7,559.42 acres.

Authority: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by the Departmental Manual in part 209, chapter 8, paragraph 8.1 and is published to comply with the requirements of the Navajo-Hopi Land Dispute Settlement Act of 1996, Public Law 104-301 (Oct. 11, 1996), 110 Stat. 3649.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2024-31122 Filed 12-27-24; 8:45 am]

BILLING CODE 4337-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[256A2100DD/AAKC001030/A0A51010.999900]

Proclaiming Certain Lands as Reservation for the Rincon Band of Luiseno Mission Indians of Rincon Reservation, California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of reservation proclamation.

SUMMARY: This notice informs the public that the Assistant Secretary—Indian Affairs proclaimed approximately 56.66 acres, more or less, an addition to the reservation of the Rincon Band of Luiseno Mission Indians of Rincon Reservation, California.

DATES: This proclamation was made on December 17, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Carla H. Clark, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Box #44,

Albuquerque, New Mexico 87104,
Carla.Clark@bia.gov, (720) 424–3233.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 5110) for the lands described below. The lands are proclaimed to be the Rincon Reservation for the Rincon Band of Luiseno Mission Indians of Rincon Reservation, California in San Diego, California.

587 T 5625—Rodriguez

The land referred to herein is situated in the State of California, County of San Diego, and described as follows:

All that portion of the Pauma Rancho, in the County of San Diego, State of California, according to map thereof attached to the record of patent in Book 1, Page 67 of Patents, records of said San Diego County, described as follows:

Commencing at the most westerly corner of land described in deed to Pete Dykzuel, recorded March 12, 1942 in Book 1315, Page 239 of Official Records, said point being also the most Westerly corner of land described in Parcel 1 of Deed to Kenneth A. Chapman ET UX, recorded September 8, 1976 AS FILE/PAGE NO. 76–292966 of Official Records; THENCE along the boundary of said land of Chapman, as follows: North 38°00′20″ East 1010.34 Feet (Record North 38°09′40″ East 1012.19 Feet) North 51°50′20″ West 437.25 Feet to the center line of California State Highway NO–195, Section “D” as said Highway existed on February 1944, said point being on a 320.70 Foot radius curve, concave Southerly the radial line to said point bears North 34°22′05″ West; Northeasterly along said center line curve through an angle of 25°00′05″ a distance of 139.94 Feet; tangent to said curve, North 80°38′00″ East 70.93 Feet (Record North 81°44′16″ East 69.20 Feet) TO POINT “A” OF THIS DESCRIPTION; Thence South 45°29′00″ East 527.46 Feet; Thence South 38°00′20″ West 179.00 Feet; Thence South 45°29′00″ East 438.30 Feet; Thence South 38°00′20″ West 614.76 Feet to an intersection with the Southerly Boundary of said Pauma Rancho, said Point of Intersection being the TRUE POINT OF BEGINNING; Thence retracing the last four courses to said POINT “A”; Thence North 80°38′00″ East 73.62 Feet to the most Westerly corner of land described in Deed to O.K. Anderson, Recorded May 29, 1947 as FILE/PAGE NO. 56307 of Official Records; said point being also an angle point in the boundary of land described in deed to Suzanne W. D’Aumant-Post, Recorded September 21, 1959 in BOOK 7891, Page 41 of Official Records; Thence along the boundary of said land of D’Aumant-Post as follows: South 45°29′00″ East 588.50 Feet; North 70°34′00″ East 393.80 Feet; North 76°57′00″ East 636.03 Feet; South 40°13′30″ East 1772.09 Feet; South 16°45′00″ West 430.18 Feet (Record 560.47 Feet) to the

southerly boundary of said Pauma Rancho; and along said southerly boundary, North 75°39′48″ West 2377.12 Feet to the TRUE POINT OF BEGINNING.

Pursuant to Certificate of Compliance recorded April 28, 1977 as Instrument NO. 77–159162 of Official Records.

The above described lands contain a total of 56.66 acres, more or less, which are subject to all valid rights, reservations, rights-of-way, and easements of record.

This proclamation does not affect title to the lands described above, nor does it affect any valid existing easements for public roads, highways, public utilities, railroads and pipelines, or any other valid easements or rights-of-way or reservations of record.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2024–30984 Filed 12–27–24; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[PO #4820000251]

BLM Director’s Response to the Wyoming Governor’s Appeal of the BLM Wyoming State Director’s Governor’s Consistency Review Determination for the Buffalo Field Office Proposed Resource Management Plan Amendment and Final Supplemental Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of response.

SUMMARY: The Bureau of Land Management (BLM) is publishing this notice of the reasons for the BLM Director’s determination to reject the Governor of Wyoming’s recommendations regarding the Buffalo Field Office Proposed Resource Management Plan Amendment (RMPA) and Final Supplemental Environmental Impact Statement (SEIS).

ADDRESSES: A copy of the Record of Decision and Approved RMPA is available on the BLM website at: <https://eplanning.blm.gov/eplanning-ui/project/2021239/570>.

FOR FURTHER INFORMATION CONTACT: Heather Bernier, Division Chief for Decision Support, Planning, and National Environmental Policy Act; telephone 303–239–3635; address P.O. Box 151029, Lakewood, CO 80215; email hbernier@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a

speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Ms. Bernier. 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: On May 17, 2024, the BLM released the Proposed RMPA/Final SEIS for the Buffalo Field Office (89 FR 43431). In accordance with the regulations at 43 CFR 1610.3–2(e), the BLM submitted the Proposed RMPA/Final SEIS for the Buffalo Field Office to the Governor of Wyoming for a 60-day Governor’s Consistency Review in order for the Governor to review the Proposed RMPA and identify any inconsistencies with State plans, policies, or programs. On July 16, 2024, the Governor of Wyoming submitted a response for the Buffalo Field Office planning effort to the BLM Wyoming State Director. After careful consideration of the concerns raised in the Governor’s response, the State Director decided not to accept the Governor’s recommendations. The BLM sent a written response to the Governor on August 16, 2024.

On September 12, 2024, the Governor of Wyoming appealed the State Director’s decision to the BLM Director. In reviewing these appeals, the regulations at 43 CFR 1610.3–2(e) state that “[t]he Director shall accept the (consistency) recommendations of the Governor(s) if he/she determines they provide for a reasonable balance between the state’s interest and the national interest.” On November 6, 2024, the BLM Director issued a response to the Governor detailing the reasons that the recommendations did not meet this standard. Pursuant to 43 CFR 1610.3–2(e), the basis for the BLM’s determination on the Governor’s appeal is presented below. The appeal response is being published verbatim.

“I am in receipt of your letter dated September 12, 2024, which contains the State of Wyoming’s appeal to the Bureau of Land Management (BLM) Wyoming State Director response to the Governor’s consistency review of the Buffalo Field Office Proposed Resource Management Plan Amendment (PRMPA) and Final Supplemental Environmental Impact Statement (FSEIS). The Governor’s consistency review is an important part of the BLM land use planning process, and we appreciate the significant time and attention that you and your staff have committed to this effort.

The applicable regulations at 43 CFR 1610.3–2(e) provide you with the opportunity to appeal the State Director's decision to not accept the recommendations you made in your consistency review letter. These regulations also guide my review of the appeal, in which I must consider whether you have raised inconsistencies with State or local plans, policies, and or programs. If inconsistencies are raised, I would consider whether your recommendations address the inconsistencies and provide for a reasonable balance between the national interest and the State of Wyoming's interest.

I have completed my review of your appeal and determined that the recommendation you have provided does not meet this standard for reasons as detailed in the following paragraphs.

In your consistency review and subsequent appeal, you allege 11 inconsistencies with State or local plans, policies, and programs. Your alleged inconsistencies are as follows:

- The No Leasing Alternative interferes with the Wyoming Constitution's policy of supporting public services with severance taxes from Federal coal development.
- The No Leasing Alternative is inconsistent with State law requiring the optimization of its State trust lands.
- The No Leasing Alternative is inconsistent with Wyoming Energy Policy.
- The No Leasing Alternative is inconsistent with the Wyoming Environmental Quality Act.
- The No Leasing Alternative conflicts with the State's Interstate Compact Statute.
- The No Leasing Alternative is inconsistent with the Natural Resource Protection Act.
- The No Leasing Alternative is inconsistent with the Campbell County's Plan Principles.
- The No Leasing Alternative is inconsistent with Campbell County's Plan Policy.
- The No Leasing Alternative is inconsistent with Campbell County's Plan Goals.
- The No Leasing Alternative is inconsistent with Campbell County's Plan Objectives.
- The No Leasing Alternative is inconsistent with the Johnson County Plan Objectives.

To address these inconsistencies, it is your recommendation that the BLM adopt the No Action Alternative (Alternative B) for the Buffalo PRMPA. Upon review, I find that your recommendation does not present a reasonable balance between the national

interest and the State's interest, because Alternative B is inconsistent with national policy.

The Buffalo FSEIS/PRMPA was developed under the BLM's authority to manage coal under all the applicable statutes and regulations including, but not limited to; the Federal Land Policy and Management Act (FLPMA) of 1976, as amended; the Mineral Leasing Act of 1920, as amended; the Mineral Leasing Act on Acquired Lands of 1947, as amended; and all applicable regulations developed from these statutes found in 43 CFR 3000 and 3400.

Section 102(a)(7) of FLPMA declares that it is the policy of the United States that management of the public lands be based on "multiple use" and "sustained yield." Section 103(c) of FLPMA defines "multiple use" as the management of the public lands and their various resource values so that they are used in the combination that will best meet the present and future needs of the American people. FLPMA's multiple-use policy does not require that all uses be allowed on all areas of the public lands. Through the land use planning process, the BLM evaluates and chooses an appropriate balance of resource uses that involves tradeoffs between competing uses, and the BLM has discretion to allocate the public lands to particular uses and to employ the mechanism of land use allocation to protect for certain resource values.

As explained in the FSEIS/PRMPA, the BLM has determined that the economic benefits from coal leasing no longer balance with the adverse effects to other public land resources, including but not limited to, air quality and environmental justice, as well as social and economic considerations. In addition, the BLM has determined that continued coal leasing at any level in the planning area is no longer consistent with presidential executive orders and policies. For instance, continued coal leasing in the planning area is inconsistent with Presidential Executive Orders 13990, entitled, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, and 14008, entitled, *Tackling the Climate Crisis at Home and Abroad*, as well as Department of the Interior Secretary's Order 3399, entitled, *Department-Wide Approach to the Climate Crisis and Restoring Transparency and Integrity to the Decision-Making Process*. These executive orders and policies direct agencies to, among other things, work on confronting the climate crisis to improve public health and the environment, reduce greenhouse gas (GHG) emissions, increase renewable

energy production on public lands and waters, and to review potential climate and other impacts from oil and natural gas development on public lands.

As explained in the Buffalo FSEIS/PRMPA, the mining of coal in the planning area would continue to contribute to GHG emissions, which in turn adds to ongoing impacts from climate change on human health and disease in numerous ways (Buffalo FSEIS/PRMPA section 3.5.1). The BLM also determined that the potential environmental justice health-related impacts would be highest under Alternative B, and therefore, not in alignment with the Nation's interest in addressing climate-related public health concerns. Moreover, additional coal leasing in the planning area would not support the Nation's long term climate strategy (November 2021) of limiting global temperature rise and putting the U.S. on a pathway to net-zero GHG emissions by 2050. Coal production is in decline, both nationally and in the Wyoming Powder River Basin, where coal production has been declining since the late 2000's. As such, the Nation's energy market is moving away from coal towards natural gas and renewable energy, which are more aligned with the Nation's long term climate strategy, and continued coal leasing in the planning area would not support the national interest.

Regarding Campbell County's Plan, the BLM did determine that the previous version of the Buffalo FSEIS/PRMPA (2019) was consistent with the 2022 Campbell County Natural Resource Land Use Plan. However, since that time, Federal policy direction regarding continued coal mining has shifted, as discussed above. As such, the BLM determined in this current planning effort that the 2022 Campbell County Natural Resource Land Use Plan is not consistent with Federal policies and executive orders applicable to BLM-administered lands.

For these reasons outlined above, I find that your recommendation does not present a reasonable balance between the national interest and the State's interest.

Your consistency review and subsequent appeal also alleged 12 issues related to Federal laws, regulations, and policies including the Federal Land Policy and Management Act of 1976, the Mineral Leasing Act of 1920, Federal Coal Leasing Amendments Act of 1976, the Surface Mining and Coal Reclamation Act, the Federal Coal Screening regulations, and others. These Federal issues do not raise inconsistencies with State or local plans, policies, or programs and are

outside the scope of the Governor's Appeal process.

Finally, the BLM has prepared the Buffalo PRMPA/FSEIS in accordance with all applicable Federal laws, regulations, and policies. The BLM did carefully review and consider applicable State, local, and other Federal agency plans, policies, and programs in the development of the Buffalo PRMPA/FSEIS. The BLM is consistent, to the extent practicable, with these plans as per the provisions of FLPMA and the planning regulations at 43 CFR 1610–3–2.”

(Authority: 43 CFR 1610.3–2(e))

Nada Wolff Culver,
Principal Deputy Director.

[FR Doc. 2024–31314 Filed 12–27–24; 8:45 am]

BILLING CODE 4331–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[PO4820000251]

Filing of Plats of Survey: Oregon/ Washington

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of official filing.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management (BLM), Oregon State Office, Portland, Oregon, 30 calendar days from the date of this publication.

DATES: Protests must be received by the BLM prior to the scheduled date of official filing, January 29, 2025.

ADDRESSES: A copy of the plats may be obtained from the Public Room at the Bureau of Land Management, Oregon State Office, 1220 SW 3rd Avenue, Portland, Oregon 97204, upon required payment. The plats may be viewed at this location at no cost.

FOR FURTHER INFORMATION CONTACT: Robert Femling, telephone: (503) 808–6633, email: rfemling@blm.gov, Branch of Geographic Sciences, Bureau of Land Management, 1220 SW 3rd Avenue, Portland, Oregon 97204. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339 to contact Mr. Femling during normal business hours. The service is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The plats of survey of the following described lands are scheduled to be officially filed

in the Bureau of Land Management, Oregon State Office, Portland, Oregon:

WILLAMETTE MERIDIAN, OREGON

T. 34 S., R. 7 W. accepted September 11, 2024

T. 38 S., R. 3 E., accepted September 12, 2024

T. 33 S., R. 3 E., accepted October 22, 2024

T. 33 S., R. 2 E., accepted October 22, 2024

T. 15 S., R. 8 W., accepted October 22, 2024

T. 34 S., R. 2 E., accepted October 22, 2024

T. 39 S., R. 1 W., accepted October 22, 2024

T. 39 S., R. 5 E., accepted October 22, 2024

T. 38 S., R. 5 E., accepted October 22, 2024

T. 36 S., R. 3 E., accepted October 22, 2024

T. 37 S., R. 3 E., accepted October 22, 2024

A person or party who wishes to protest one or more plats of survey identified above must file a written notice of protest with the Chief Cadastral Surveyor for Oregon/ Washington, Bureau of Land Management. The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. The notice of protest must be filed before the scheduled date of official filing for the plat(s) of survey being protested. Any notice of protest filed after the scheduled date of official filing will be untimely and will not be considered. A notice of protest is considered filed on the date it is received by the Chief Cadastral Surveyor for Oregon/ Washington during regular business hours; if received after regular business hours, a notice of protest will be considered filed the next business day. A written statement of reasons in support of a protest, if not filed with the notice of protest, must be filed with the Chief Cadastral Surveyor for Oregon/ Washington within 30 calendar days after the notice of protest is filed. If a notice of protest against a plat of survey is received prior to the scheduled date of official filing, the official filing of the plat of survey identified in the notice of protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the next business day following dismissal or resolution of all protests of the plat.

Before including your address, phone number, email address, or other personal identifying information in a notice of protest or statement of reasons, you should be aware that the documents you submit—including your personal identifying information—may be made publicly available in their entirety at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 U.S.C., chapter 3)

Robert Femling,

Chief Cadastral Surveyor of Oregon/ Washington.

[FR Doc. 2024–31029 Filed 12–27–24; 8:45 am]

BILLING CODE 4331–25–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Fish and Wildlife Service

[PO #4820000251]

Notice of Availability of the Records of Decision for Reconsideration of a Highway Right-of-Way Application and Associated Amendment of an Incidental Take Permit, Washington County, UT

AGENCY: Bureau of Land Management, Interior; Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) and the United States Fish and Wildlife Service (FWS), as co-lead agencies, announce the availability of the records of decision (RODs) for the Northern Corridor highway right-of-way (ROW) and associated amendment of an incidental take permit (ITP) located in Washington County, Utah. The RODs constitute the decisions of the BLM and FWS.

DATES: The Acting Deputy Secretary of the Interior signed a ROD for the Northern Corridor highway ROW on December 19, 2024. The FWS's Deputy Regional Director for the Mountain-Prairie Region (Region 6) signed a ROD to amend the ITP issued to Washington County (County) on December 19, 2024.

ADDRESSES: The RODs are available on the BLM ePlanning project website at <https://eplanning.blm.gov/eplanning-ui/project/2026562/510>.

FOR FURTHER INFORMATION CONTACT:

Dawna Ferris-Rowley, National Conservation Area (NCA) Manager, Red Cliffs and Beaver Dam Wash NCAs, telephone (435) 688–3200; address 345 East Riverside Drive, St. George, UT 84790; email BLM_UT_NorthernCorridor@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Ms. Ferris-Rowley. 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. Replies are provided during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM and FWS are issuing this Notice of availability pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*; the Council on Environmental Quality's regulations for implementing NEPA, 40 CFR parts 1500 through 1508 (as amended on May 20, 2022, 87 FR 23453); and the Department of the Interior's NEPA regulations, 43 CFR part 46.

On September 4, 2018, the Utah Department of Transportation (UDOT) applied for a ROW grant for the Northern Corridor project north of the City of St. George, Utah, on BLM-managed and non-Federal lands within the Red Cliffs NCA and the Red Cliffs Desert Reserve. The Red Cliffs NCA was established through the passage of the Omnibus Public Land Management Act of 2009 (16 U.S.C. 460www). Prior to the NCA's designation, the Red Cliffs Desert Reserve was established for the protection of the Mojave desert tortoise as part of the 1995 Washington County Habitat Conservation Plan (HCP). In 2015, pursuant to section 10(a)(1)(B) of the Endangered Species Act (ESA), Washington County applied to renew and amend the HCP and associated ITP. The restated and amended HCP described the Northern Corridor highway as a potential changed circumstance, which would be partially offset with the addition of a sixth zone to the Red Cliffs Desert Reserve (Zone 6) as the primary conservation strategy. To consider the ROW application and the proposed Zone 6, the BLM needed to also consider amending the St. George Field Office and Red Cliffs NCA Resource Management Plans (RMPs).

In 2019 and 2020, the BLM and FWS prepared an environmental impact statement (EIS) to analyze the environmental impacts associated with the proposed actions and reasonable alternatives. The BLM also consulted with the FWS to meet the requirements in section 7(a)(2) of the ESA. The FWS issued a biological opinion to the BLM that determined the ROW and the amendments to the RMPs were not likely to jeopardize the continued existence of the Mojave desert tortoise or destroy or adversely modify designated critical habitat for the Mojave desert tortoise. In addition, the FWS issued an intra-agency biological opinion that determined that the ITP was not likely to jeopardize the continued existence of the Mojave desert tortoise, Holmgren milkvetch, Shiwits milkvetch, dwarf bear-poppy, Siler pincushion cactus, Gierisch

mallow, and Fickeisen plains cactus or result in the adverse modification of critical habitat for any of the above-listed species.

On January 13, 2021, the Secretary of the Interior signed a ROD that approved the Northern Corridor ROW application and approved the amendments to the RMPs. The decision approving the ROW was effective immediately. The BLM then signed and issued the ROW grant to UDOT on the same day. Also on January 13, 2021, the FWS Regional Director for the Mountain-Prairie Region signed a ROD approving the issuance of an ITP to Washington County. The FWS issued the ITP to Washington County on January 13, 2021. Because the BLM approved the UDOT ROW application, the changed circumstance was triggered, and Zone 6 was formally added to the Reserve.

On June 3, 2021, seven conservation organizations (collectively, Plaintiffs) filed an initial complaint in the United States District Court for the District of Columbia, Case No. 1:21-cv-01506. Among other claims, plaintiffs alleged the BLM's ROW decision violated both NEPA and the National Historic Preservation Act (NHPA). The Plaintiffs stated, in part, the Final EIS did not fully address the changed circumstances of wildfire in the region and the impacts it may have on the Mojave desert tortoise, desert tortoise habitat, and the spread of invasive annual grasses. The Plaintiffs also alleged that the BLM failed to comply with the consultation requirements under section 106 of the NHPA. On July 27, 2021, Plaintiffs amended their complaint to include the FWS and additional claims related to NEPA and the ESA.

During the litigation, the United States and plaintiffs reached a settlement agreement that was signed on August 30, 2023. Prior to executing that agreement, the United States moved for the remand and partial vacatur of the BLM's and FWS's 2021 decisions. In the motion, the United States acknowledged the BLM did not fully comply with the NHPA and the agencies had concerns that the Final EIS may lack sufficient analysis of certain resource effects, including the effects of the construction and use of the Northern Corridor project in the context of the following: (1) the trend in the increasing frequency and extent of wildfires in the Mojave Desert; (2) the rise of non-native/exotic and invasive vegetation in post-burn areas; and (3) the impacts increased fire and new non-native/exotic and invasive vegetation have on desert tortoise. On November 16, 2023, the court issued an Order that granted the remand of all decisions associated with the January

2021 RODs issued by the BLM and FWS and denied the BLM's request to vacate the ROW grant issued to UDOT in January 2021. On March 8, 2024, at the request of the BLM and consistent with the Settlement Agreement, the FWS withdrew the Biological Opinion for the Northern Corridor ROW grant.

A 30-day public scoping period for a supplemental EIS was initiated with the publication of a Notice of Intent in the **Federal Register** on November 16, 2023 (88 FR 78781). The scoping period was extended at the request of Washington County and the State of Utah until December 28, 2023. The scoping period included a public open house held in St. George, Utah on December 6, 2023, with over 200 attendees. A total of 8,993 comment submissions were received, of which 8,145 were form letters, 793 were unique submissions, and 55 did not include a comment or were comments not relevant to scoping. The BLM and FWS considered all comments received during the scoping period in preparation of the Draft Supplemental EIS. A scoping report is available for public review on the BLM ePlanning project website (see **ADDRESSES**).

A Notice of Availability for the Draft Supplemental EIS was published in the **Federal Register** on May 10, 2024 (89 FR 40504), initiating a 45-day public review and comment period. In addition, the BLM issued media releases and sent notifications via email to cooperating agencies, Tribal Nations, and the updated project mailing list. The BLM and FWS held an in-person public open house on June 4, 2024, at the Dixie Convention Center in St. George, Utah, during the public comment period.

Agencies, organizations, and individual stakeholders were able to submit comments through the U.S. Postal Service and the BLM ePlanning project website (see **ADDRESSES**). The comment period was extended until July 9, 2024, after an updated Traffic Analysis Memorandum, prepared by the Dixie Metropolitan Planning Organization, and an Assessment, Inventory, and Monitoring Vegetation Survey Technical Report were made available for public review on the BLM ePlanning project website. The BLM and FWS announced the availability of these documents, and the date of the extended public review and comment period, through social media releases, a posting on the BLM ePlanning project website, and email messages to the project mailing list.

A total of 4,255 comment submissions were received during the 60-day public comment period, of which 3,354 were part of organized letter-writing

campaigns and 901 were unique comment submissions. The BLM and FWS considered all comments received during the extended comment period in the preparation of the Final Supplemental EIS. The BLM and FWS responded to substantive comments and made appropriate revisions in the Final Supplemental EIS or explained why a comment did not warrant a change, as documented in Appendix F of the Final Supplemental EIS.

The BLM's 2024 ROD decision is to terminate the UDOT ROW grant issued on January 13, 2021, and to endorse the Red Hills Parkway Expressway alternative. The termination of the BLM ROW grant is effective immediately. The FWS's ROD amends the 2021 ITP to authorize incidental take of the desert tortoise to Washington County caused by covered activities, without the Northern Corridor changed circumstance. The amended ITP reinstates take authorization of desert tortoise in the 3,341 acres of State and private land in Zone 6, previously required as mitigation under the Northern Corridor changed circumstance.

(Authority: 40 CFR 1506.6; 40 CFR 1506.10 (2022))

Matthew A. Preston,
Acting State Director.

Anna Munoz,
Deputy Regional Director.

[FR Doc. 2024-30978 Filed 12-27-24; 8:45 am]

BILLING CODE 4331-25-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[PO #4820000251]

Notice of Termination of the Environmental Impact Statement for the Twin Metals Project in the Superior National Forest, Lake and St. Louis Counties, Minnesota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of termination.

SUMMARY: By this notice, the Bureau of Land Management (BLM), Northeastern States District, located in Milwaukee, Wisconsin, is announcing the termination of the Twin Metals Project Environmental Impact Statement (EIS). **DATES:** This termination takes effect immediately.

FOR FURTHER INFORMATION CONTACT: Kurt Wadzinski, NSDO Planning and Environmental Coordinator, at 414-297-4408 or by email to kwadzins@blm.gov.

blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to contact during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Pursuant to the National Environmental Policy Act of 1969 (NEPA) and Council on Environmental Quality (CEQ) NEPA regulations, the BLM published its Notice of Intent (NOI) to prepare an EIS for the Twin Metals Project in the **Federal Register** on June 30, 2020 (85 FR 39206). The EIS would have analyzed the potential impacts of issuing a proposed new preference right lease (MNES 57965) and approving a mine plan of operations for that lease and an existing lease (MNES 1352) held by Twin Metals Minnesota (Twin Metals) in the Superior National Forest in Lake and St. Louis counties, Minnesota.

In October 2021, the USDA Forest Service submitted an application to withdraw the lands in question from disposition under the United States mineral and geothermal leasing laws. The BLM published a notice of its receipt of that application in the **Federal Register** (86 FR 58299), which segregated the lands from the operation of the mineral and geothermal leasing laws, and the BLM subsequently rejected the preference right lease application submitted by Twin Metals in accordance with 43 CFR 2310.2(d).

In January 2022, the Department of the Interior cancelled two hardrock mineral leases held by Twin Metals, including lease MNES 1352, because the leases were improperly renewed. Because Twin Metals did not have an underlying land use authorization, the BLM subsequently rejected the mine plan of operations. On January 31, 2023, the Secretary of the Interior issued Public Land Order 7917 (88 FR 6308), which withdrew approximately 225,504 acres of National Forest System lands in Cook, Lake, and Saint Louis counties, Minnesota, from disposition under the United States mineral and geothermal leasing laws for a period of 20 years, subject to valid existing rights. As a result, new mineral leasing is prohibited for 20 years from the date of the withdrawal.

Based on BLM environmental policy, the bureau must announce in the **Federal Register** when it does not complete previously initiated NEPA actions.

(Authority: 40 CFR 1501.9)

Mitchell Leverette,
Eastern States State Director.

[FR Doc. 2024-31215 Filed 12-27-24; 8:45 am]

BILLING CODE 4331-18-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[PO #4820000251]

Public Land Order No. PLO 7954; Withdrawal of National Forest System Lands for the Schwartz and Leff Administrative Site; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This Public Land Order (PLO) withdraws 39.6 acres of National Forest System lands from location and entry under the United States mining laws, but not from leasing under the mineral or geothermal leasing laws or disposal under the Mineral Materials Act of 1947, for a period of 20 years, subject to valid existing rights, to protect the integrity of the historic and cultural resources located within the Schwartz and Leff Administrative Site along the North Fork of the Salmon River in Siskiyou County, California.

DATES: This PLO takes effect on December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Heather Daniels, BLM California State Office, telephone: (916) 978-4674, email: hdaniels@blm.gov; or Zareen Ali, Forest Service Regional Office, telephone: (707) 562-8964 during regular business hours, 8:00 a.m. to 4:30 p.m. Monday through Friday, except holidays. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The United States Forest Service will manage the lands to protect the integrity of the historic and cultural resources located within the Schwarzs and Leff Administrative Site along the North Fork of the Salmon River in the Klamath National Forest, Siskiyou County, California.

Order

By virtue of the authority vested in the Secretary of the Interior by Section

204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the United States mining laws, but not from leasing under the mineral or geothermal leasing laws or disposal under the Mineral Materials Act of 1947, for the protection of the cultural and historic resources within the Schwartz and Leff Administrative Site in the Klamath National Forest, California.

National Forest System Lands

Klamath National Forest

Humboldt Meridian, California

T. 10 N., R. 8 E.,

M.S. 6686 EXCEPT that portion within Tract 44 of said T. 10 N., R. 8 E., Humboldt Meridian

The area described contains 39.60 acres in Siskiyou County.

2. The withdrawal made by this order does not alter the applicability of those laws governing the use of National Forest System lands under lease, license, or permit, or governing the disposal of the mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

(Authority: 43 U.S.C. 1714)

Robert T. Anderson,
Solicitor.

[FR Doc. 2024-31211 Filed 12-27-24; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0039254;
PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: University of Illinois Urbana- Champaign, Champaign, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Illinois Urbana-Champaign has completed an inventory

of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after January 29, 2025.

ADDRESSES: Krystiana Krupa, University of Illinois Urbana-Champaign, 601 E. John Street, Champaign, IL 61820, telephone (217) 244-2587, email klkrupa@illinois.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Illinois Urbana-Champaign, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, 132 individuals have been identified. The six associated funerary objects are one lot of botanical remains; one lot of ceramics; one lot of faunal bone; one lot of historic tools and ornaments; one lot of lithics; and one lot of shell. The human remains and associated funerary objects were excavated from Will County, IL by George Langford and by the University of Chicago between 1912 and 1941. The collection dates to approximately A.D. 800-1400 and the late 17th century. No hazardous substances are known to have been used to treat any of the human remains or associated funerary objects.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

The University of Illinois Urbana-Champaign has determined that:

- The human remains described in this notice represent the physical remains of at least 132 individuals of Native American ancestry.
- The six lots of objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the

time of death or later as part of the death rite or ceremony.

- There is a connection between the human remains and associated funerary objects described in this notice and the Absentee-Shawnee Tribe of Indians of Oklahoma; Citizen Potawatomi Nation, Oklahoma; Eastern Shawnee Tribe of Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Match-e-be-nash-she-wish Band of Pottawatomi Indians; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Fond du Lac Band; Mille Lacs Band); Nottawaseppi Huron Band of the Potawatomi, Michigan; Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Shawnee Tribe; and the Winnebago Tribe of Nebraska.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after January 29, 2025. If competing requests for repatriation are received, the University of Illinois Urbana-Champaign must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The University of Illinois Urbana-Champaign is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: December 19, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–31302 Filed 12–27–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039259;
PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: University of Georgia, Laboratory of Archaeology, Athens, GA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Georgia, Laboratory of Archaeology intends to repatriate certain cultural items that meet the definition of objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after January 29, 2025.

ADDRESSES: Amanda Thompson, University of Georgia, Laboratory of Archaeology, 1125 Whitehall Road, Athens, GA 30605, telephone (706) 542–8737, email arobthom@uga.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Georgia, Laboratory of Archaeology, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of two cultural items has been requested for repatriation. The two objects of cultural patrimony are baskets that were donated to the University of Georgia libraries in 2016 from Nancy Montgomery. The objects of cultural patrimony were appraised prior to their donation and the appraisal details that the objects of cultural patrimony were from the following locations: Carson

Valley and Lake Tahoe region in Nevada and California to the first half of the 20th century. The Laboratory has been unable to locate information for any research on these objects and does not have any history of contamination.

Determinations

The University of Georgia, Laboratory of Archaeology has determined that:

- The two objects of cultural patrimony described in this notice have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.

- There is a reasonable connection between the cultural items described in this notice and the Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches).

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after January 29, 2025. If competing requests for repatriation are received, the University of Georgia, Laboratory of Archaeology must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The University of Georgia, Laboratory of Archaeology is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: December 19, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–31299 Filed 12–27–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039261;
PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of California, Riverside, Riverside, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of California, Riverside has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after January 29, 2025.

ADDRESSES: Megan Murphy, University of California, Riverside, 900 University Avenue, Riverside, CA 92517–5900, telephone (951) 827–6349, email megan.murphy@ucr.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of California, Riverside, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual have been reasonably identified. The eight associated funerary objects are one lot of ceramic sherds, one lot of glass objects, one lot of lithic materials, one lot of metal objects, one lot of botanical materials, one lot of unmodified shell, one lot of fire-altered rock, and one lot of geological materials. In 1978, the University of California, Riverside Department of Anthropology led an archaeological field school under

the direction of Philip Wilke. The field school consisted of the student excavation of archaeological site CA-SBR-1577 (formerly CA-SBR-911 and SBCM-65). The site was first recorded by Gerald Smith in 1940 as a “large campsite on [a] terrace overlooking [the Santa Ana] riverbed.” Objects such as manos, metates, cogstones, and projectile points had previously been reported by residents on the surface of the site. The students excavated a total of 6 units to an average depth of 70cm. A total of 3,092 items were cataloged and housed at the University of California, Riverside, under Accession Number 59. During the excavation, students uncovered a human burial in Unit 1, which was misidentified as faunal remains. In 2024, at the request of tribal representatives, an osteologist reviewed the collection and identified the remains as human. Tribal representatives also identified the objects in the collection as being associated funerary objects. These objects included ceramic sherds, glass objects, lithic materials, metal objects, botanical materials, unmodified shell, fire-altered rock, and geological materials. Based on biological information, the human remains were determined to be Native American. Archaeologists have asserted that Serrano peoples have continuously occupied the San Bernardino Mountains and the Santa Ana River Watershed for up to 5,000–6,000 years BP. Ethnographer John Peabody Harrington recorded several Serrano place names throughout the Watershed during his interviews with Yuhaaviatam leader, Santos Manuel in 1918. Manuel told Harrington that the Santa Ana River is called hu’napat patr, meaning “bears water,” and a Serrano village, Junubabit, was situated on the Santa Ana River’s southeast bank in today’s Colton, CA. Santos Manuel’s testimony and Traditional Knowledge identify Colton and the surrounding region as within Serrano Ancestral Territory since time immemorial, sharing a group identity with the human remains taken from Morgan’s Bluff.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

The University of California, Riverside has determined that:

- The human remains described in this notice represent the physical

remains of one individual of Native American ancestry.

- The eight objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.

- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Morongo Band of Mission Indians, California and the Yuhaaviatam of San Manuel Nation (*previously* listed as San Manuel Band of Mission Indians, California).

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after January 29, 2025. If competing requests for repatriation are received, the University of California, Riverside must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The University of California, Riverside is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: December 19, 2024.

Melanie O’Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–31300 Filed 12–27–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039245; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: California State University, Sacramento, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the California State University, Sacramento has completed an inventory of associated funerary objects and has determined that there is a cultural affiliation between the associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the associated funerary objects in this notice may occur on or after January 29, 2025.

ADDRESSES: Dr. Mark R. Wheeler, Senior Advisor to President Luke Wood, California State University, Sacramento, 6000 J Street Sacramento, CA 95819, telephone (916) 460–0490, email mark.wheeler@csus.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service’s administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the California State University, Sacramento, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

One lot of associated funerary objects have been identified that likely originate from CA–PLA–14, located in Placer County, CA. Currently, at least seven objects are missing, and California State University, Sacramento continues to look for them. The funerary objects were donated to California State University, Sacramento by the estate of Anthony Zallio in the 1950s. The circumstances around their collection are unknown. They have since been housed at the University under accessions 81–172.12 and 81–172.16.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the

associated funerary objects described in this notice.

Determinations

The California State University, Sacramento has determined that:

- The one lot of objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.

- There is a connection between the associated funerary objects described in this notice and the Ione Band of Miwok Indians of California; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; United Auburn Indian Community of the Auburn Rancheria of California; and the Wilton Rancheria, California.

Requests for Repatriation

Written requests for repatriation of the associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the associated funerary objects described in this notice to a requestor may occur on or after January 29, 2025. If competing requests for repatriation are received, the California State University, Sacramento must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the associated funerary objects are considered a single request and not competing requests. The California State University, Sacramento is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: December 19, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-31282 Filed 12-27-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0039257; PPWOCRADN0-PCU00RP14.R50000]

Notice of Intended Repatriation: The University of Kansas, Lawrence, KS

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Kansas intends to repatriate a certain cultural item that meets the definition of an unassociated funerary object and that has a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural item in this notice may occur on or after January 29, 2025.

ADDRESSES: Dr. Thomas Torma, University of Kansas, Office of Audit, Risk & Compliance, The University of Kansas, 1450 Jayhawk Boulevard, 351 Strong Hall Lawrence, KS 66045, telephone (406) 850-2220, email t-torma@ku.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Kansas, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of one cultural item has been requested for repatriation. The one unassociated funerary object is a silver ring. The ring was taken from an Arapaho man named Wox-Ei-Bet', also known as Walks-a-Bed, after having been killed by an individual known only as "K-" in 1874 at Camp Supply, Indian Country—present day Fort Supply, Oklahoma. Wox-Ei-Bet' had a great-great-great-grandson who is related to the Birdshead Family of the Southern Arapaho in Oklahoma. The Birdshead family has deferred to the Cheyenne and Arapaho Tribes, Oklahoma on this repatriation.

The ring was given to the Benedictine College Museum in Atchison, KS by a person identified as R. Kitching, likely in the 1920s. Father Felix Nolte was the curator of the Benedictine College

Museum and the items collected during his tenure are referred to as the Father Felix Nolte collection. The collections from Benedictine College were transferred to the University of Kansas Museum of Anthropology (KUMA) in 1998. KUMA closed to the public in August 2002 and the collections were renamed the Anthropological Research and Cultural Collections (ARCC) in July 2005. The collections were then transferred internally within the University of Kansas from the ARCC to the Spencer Museum of Art in January 2007.

There is no known presence of any potentially hazardous substances used to treat the cultural item mentioned in this notice.

Determinations

The University of Kansas has determined that:

- The one unassociated funerary object described in this notice is reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary object has been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.

- There is a reasonable connection between the cultural item described in this notice and the Cheyenne and Arapaho Tribes, Oklahoma.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after January 29, 2025. If competing requests for repatriation are received, the University of Kansas must determine the most appropriate requestor prior to repatriation. Requests

for joint repatriation of the cultural item are considered a single request and not competing requests. The University of Kansas is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: December 19, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–31304 Filed 12–27–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039250;
PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Disposition: U.S. Department of Agriculture, Forest Service, Carson National Forest, Taos, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of Agriculture, Forest Service, Carson National Forest (CAF), intends to carry out the disposition of human remains removed from Federal or Tribal lands to the lineal descendants, Indian Tribe, or Native Hawaiian organization with priority for disposition in this notice.

DATES: Disposition of the human remains in this notice may occur on or after January 29, 2025. If no claim for disposition is received by December 30, 2025, the human remains in this notice will become unclaimed human remains.

ADDRESSES: Erin E. Brown, Forest Archeologist, USDA Forest Service, Carson National Forest, 208 Cruz Alta Road, Taos, NM 87571, telephone (575) 779–4827, email erin.brown@usda.gov.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the CAF, and additional information on the human remains in this notice, including the results of consultation, can be found in the related records. The National Park Service is not responsible for the identifications in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual have been reasonably identified. No associated funerary objects are present. A single human tooth was mailed to the Jicarilla Ranger District of the Carson National Forest in August 2002 by a private individual. While hiking the individual encountered what was initially thought to be the bottom of a ceramic vessel near a fallen log. The individual removed soil around the “vessel” and found the vessel was actually a human skull. The individual explained the tooth was removed so the Forest Service could “date” the site. Attempts to locate the source of the tooth were unsuccessful. Known archeological sites in the area of the discovery are a mix of Ancestral Puebloan Pueblo I and Early Navajo sites. The Jicarilla Ranger District is located in Rio Arriba County, NM.

Determinations

The CAF has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Based on geographic affiliation, the Apache Tribe of Oklahoma; Cheyenne and Arapaho Tribes, Oklahoma; Comanche Nation, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico, & Utah; Ohkay Owingeh, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Santo Domingo Pueblo; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Mountain Ute Tribe; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Wichita and Affiliated Tribes (Wichita, Keechi, Waco, & Tawakonie), Oklahoma; Yselta del Sur Pueblo; and the Zuni Tribe of the Zuni Reservation, New Mexico have priority for disposition of the human remains described in this notice.

Claims for Disposition

Written claims for disposition of the human remains in this notice must be sent to the appropriate official identified in this notice under **ADDRESSES**. If no claim for disposition is received by December 30, 2025, the human remains in this notice will become unclaimed human remains. Claims for disposition may be submitted by:

1. Any lineal descendant, Indian Tribe, or Native Hawaiian organization identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that they have priority for disposition.

Disposition of the human remains in this notice may occur on or after January 29, 2025. If competing claims for disposition are received, the CAF must determine the most appropriate claimant prior to disposition. Requests for joint disposition of the human remains are considered a single request and not competing requests. The CAF is responsible for sending a copy of this notice to the lineal descendants, Indian Tribes, and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3002, and the implementing regulations, 43 CFR 10.7.

Dated: December 19, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–31287 Filed 12–27–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039264;
PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Disposition: U.S. Department of Agriculture, Forest Service, Mendocino National Forest, Willows, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of Agriculture, Forest Service, Mendocino National Forest intends to carry out the disposition of human remains or objects of cultural patrimony removed from Federal or Tribal lands to the lineal descendants, Indian Tribe, or Native Hawaiian organization with priority for disposition in this notice.

DATES: Disposition of the human remains or cultural items in this notice may occur on or after January 29, 2025. If no claim for disposition is received by December 30, 2025, the human remains or cultural items in this notice will become unclaimed human remains or cultural items.

ADDRESSES: Wade McMaster, Mendocino National Forest Supervisor, U.S. Department of Agriculture, Forest Service, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA 95988, telephone (530) 934-3316, email wade.mcmaster@usda.gov.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Mendocino National Forest and additional information on the human remains or cultural items in this notice, including the results of consultation, can be found in the related records. The National Park Service is not responsible for the identifications in this notice.

Abstract of Information Available

TEH-926

Based on the information available, human remains representing, at least, one individual (Ancestor) has been reasonably identified. The 239 objects of cultural patrimony are various stone tools (milling slabs, manos, etc.), debitage, and unmodified faunal remains. No funerary objects or sacred objects have been identified based on the available documentation from the rest of the collection.

CA-TEH-926 is located in Tehama County, California on the Mendocino National Forest. The fragmentary human remains, representing at minimum one individual, and objects of cultural patrimony were removed from the site in 1999. Excavations at CA-TEH-926 took place via a Passport in Time (PIT) project as part of the larger Nomlaki Archaeological Research project which began in 1996. Tribal members from the Paskenta Band of Nomlaki Indians and Round Valley Indian Reservation were present during all phases of fieldwork. Based on existing documentation, at the time of excavation, identified human remains were left in situ and the respective unit terminated. The human remains identified as part of this Notice were initially misidentified as nonhuman animal and were discovered in September 2024.

TEH-984

Based on the information available, human remains representing, at least,

two individuals (Ancestors) have been reasonably identified. No associated funerary objects are present. The 1,035 objects of cultural patrimony are unmodified and modified faunal remains, modified stone tools (including bifaces, edge modified flakes, hammerstones, hand stones, milling stones, drills, etc.), projectile points, debitage, and various plant seeds. No funerary objects or sacred objects have been identified based on the available documentation.

The fragmentary human remains, representing at minimum two individuals, and objects of cultural patrimony were removed from CA-TEH-984 between 1999 and 2000. Excavations at CA-TEH-984 took place via a Passport in Time (PIT) project as part of the larger Nomlaki Archaeological Research project which began in 1996. The site is classified as a seasonal base camp culturally affiliated with the Nomlaki due to its geographic location. At the time of excavation, all identified human remains remained in situ per the established Plan of Action. The fragmentary human remains identified as part of this Notice were initially misidentified as nonhuman animal and only identified as human during subsequent cataloging efforts. The previously unknown human remains were discovered in September 2024.

TEH-1722

Based on the information available, human remains representing, at least, two individuals (Ancestors) have been reasonably identified. The 851 objects of cultural patrimony are unmodified and modified faunal remains, modified stone tools (including bifaces, edge modified flakes, hammerstones, hand stones, milling stones, drills, etc.), projectile points, debitage, and various plant seeds. No funerary objects or sacred objects have been identified based on the available documentation.

CA-TEH-1722 is located in Tehama County, California on the Mendocino National Forest. The fragmentary human remains, representing at minimum two individuals, and 851 cultural objects were removed from the site between 1996 and 1997. The excavations were conducted as part of a Passport in Time (PIT) project under the larger Nomlaki Archaeological Research Project which began following requests for archaeological research from the Paskenta Band of Nomlaki Indians. Tribal members were present and participated in the 1996 and 1997 excavations. The artifact assemblage indicates significant seasonal occupation at the site by the Nomlaki.

The fragmentary human remains were not identified at the time of excavation and thus were likely initially misidentified as nonhuman animal. The previously unknown human remains identified as part of this Notice were discovered in September 2024.

Determinations

The Mendocino National Forest has determined that:

- The human remains described in this notice represent the physical remains of five individuals of Native American ancestry.
- The 2,125 objects of cultural patrimony described in this notice have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.
- The Paskenta Band of Nomlaki Indians of California have priority for disposition of the human remains and cultural items described in this notice.

Claims for Disposition

Written claims for disposition of the human remains or cultural items in this notice must be sent to the appropriate official identified in this notice under **ADDRESSES**. If no claim for disposition is received by December 30, 2025, the human remains or cultural items in this notice will become unclaimed human remains or cultural items. Claims for disposition may be submitted by:

1. Any lineal descendant, Indian Tribe, or Native Hawaiian organization identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that they have priority for disposition.

Disposition of the human remains or cultural items in this notice may occur on or after January 29, 2025. If competing claims for disposition are received, the Mendocino National Forest must determine the most appropriate claimant prior to disposition. Requests for joint disposition of the human remains or cultural items are considered a single request and not competing requests. The Mendocino National Forest is responsible for sending a copy of this notice to the lineal descendants, Indian Tribes, and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25

U.S.C. 3002, and the implementing regulations, 43 CFR 10.7.

Dated: December 19, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–31295 Filed 12–27–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039253;
PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Disposition: U.S. Department of Agriculture, Forest Service, Santa Fe National Forest, Santa Fe, NM

AGENCY: National Park Service, Interior.
ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of Agriculture, Forest Service, Santa Fe National Forest (Forest Service), intends to carry out the disposition of human remains removed from Federal or Tribal lands to the lineal descendants, Indian Tribe, or Native Hawaiian organization with priority for disposition in this notice.

DATES: Disposition of the human remains in this notice may occur on or after January 29, 2025. If no claim for disposition is received by December 30, 2025, the human remains in this notice will become unclaimed human remains.

ADDRESSES: Kathryn Turner, U.S. Forest Service, Santa Fe National Forest, 11 Forest Lane, Santa Fe, NM 87508, telephone (505) 438–5380, email kathryn.turner@usda.gov.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Forest Service and additional information on the human remains or cultural items in this notice, including the results of consultation, can be found in the related records. The National Park Service is not responsible for the identifications in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, two individuals have been reasonably identified. No associated funerary objects are present.

On August 8, 2006, human remains representing two individuals were recovered from Forest Service site 03–

10–02–01363/LA 90334 during excavations undertaken by the U.S. Forest Service when they were found eroding from the site during a wildfire. The individuals were sent to the University of Oregon for analysis shortly thereafter and later returned to the Santa Fe National. There are no known associated funerary objects.

Site 03–10–02–01363/LA 90334 is located within the Cuba Ranger District, Santa Fe National Forest, Rio Arriba County, NM. The site is located on a north to south trending ridge north of Forest Road 313 and consists of two features, a unit house and an undefined rock alignment which may have been a terrace. The artifact assemblage numbers in the thousands and is comprised of pottery sherds and flaked and ground stone. Diagnostic pottery types documented include Gallina Black-on-gray, Red Mesa Black-on-white, and utility wares. Flaked stone includes chert and obsidian. Ground stone present includes several manos. The structure type and presence of Gallina Black-on-gray pottery suggests that this site was occupied by the Gallina from A.D. 1100 to A.D. 1300.

Determinations

The U.S. Forest Service has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Based on geographic location the Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico, & Utah; Ohkay Owingeh, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Santo Domingo Pueblo; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Mountain Ute Tribe; and the Zuni Tribe of the Zuni Reservation, New Mexico has priority for disposition of the human remains or cultural item described in this notice.

Claims for Disposition

Written claims for disposition of the human remains in this notice must be sent to the appropriate official identified in this notice under **ADDRESSES**. If no claim for disposition is received by December 30, 2025, the human remains or cultural items in this notice will become unclaimed human remains. Claims for disposition may be submitted by:

1. Any lineal descendant, Indian Tribe, or Native Hawaiian organization identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that they have priority for disposition.

Disposition of the human remains in this notice may occur on or after January 29, 2025. If competing claims for disposition are received, the Forest Service must determine the most appropriate claimant prior to disposition. Requests for joint disposition of the human remains are considered a single request and not competing requests. The Forest Service is responsible for sending a copy of this notice to the lineal descendants, Indian Tribes, and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3002, and the implementing regulations, 43 CFR 10.7.

Dated: December 19, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–31290 Filed 12–27–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039246;
PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: San Francisco State University NAGPRA Program, San Francisco, CA

AGENCY: National Park Service, Interior.
ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the San Francisco State University (SF State) NAGPRA Program intends to repatriate certain cultural items that meet the definition of sacred objects and objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after January 29, 2025.

ADDRESSES: Victor Javier Aguilar, San Francisco State University NAGPRA Program, 1600 Holloway Avenue, San Francisco, CA 94132, telephone (415) 405-3545, email vaguila4@sfsu.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the SF State NAGPRA Program, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of three cultural items have been requested for repatriation. The three sacred objects/objects of cultural patrimony are a coiled basket jar, a coiled flare bowl, and a coiled tray basket. These baskets were donated to the Treganza Anthropology Museum (TAM) at San Francisco State University in the 1960s and 1970s. When the TAM closed in 2012, all the Native American items were transferred to the SF State NAGPRA Program. All baskets are from the California Basket Collection.

It was once common practice by museums to use chemicals on cultural items to prevent deterioration by mold, insects, and moisture. To date, the SF State NAGPRA Program has no records documenting use of chemicals at our facilities, and we currently do not use chemicals on any cultural items. A former SF State professor, Dr. Michael Moratto, stated that staff used glues, polyvinyl acetate, and a solution called Glyptol to mend and stabilize cultural objects in the past. Prior non-invasive and non-destructive hazardous chemical tests conducted at the SF State NAGPRA Program repositories show arsenic, mercury, and/or lead in some storage containers, surfaces, and certain cultural items.

Determinations

The SF State NAGPRA Program has determined that:

- The three sacred objects/objects of cultural patrimony described in this notice are, according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization, specific ceremonial objects needed by a traditional Native American religious leader for present-day adherents to practice traditional Native

American religion, and have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision).

- There is a reasonable connection between the cultural items described in this notice and the Jamul Indian Village of California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after January 29, 2025. If competing requests for repatriation are received, the SF State NAGPRA Program must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The SF State NAGPRA Program is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: December 19, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-31283 Filed 12-27-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-OIA-DTS-39203;
PPWODIREIO-PIN00IO15.XI0000]

Submission of U.S. Nomination to the World Heritage List

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior has submitted a nomination to the World Heritage List for Okefenokee National Wildlife Refuge. This is the third notice required by the Department

of the Interior's World Heritage Program regulations.

ADDRESSES: To request paper copies of documents discussed in this notice, contact April Brooks, Office of International Affairs, National Park Service, 1849 C St. NW, Room 2415, Washington, DC 20240 (202) 354-1808, or send electronic mail (Email) to: april_brooks@nps.gov.

FOR FURTHER INFORMATION CONTACT: Jonathan Putnam, Acting Chief, Office of International Affairs, at 202-354-1809. Information on the U.S. World Heritage program can be found at: <https://www.nps.gov/subjects/internationalcooperation/worldheritage.htm>.

SUPPLEMENTARY INFORMATION: This constitutes the official notice of the decision by the United States Department of the Interior to submit a nomination to the World Heritage List for Okefenokee National Wildlife Refuge, as enumerated in the Summary above, and serves as the Third Notice referred to in 36 CFR 73.7(j) of the World Heritage Program regulations (36 CFR part 73).

The nomination was submitted through the U.S. Department of State to the World Heritage Centre of the United Nations Educational, Scientific and Cultural Organization (UNESCO) for consideration by the World Heritage Committee, which will likely occur at the Committee's 48th annual session in mid-2026.

This property has been selected from the U.S. World Heritage Tentative List, which comprises properties that appear to qualify for World Heritage status, and which may be considered for nomination by the United States to the World Heritage List, as required by the World Heritage Committee's *Operational Guidelines*.

The U.S. World Heritage Tentative List appeared in a **Federal Register** notice on June 7, 2023 (88 FR 37270), as required by 36 CFR 73.7(c) with a request for public comment on possible nominations from the 19 sites on the Tentative List. A summary of the comments received, the Department of the Interior's responses to them and the Department's decision to request preparation of this nomination appeared in a subsequent **Federal Register** notice published on September 25, 2023 (88 FR 65748-65749). These are the First and Second Notices required by 36 CFR 73.7(c) and (f).

In making the decision to submit this U.S. World Heritage nomination, pursuant to 36 CFR 73.7(h) and (i), the Department's Assistant Secretary for Fish and Wildlife and Parks evaluated

the draft nomination and the recommendations of the Federal Interagency Panel for World Heritage. She determined that the property meets the prerequisites for nomination by the United States to the World Heritage List that are detailed in 36 CFR part 73. The property is nationally significant, being a National Natural Landmark designated by the Department of the Interior. The owner of the property has concurred in writing with the nomination, and the property is well protected legally and functionally as documented in the nomination. It appears to meet two of the World Heritage criteria for natural properties.

Okefenokee National Wildlife Refuge is nominated under World Heritage natural criteria (ix) and (x), as provided in 36 CFR 73.9(c)(1), as a property that appears to justify criterion (ix) as a diverse mosaic of wetlands, savannas, forests, and prairie ecosystems and ecotones with a unique reliance on the natural interplay between fire and precipitation. The property also justifies criterion (x) as it is uniquely situated to be a thriving habitat for many important and rare plant and animal species. The refuge also meets the World Heritage requirements for integrity.

The World Heritage List is an international list of cultural and natural properties nominated by the signatories to the World Heritage Convention (1972). The World Heritage Committee, composed of representatives of 21 nations elected as the governing body of the World Heritage Convention, makes the final decisions on which nominations to accept on the World Heritage List at its annual meeting each summer. There are 1,223 World Heritage sites in 168 of the 196 signatory countries. The United States has 26 sites inscribed on the World Heritage List.

U.S. participation and the role of the Department of the Interior are authorized by title IV of the National Historic Preservation Act Amendments of 1980, Public Law 96–515, 94 Stat. 2987, 3000, codified as amended at 54 U.S.C. 307101, and conducted by the Department through the National Park Service in accordance with the regulations at 36 CFR part 73 which implement the Convention pursuant to the 1980 Amendments.

Neither inclusion in the Tentative List nor inscription as a World Heritage Site imposes legal restrictions on owners or neighbors of sites, nor do they give the United Nations any management authority or ownership rights in U.S. World Heritage Sites, which continue to be subject only to U.S. federal and local laws, as applicable.

Authority: 54 U.S.C. 307101; 36 CFR part 73.

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2024–31121 Filed 12–27–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039249; PPWOCRADNO–PCU00RP14.R50000]

Notice of Intended Disposition: U.S. Department of Agriculture, Forest Service, Carson National Forest, Taos, NM

AGENCY: National Park Service, Interior.
ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of Agriculture, Forest Service, Carson National Forest (CAF), intends to carry out the disposition of objects of cultural patrimony removed from Federal or Tribal lands to the lineal descendants, Indian Tribe, or Native Hawaiian organization with priority for disposition in this notice.

DATES: Disposition of the cultural items in this notice may occur on or after January 29, 2025. If no claim for disposition is received by December 30, 2025, the cultural items in this notice will become unclaimed cultural items.

ADDRESSES: Erin E. Brown, Forest Archeologist, USDA Forest Service, Carson National Forest, 208 Cruz Alta Road, Taos, NM 87571, telephone (575) 779–4827, email erin.brown@usda.gov.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the CAF, and additional information on the cultural items in this notice, including the results of consultation, can be found in the related records. The National Park Service is not responsible for the identifications in this notice.

Abstract of Information Available

Based on the information available, seven objects of cultural patrimony include a small Dinetah Grayware jar, a wooden feather effigy, and five wooden cradle board pieces. The Dinetah Grayware pot has flat to slightly concave base, with some striations on the surface of the vessel. At the time of discovery, the wooden feather effigy was resting on

top of the vessel. Both items were located in a crevice under a large sandstone boulder, and the items had been walled in with thin sandstone slabs and adobe. Approximately 35 feet north of the first crevice, a second crevice contained the five wooden cradleboard pieces. The seven items were found in two crevices, separated by approximately 35 feet, in 1991 by a member of the public. The items were removed from site AR–03–02–03–00524 in Pueblita Canyon located within the Jicarilla Ranger District of the Carson National Forest, Rio Arriba County, New Mexico.

Determinations

The CAF has determined that:

- The seven objects of cultural patrimony described in this notice have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.

- The Navajo Nation, Arizona, New Mexico, & Utah has priority for disposition of the cultural items described in this notice.

Claims for Disposition

Written claims for disposition of the cultural items in this notice must be sent to the appropriate official identified in this notice under **ADDRESSES**. If no claim for disposition is received by December 30, 2025, the cultural items in this notice will become unclaimed cultural items. Claims for disposition may be submitted by:

1. Any lineal descendant, Indian Tribe, or Native Hawaiian organization identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that they have priority for disposition.

Disposition of the cultural items in this notice may occur on or after January 29, 2025. If competing claims for disposition are received, the CAF must determine the most appropriate claimant prior to disposition. Requests for joint disposition of the cultural items are considered a single request and not competing requests. The CAF is responsible for sending a copy of this notice to the lineal descendants, Indian Tribes, and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25

U.S.C. 3002, and the implementing regulations, 43 CFR 10.7.

Dated: December 19, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–31286 Filed 12–27–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039244;
PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Milwaukee Public Museum, Milwaukee, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Milwaukee Public Museum has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after January 29, 2025.

ADDRESSES: Dawn Scher Thomae, Milwaukee Public Museum, 800 W Wells Street, Milwaukee, WI 53233 telephone (414) 278–6157, email thomae@mpm.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Milwaukee Public Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at least, 67 individuals have been identified. The 3,967 associated funerary objects are hornstone blades, bifaces, chert blades, flakes; charcoal; copper artifacts including awls, crescents, points, beads; wood fragments; quartzite flakes; stone fragments; soil samples; stone points and cores; birchbark fragments; shell beads, red sandstone/catlinite fragments; worked stone or whetstones;

limonite; seeds, bark, deer premolar, and a shell.

The Riverside Site was excavated jointly by the Oshkosh Public Museum (OPM) and MPM between 1961 and 1963. The excavation was led by Robert Hrushka of OPM and Robert Ritzenthaler of MPM. Most of the site collections were donated to the MPM by the Oshkosh Public Museum on 9/26/1968. The Riverside Site is considered a multicomponent site representing Late Archaic to the Mississippian time periods, with the main component being a Late Archaic/Early Woodland Transition/Red Ochre Culture cemetery dating between 1000 and 100 BC.

The MPM is unaware of the presence of any potentially hazardous substances used to treat any of the human remains or associated funerary objects.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

The Milwaukee Public Museum has determined that:

- The human remains described in this notice represent the physical remains of at least 67 individuals of Native American ancestry.
- The 3,967 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a connection between the human remains and associated funerary objects described in this notice and the Menominee Indian Tribe of Wisconsin.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
 2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.
- Repatriation of the human remains and associated funerary objects described in this notice to a requestor may occur on or after January 29, 2025.

If competing requests for repatriation are received, the Milwaukee Public Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Milwaukee Public Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: December 19, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–31281 Filed 12–27–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039248;
PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Brooklyn Children's Museum, Brooklyn, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Brooklyn Children's Museum intends to repatriate certain cultural items that meet the definition of sacred objects and objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after January 29, 2025.

ADDRESSES: Kiani Kodama and Kate Mirand Calleri, Brooklyn Children's Museum, 145 Brooklyn Avenue, Brooklyn, NY 11213, telephone (718) 735–4400, email kkodama@brooklynkids.org and kcalleri@brooklynkids.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Brooklyn Children's Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The

National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of five cultural items have been requested for repatriation by the Onondaga Nation of NY. The five sacred objects of cultural patrimony are false face masks and rattles.

Miniature Cornhusk Mask (object number 66.87.4), False Face Mask (object number 66.87.7), Miniature Cornhusk Mask (object number 66.113.3), Snapping Turtle Claw Rattles (object number 67.86.3ab), and False Face Mask (object number 59.1) are listed in Brooklyn Children's Museum records as "Onondaga." The items were reportedly acquired in North America and gifted to or purchased by Brooklyn Children's Museum between 1959–1982. Brooklyn Children's Museum records indicate no known hazardous substances.

Determinations

The Brooklyn Children's Museum has determined that:

- The five sacred objects/objects of cultural patrimony described in this notice are, according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization, specific ceremonial objects needed by a traditional Native American religious leader for present-day adherents to practice traditional Native American religion, and have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision).
- There is a reasonable connection between the cultural items described in this notice and the Onondaga Nation.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after January 29, 2025. If competing requests for repatriation are received, the Brooklyn Children's Museum must determine the most appropriate requestor prior to repatriation. Requests

for joint repatriation of the cultural items are considered a single request and not competing requests. The Brooklyn Children's Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: December 19, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–31285 Filed 12–27–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039247; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: University of Oregon, Museum of Natural and Cultural History, Eugene, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Oregon Museum of Natural and Cultural History intends to repatriate a certain cultural item that meets the definition of an object of cultural patrimony and that has a cultural affiliation with the Indian Tribes in this notice.

DATES: Repatriation of the cultural item in this notice may occur on or after January 29, 2025.

ADDRESSES: Dr. Pamela Endzweig, Director of Anthropological Collections, University of Oregon Museum of Natural and Cultural History, 1224 University of Oregon, Eugene, OR 97403–1224, telephone (541) 346–5120, email endzweig@uoregon.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Oregon Museum of Natural and Cultural History and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

One cultural item has been requested for repatriation. The one object of cultural patrimony, catalog 2–967, is a coiled basket donated in 1937 by former University of Oregon student A. (Ada) Ossie Walton (1867–1944). A newspaper article, which appears to be from 1937, mentions that Walton began collecting while still a student. She graduated in 1885. A hand-written note in the Museum's accessions files, which we presume to be the donor's, lists the basket as "Large basket (told one of tribes adjoining Navahoes)". This is also what the partial old label on the base of the basket reads. We believe this to be an incorrect identification. Museum staff have described the coiled basket as "Mission style" and attributed it to Southern California Native peoples. There is no additional information in the Museum's files relating to the provenance of the basket.

Cultural Affiliation

The cultural item in this notice is connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: expert opinion, including Native American traditional knowledge.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the University of Oregon Museum of Natural and Cultural History has determined that:

- The one object of cultural patrimony described in this notice has ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.

- There is a reasonable connection between the cultural item described in this notice and the Pechanga Band of Indians (*previously* listed as Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California).

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this

notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after January 29, 2025. If competing requests for repatriation are received, the University of Oregon Museum of Natural and Cultural History must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The University of Oregon Museum of Natural and Cultural History is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: December 19, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-31284 Filed 12-27-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0039255;
PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: University of California, Riverside, Riverside, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of California, Riverside has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after January 29, 2025.

ADDRESSES: Megan Murphy, University of California, Riverside, 900 University Avenue, Riverside, CA 92517-5900, telephone (951) 827-6349, email megan.murphy@ucr.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of California, Riverside, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual has been reasonably identified. The three associated funerary objects are one lot of lithic materials, one lot of pottery sherds, and one lot of grinding stones. In 1975, the University of California, Riverside Archaeological Research Unit (UCRARU) was contracted by Hirsch and Koptonak Consulting Engineers and Planners to conduct an archaeological filed reconnaissance of the Mason Valley Ranch. The property is in Oriflamme Canyon, adjacent to the Anza-Borrego Desert State Park in central San Diego County. During the survey archaeologists recorded twenty archaeological sites and a test unit in archaeological site CA-SDI-4812. Archaeologists removed approximately 175 items from the unit including pottery sherds, lithic materials, and grinding stones. A burnt bone fragment was also removed from the unit and initially identified as faunal remains. In 2024, at the request of tribal representatives, an osteologist reviewed the bone fragment and identified it as a human rib fragment. During consultation tribal representatives also identified the objects in the collection to be associated funerary objects. In the report for the project, ARU Report #151, archaeologists noted that cremation burials have been previously identified in the canyon as well as village sites and surface artifacts. Tribal representatives confirmed this to be true during consultation and noted that they had conducted repatriations of other burials removed from the area.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human

remains and associated funerary objects described in this notice.

Determinations

The University of California, Riverside has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The three objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Capitan Grande Band of Diegueno Mission Indians of California (Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California); Ewiiapaayp Band of Kumeyaay Indians, California; Iipay Nation of Santa Ysabel, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; and the Sycuan Band of the Kumeyaay Nation.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after January 29, 2025. If competing requests for repatriation are received,

the University of California, Riverside must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The University of California, Riverside is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: December 19, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-31303 Filed 12-27-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0039266;
PPWOCRADN0-PCU00RP14.R50000]

Notice of Intended Repatriation: Sam Noble Oklahoma Museum of Natural History, Norman, OK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Sam Noble Oklahoma Museum of Natural History (SNOMNH) intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after January 29, 2025.

ADDRESSES: Dr. Marc Levine, Associate Curator of Archaeology, Sam Noble Oklahoma Museum of Natural History, University of Oklahoma, 2401 Chautauqua Avenue, Norman, OK 73072-7029, telephone (405) 325-1994, email mlevine@ou.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the SNOMNH, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 731 cultural items from four sites have been requested for repatriation.

The 138 unassociated funerary objects were removed from the A.W. Davis site (34Mc6) in McCurtain County, OK. Following extensive looting, the University of Oklahoma carried out excavations at the site in June and July of 1955 and transferred the objects to the Museum that same year. The 138 unassociated funerary objects include one reconstructed decorated ceramic bowl, three decorated potsherds, 133 undecorated potsherds, and one sample of hematite pigment.

The 452 unassociated funerary objects were removed from the Clement 1 site (34Mc8) in McCurtain County, OK. The site was excavated in 1941 by the Works Progress Administration (WPA) and the associated material was transferred to the Museum the same year. The 452 unassociated funerary objects include one Taylor engraved ceramic bowl, five ceramic vessels, 44 Hodges engraved potsherds, three decorated potsherds, and 399 undecorated potsherds.

The 115 unassociated funerary objects were removed from the McDonald 1 site (34Mc11) in McCurtain County, OK. This site was excavated by the WPA in 1941 and 1942, then resurveyed in 1965 by the University of Oklahoma. The associated materials were transferred to the Museum in 1965. The 115 unassociated funerary objects are 17 ceramic vessels, five bowls, four bottles, three jars, three partially reconstructed vessels, 82 potsherds, and one clay sample.

The 26 unassociated funerary objects were removed from the McDonald 2 site (34Mc12) in McCurtain County, OK. This site was excavated by the WPA in 1941 and 1942, and the associated material was transferred to the Museum in 1965. The 26 unassociated funerary objects are two ceramic bowls, two undecorated ceramic vessels, three partially reconstructed vessels, one bag of decorated potsherds, 17 sherds, and one sample of baked clay.

Determinations

The SNOMNH has determined that:

- The 731 unassociated funerary objects described in this notice are reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later, as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The

unassociated funerary objects have been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.

- There is a connection between the cultural items described in this notice and the Caddo Nation of Oklahoma.

Requests for Repatriation

Additional written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after January 29, 2025. If competing requests for repatriation are received, the SNOMNH must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The SNOMNH is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004, and the implementing regulations, 43 CFR 10.9.

Dated: December 19, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-31297 Filed 12-27-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0039252;
PPWOCRADN0-PCU00RP14.R50000]

Notice of Intended Disposition: U.S. Department of Agriculture, Forest Service, Santa Fe National Forest, Santa Fe, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of Agriculture, Forest Service, Santa Fe National Forest (Forest Service), intends to carry out the disposition of human remains and associated funerary objects removed from Federal or Tribal lands to the lineal descendants, Indian Tribe, or Native Hawaiian organization with priority for disposition in this notice.

DATES: Disposition of the human remains and associated funerary objects in this notice may occur on or after January 29, 2025. If no claim for disposition is received by December 30, 2025, the human remains and associated funerary objects in this notice will become unclaimed human remains and associated funerary objects.

ADDRESSES: Kathryn Turner, U.S. Forest Service, Santa Fe National Forest, 11 Forest Lane, Santa Fe, NM 87508, telephone (505) 438-5380, email kathryn.turner@usda.gov.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Forest Service, and additional information on the human remains and associated funerary objects in this notice, including the results of consultation, can be found in the related records. The National Park Service is not responsible for the identifications in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual, has been reasonably identified. The 46 associated funerary objects are pottery sherds and charcoal fragments.

On October 30, 2012, human remains representing one individual were recovered from Forest Service site 03-10-02-01064/LA 74378 by the U.S. Forest Service when found eroding from a well-travelled Forest Service Road which leads to an active communication site. The possible associated funerary objects include 45 pottery sherds and charcoal fragments.

Site 03-10-02-01064/LA 74378 is located in the Cuba Ranger District, Santa Fe National Forest, Rio Arriba County, NM. The site is located on Forest Road 312J on a small ridge south of Wolf Draw. This site has been almost completely destroyed and currently has a radio tower built on top of it. All that remains are a few structural stones and an artifact assemblage comprised of pottery sherds, flaked stone, and a

cobble tool. Diagnostic pottery types documented include Gallina Black-on-gray and plainware. Flaked stone includes chert, chalcedony, and quartzite. The presence of Gallina Black-on-gray pottery suggests that this site was occupied by the Gallina from A.D. 1100 to A.D. 1300.

Determinations

The Forest Service has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The 46 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Based on geographic location the Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico, & Utah; Ohkay Owingeh, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Santo Domingo Pueblo; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Mountain Ute Tribe; and the Zuni Tribe of the Zuni Reservation, New Mexico has priority for disposition of the human remains and associated funerary objects described in this notice.

Claims for Disposition

Written claims for disposition of the human remains and associated funerary objects in this notice must be sent to the appropriate official identified in this notice under **ADDRESSES**. If no claim for disposition is received by December 30, 2025, the human remains and associated funerary objects in this notice will become unclaimed human remains and associated funerary objects. Claims for disposition may be submitted by:

1. Any lineal descendant, Indian Tribe, or Native Hawaiian organization identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows,

by a preponderance of the evidence, that they have priority for disposition.

Disposition of the human remains and associated funerary objects in this notice may occur on or after January 29, 2025. If competing claims for disposition are received, the Forest Service must determine the most appropriate claimant prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. The Forest Service is responsible for sending a copy of this notice to the lineal descendants, Indian Tribes, and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3002, and the implementing regulations, 43 CFR 10.7.

Dated: December 19, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-31289 Filed 12-27-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0039265; PPWOCRADNO-PCU00RP14.R50000]

Notice of Intended Repatriation: Peabody Essex Museum, Salem, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Essex Museum (PEM) intends to repatriate a certain cultural item that meets the definition of an object of cultural patrimony and that has a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural item in this notice may occur on or after January 29, 2025.

ADDRESSES: Kathryn Smith, Registrar of Collections, Peabody Essex Museum, 161 Essex Street, Salem, MA 01970, telephone (978) 542-1559, email kathryn_smith@pem.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Peabody Essex Museum, and additional information on the determinations in this notice, including the results of consultation,

can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of one cultural item has been requested for repatriation. The one object of cultural patrimony is a group of shell wampum beads, alternating white and purple tubes, about 5.9 inches long, strung on white cotton with each end tied together. This was donated to the Peabody Museum of Salem (now PEM) on October 14, 1884 by Miss Erminnie A. Smith. Museum accession record 1759 recorded the cultural item as "Beads of Tuscarora [sic] Indian Chief." It was assigned in the logbook as catalog number E991, and described as "Beads of a Chief, Tuscarora" given by Miss E.F. [sic] Smith. Its corresponding 20th century catalog card described the cultural item as "Beads, Wampum, of Tuscarora Chief." The donor is confirmed as Mrs. Erminnie A. Smith of Jersey City, N.J. in *Peabody Academy of Science Annual Report* (Salem: 1885, 90). In 1880, the Smithsonian Institution appointed Smith as a "scientific explorer" charged with studying the language and culture of the Six Nations and the collection of cultural items. From published memorial volume, *In Memoriam: Mrs. Erminnie A. Smith* (Boston: Lee and Shepard, 1890, 33–34), Smith was adopted into the White Bear Clan at Tuscarora Nation and given the name Ka-tci'-tcis-tä'-kwäst.

Determinations

The Peabody Essex Museum has determined that:

- The one object of cultural patrimony described in this notice has ongoing historical, traditional, or cultural importance central to the Tuscarora Nation, including any constituent sub-groups (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural item described in this notice and the Tuscarora Nation.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by

a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after January 29, 2025. If competing requests for repatriation are received, the Peabody Essex Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural item are considered a single request and not competing requests. The Peabody Essex Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: December 19, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–31296 Filed 12–27–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0039251; PPWOCRADNO–PCU00RP14.R50000]

Notice of Intended Disposition: U.S. Department of Agriculture, Forest Service, Santa Fe National Forest, Santa Fe, NM

AGENCY: National Park Service, Interior.
ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of Agriculture, Forest Service, Santa Fe National Forest (Forest Service), intends to carry out the disposition of human remains and removed from Federal or Tribal lands to the lineal descendants, Indian Tribe, or Native Hawaiian organization with priority for disposition in this notice.

DATES: Disposition of the human remains in this notice may occur on or after January 29, 2025. If no claim for disposition is received by December 30, 2025, the human remains in this notice will become unclaimed human remains.

ADDRESSES: Kathryn Turner, U.S. Forest Service, Santa Fe National Forest, 11 Forest Lane, Santa Fe, NM 87508, telephone (505) 438–5380, email kathryn.turner@usda.gov.

SUPPLEMENTARY INFORMATION: This notice is published as part of the

National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Forest Service, and additional information on the human remains in this notice, including the results of consultation, can be found in the related records. The National Park Service is not responsible for the identifications in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, 10 individuals have been reasonably identified. No associated funerary objects are present.

In 1996, 2005, and 2006, human remains representing 10 individuals were recovered from Forest Service site 03–10–02–00389/LA 49387 by the U.S. Forest Service after being found eroding from the cut bank along the west edge of the road beneath the site. Prior to recovery consultation was conducted with the State Historic Preservation Office and the Pueblo of Jemez, New Mexico. The individuals were sent to the University of Oregon for analysis shortly thereafter and later returned to the Santa Fe National Forest. There are possible associated funerary objects which include pottery sherds, flaked stone, and charcoal.

Site 03–10–02–00389/LA 49387 is located within the Cuba Ranger District, Santa Fe National Forest, Rio Arriba County, NM. The site is located on a terrace west of Forest Road 517 and consists of two features, a rectangular shaped unit house and a possible pithouse. The artifact assemblage is comprised of pottery sherds, flaked stone, and ground stone. Diagnostic pottery types documented include Gallina Black-on-gray, corrugated, and utility wares. Flaked stone includes chert, quartzite, and obsidian. The structure type and presence of Gallina Black-on-gray pottery suggests that this site was occupied by the Gallina from A.D. 1100 to A.D. 1300.

Determinations

The U.S. Forest Service has determined that:

- The human remains described in this notice represent the physical remains of, at least, 10 individuals of Native American ancestry.
- Based on geographic location the Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico, & Utah; Ohkay Owingeh, New Mexico; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez,

New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambé, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Santo Domingo Pueblo; Southern Ute Indian Tribe of the Southern Ute Reservation, New Mexico; Ute Mountain Ute Tribe; and the Zuni Tribe for the Zuni Reservation, New Mexico has priority for disposition of the human remains described in this notice.

Claims for Disposition

Written claims for disposition of the human remains in this notice must be sent to the appropriate official identified in this notice under **ADDRESSES**. If no claim for disposition is received by December 30, 2025, the human remains in this notice will become unclaimed human remains. Claims for disposition may be submitted by:

1. Any lineal descendant, Indian Tribe, or Native Hawaiian organization identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that they have priority for disposition.

Disposition of the human remains in this notice may occur on or after January 29, 2025. If competing claims for disposition are received, the U.S. Forest Service must determine the most appropriate claimant prior to disposition. Requests for joint disposition of the human remains are considered a single request and not competing requests. The U.S. Forest Service is responsible for sending a copy of this notice to the lineal descendants, Indian Tribes, and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3002, and the implementing regulations, 43 CFR 10.7.

Dated: December 19, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–31288 Filed 12–27–24; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1356]

Certain Dermatological Treatment Devices and Components Thereof; Notice of Request for Submissions on the Public Interest

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that on December 19, 2024, the presiding administrative law judge (“ALJ”) issued an Initial Determination on Violation of section 337. The ALJ also issued a Recommended Determination on remedy and bonding should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public and interested government agencies only.

FOR FURTHER INFORMATION CONTACT:

Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. (19 U.S.C. 1337(d)(1)). A similar provision applies to cease and desist orders. (19 U.S.C. 1337(f)(1)).

The Commission is soliciting submissions on public interest issues raised by the recommended relief

should the Commission find a violation, specifically: a limited exclusion order directed to certain dermatological treatment devices and components thereof imported, sold for importation, and/or sold after importation by Respondents Jeisys Medical Inc. of Seoul, Korea (“Jeisys”); Cynosure, LLC of Westford, MA (“Cynosure”); EndyMed Medical, Ltd. of Caesarea, Israel; EndyMed Medical, Ltd. of New York, New York and EndyMed Medical Inc. of Freehold, New Jersey (together, “EndyMed”); and cease and desist orders directed to Cynosure and EndyMed. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public and interested government agencies are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ’s Recommended Determination on Remedy and Bonding issued in this investigation on December 19, 2024. Comments should address whether issuance of the recommended remedial orders in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

- (i) explain how the articles potentially subject to the recommended remedial orders are used in the United States;
- (ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;
- (iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;
- (iv) indicate whether complainant, complainant’s licensees, and/or third-party suppliers have the capacity to replace the volume of articles potentially subject to the recommended orders within a commercially reasonable time; and
- (v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed no later than by close of business on January 20, 2025.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number ("Inv. No. 337-TA-1356") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing and must be served in accordance with Commission Rule 210.4(f)(7)(ii)(A) (19 CFR 210.4(f)(7)(ii)(A)). All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's

Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: December 20, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024-31043 Filed 12-27-24; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-722-725 and 731-TA-1690-1693 (Preliminary)]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, From Cambodia, Malaysia, Thailand and Vietnam; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: 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 investigation Nos. 701-TA-722-725 and 731-TA-1690-1693 (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 crystalline silicon photovoltaic cells, whether or not assembled into modules, from Cambodia, Malaysia, Thailand and Vietnam, provided for in statistical reporting numbers 8541.42.0010, and 8541.43.0010 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 Cambodia, Malaysia, Thailand and Vietnam. Crystalline silicon photovoltaic cells, whether or not assembled into modules, may also be imported under HTS subheadings 8501.71, 8501.72, and 8501.80 and statistical reporting number 8507.20.8010. 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 June 10, 2024. The Commission's views must be transmitted to Commerce

within five business days thereafter, or by June 17, 2024.

DATES: April 24, 2024.

FOR FURTHER INFORMATION CONTACT: Julie Duffy (202-708-2579), 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 April 24, 2024, by the American Alliance for Solar Manufacturing Trade Committee.

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 petitioner) 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 Wednesday, May 15, 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 Monday, May 13, 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 May 20, 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 noon on Tuesday, May 14. 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: December 20, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–31088 Filed 12–27–24; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committee on Evidence Rules; Hearing of the Judicial Conference

AGENCY: Judicial Conference of the United States.

ACTION: Advisory Committee on Evidence Rules; notice of cancellation of open hearing.

SUMMARY: The following public hearing on proposed amendments to the Federal Rules of Evidence has been canceled: Evidence Rules Hearing on January 22, 2025.

DATES: January 22, 2025.

FOR FURTHER INFORMATION CONTACT: H. Thomas Byron III, Esq., Chief Counsel, Rules Committee Staff, Administrative Office of the U.S. Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Phone (202) 502–1820, RulesCommittee_Secretary@ao.uscourts.gov.

SUPPLEMENTARY INFORMATION: The announcement for this hearing was previously published in the **Federal Register** on July 31, 2024 at 89 FR 61498.

(Authority: 28 U.S.C. 2073.)

Dated: December 23, 2024.

Shelly L. Cox,

Management Analyst, Rules Committee Staff.

[FR Doc. 2024–31251 Filed 12–27–24; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1461]

Bulk Manufacturer of Controlled Substances Application: Irvine Labs Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Irvine Labs Inc. has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before February 28, 2025. Such persons may also file a written request for a hearing on the application on or before February 28, 2025.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking

Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on August 26, 2024, Irvine Labs Inc., 7305 Murdy Circle,

Huntington Beach, California 92647–3533, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Lysergic acid diethylamide	7315	I
Mescaline	7381	I
Peyote	7415	I
Diethyltryptamine	7434	I
Dimethyltryptamine	7435	I
Psilocybin	7437	I
Psilocyn	7438	I

The company plans to bulk manufacture the above listed controlled substances for research and development purposes internally and for distribution to its research customers. No other activities for these drug codes are authorized for this registration.

Matthew Strait,
Deputy Assistant Administrator.
[FR Doc. 2024–31293 Filed 12–27–24; 8:45 am]
BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Soroosh Armandi, D.O.; Decision and Order

On February 1, 2024, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Soroosh Armandi, D.O., of San Pedro, California (Registrant). Request for Final Agency Action (RFAA), Attachment (RFAAX) A, at 1, 3. The OSC proposed the revocation of Registrant’s Certificate of Registration No. FA0060359, alleging that Registrant’s registration should be revoked because Registrant is “currently without authority to handle controlled substances in the State of California, the state in which [he is] registered with DEA.” *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).¹

The OSC notified Registrant of his right to file a written request for hearing, and that if he failed to file such a request, he would be deemed to have waived his right to a hearing and be in default. *Id.* (citing 21 CFR 1301.43). Here, Registrant did not request a

¹ According to Agency records, Registrant’s registration expired on June 30, 2024. The fact that a registrant allows his registration to expire during the pendency of an OSC does not impact the Agency’s jurisdiction or prerogative under the Controlled Substances Act (CSA) to adjudicate the OSC to finality. *Jeffrey D. Olsen, M.D.*, 84 FR 68474, 68476–68479 (2019).

hearing. RFAA, at 2.² “A default, unless excused, shall be deemed to constitute a waiver of the [registrant’s] right to a hearing and an admission of the factual allegations of the [OSC].” 21 CFR 1301.43(e).

Further, “[i]n the event that a registrant . . . is deemed to be in default . . . DEA may then file a request for final agency action with the Administrator, along with a record to support its request. In such circumstances, the Administrator may enter a default final order pursuant to [21 CFR] § 1316.67.” *Id.* § 1301.43(f)(1). Here, the Government has requested final agency action based on Registrant’s default pursuant to 21 CFR 1301.43(c), (f), 1301.46. RFAA, at 1; *see also* 21 CFR 1316.67.

Findings of Fact

The Agency finds that, in light of Registrant’s default, the factual allegations in the OSC are admitted. According to the OSC, Registrant’s California medical license expired on March 31, 2023. RFAAX A, at 2. Further, effective June 29, 2023, the

² Based on the Government’s submissions in its RFAA dated May 24, 2024, the Agency finds that service of the OSC on Registrant was adequate. The included declaration from a DEA Diversion Investigator (DI) indicates that she was “unable to locate Registrant and [she was] under the belief that Registrant was out of the country;” accordingly, on February 2, 2024, the DI emailed a copy of the OSC to Registrant’s registered email address. RFAAX 1, at 2. The DI did not state that an undeliverable message was ever received. *Id.* On the same date, the DI mailed a copy of the OSC to Registrant’s registered address. *Id.* On February 5, 2024, however, the OSC was returned to the DI, along with a notice of a forwarding address for Registrant. *Id.*; *see also id.*, Attachment B. On February 14, 2024, the DI mailed a copy of the OSC to Registrant’s forwarding address and later received confirmation via the certified mailing receipt that the OSC was successfully delivered on February 17, 2024. *Id.* at 2; *see also id.*, Attachment C. The Agency finds that the DI’s efforts to serve Registrant were “reasonably calculated, under all the circumstances, to apprise [Registrant] of the pendency of the action.” *Jones v. Flowers*, 547 U.S. 220, 226 (2006) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). Therefore, due process notice requirements have been satisfied.

Osteopathic Medical Board of California revoked Registrant’s California medical license. *Id.* According to California online records, of which the Agency takes official notice, Registrant’s California medical license remains revoked.³ California DCA License Search, <https://search.dca.ca.gov> (last visited date of signature of this Order).⁴ Accordingly, the Agency finds that Registrant is not licensed to practice medicine in California, the state in which he is registered with DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under 21 U.S.C. 823 “upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” With respect to a practitioner, DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *Gonzales v.*

³ Under the Administrative Procedure Act, an agency “may take official notice of facts at any stage in a proceeding—even in the final decision.” United States Department of Justice, Attorney General’s Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), “[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.” Accordingly, Registrant may dispute the Agency’s finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.gov.

⁴ The OSC lists the number for Registrant’s California medical license as 20A9741, RFAAX A, at 1; however, the California DCA License Search lists Registrant’s California medical license number as 9741.

Oregon, 546 U.S. 243, 270 (2006) (“The Attorney General can register a physician to dispense controlled substances ‘if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.’ . . . The very definition of a ‘practitioner’ eligible to prescribe includes physicians ‘licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices’ to dispense controlled substances. § 802(21).”). The Agency has applied these principles consistently. *See, e.g.*, *James L. Hooper, M.D.*, 76 FR 71371, 71372 (2011), *pet. for rev. denied*, 481 F. App’x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27616, 27617 (1978).⁵

According to California statute, “dispense” means “to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, furnishing, packaging, labeling, or compounding necessary to prepare the substance for that delivery.” Cal. Health & Safety Code § 11010 (West 2024). Further, a “practitioner” means a person “licensed, registered, or otherwise permitted, to distribute, dispense, conduct research with respect to, or administer, a controlled substance in the course of professional practice or research in [the] state.” *Id.* § 11026(c).

Here, the undisputed evidence in the record is that Registrant lacks authority to practice medicine in California. As discussed above, an individual must be a licensed practitioner to dispense a controlled substance in California. Thus, because Registrant lacks authority to practice medicine in California and, therefore, is not authorized to handle controlled substances in California, Registrant is not eligible to maintain a

DEA registration. Accordingly, the Agency will order that Registrant’s DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. FA0060359 issued to Soroosh Armandi, D.O. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Soroosh Armandi, D.O., to renew or modify this registration, as well as any other pending application of Soroosh Armandi, D.O., for additional registration in California. This Order is effective January 29, 2025.

Signing Authority

This document of the Drug Enforcement Administration was signed on December 20, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2024–31324 Filed 12–27–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 24–52]

Maria Dewitt, N.P.; Decision and Order

On June 21, 2024, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Maria Dewitt, N.P. (Respondent). OSC, at 1, 3. The OSC proposed the revocation of Respondent’s DEA Certificate of Registration No. MD7143960, at the registered address of 9038 High Branch, San Antonio, Texas. *Id.* at 1. The OSC alleged that Respondent’s DEA registration should be revoked because Respondent is “without authority to handle controlled substances in the State of Texas, the state in which [she is] registered with DEA.” *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

On June 25, 2024, Respondent requested a hearing and filed an Answer to the OSC.¹ On June 28, 2024, the Government filed a Notice of Filing of Evidence and Motion for Summary Disposition, which Respondent opposed.² On August 2, 2024, Administrative Law Judge Teresa A. Wallbaum (the ALJ) granted the Government’s Motion for Summary Disposition and recommended the revocation of Respondent’s registration, finding that because Respondent lacks state authority to handle controlled substances in Texas, the state in which she is registered with DEA, “[t]here is no genuine issue of material fact in this case.” Order Granting the Government’s Motion for Summary Disposition, and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (RD), at 8–9. Respondent did not file exceptions to the RD.³

Having reviewed the entire record, the Agency adopts and hereby incorporates by reference the entirety of the ALJ’s rulings, findings of fact, conclusions of law, and recommended sanction as found in the RD and summarizes and expands upon portions thereof herein.

Findings of Fact

The Government has alleged that Respondent lacks a prescriptive authority delegation agreement with a physician, which is required for a Texas advanced practice registered nurse to handle controlled substances. RD, at 4, 7–8.⁴ According to Texas online records, of which the Agency takes official notice, Respondent does not currently have a prescriptive authority delegation agreement with a physician.⁵

¹ Respondent’s June 25, 2024, hearing request was an amended version of an initial document filed on June 24, 2024. Respondent also submitted an amended version of her Answer on the same day of its initial filing, June 25, 2024.

² *See* Respondent’s Response to Government’s Motion for Summary Disposition and Request for Hearing (Opposition).

³ On August 5, 2024, Respondent filed a letter, dated August 2, 2024, seeking to appeal the ALJ’s Recommended Decision; however, in this letter, Respondent did not present any additional arguments for the Agency to consider.

⁴ *See also* Government’s Notice of Filing of Evidence and Motion for Summary Disposition, Exhibit (GX) 2.

⁵ Under the Administrative Procedure Act, an agency “may take official notice of facts at any stage in a proceeding—even in the final decision.” United States Department of Justice, Attorney General’s Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), “[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.” Accordingly, Respondent may dispute the Agency’s finding by

Continued

⁵ This rule derives from the text of two provisions of the CSA. First, Congress defined the term “practitioner” to mean “a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. 823(g)(1). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g.*, *James L. Hooper, M.D.*, 76 FR at 71371–72; *Sheran Arden Yeates, M.D.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51104, 51105 (1993); *Bobby Watts, M.D.*, 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton, M.D.*, 43 FR at 27617.

Texas Medical Board, Healthcare Provider Search, <https://profile.tmb.state.tx.us/Search.aspx> (last visited date of signature of this Order). Accordingly, the Agency finds that Respondent is not currently authorized to handle controlled substances in Texas, the state in which she is registered with the DEA.⁶

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (CSA) “upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” With respect to a practitioner, DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *Gonzales v. Oregon*, 546 U.S. 243, 270 (2006) (“The Attorney General can register a physician to dispense controlled substances ‘if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.’ . . . The very definition of a ‘practitioner’ eligible to prescribe includes physicians ‘licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices’ to dispense controlled substances. § 802(21).”). The Agency has applied these principles consistently. *See, e.g., James L. Hooper, M.D.*, 76 FR 71371, 71372 (2011), *pet. for rev. denied*, 481 F. App’x 826 (4th

Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27616, 27617 (1978).⁷

According to Texas statute, “dispense” means “the delivery of a controlled substance in the course of professional practice or research, by a practitioner or person acting under the lawful order of a practitioner, to an ultimate user or research subject. The term includes the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for delivery.” Tex. Health & Safety Code Ann. § 481.002(12) (2024). Further, a “practitioner” includes “an advanced practice registered nurse or physician assistant to whom a physician has delegated the authority to prescribe or order a drug or device” *Id.* § 481.002(39)(D). Texas statute provides that “[a] physician may delegate to an advanced practice registered nurse or physician assistant, acting under adequate physician supervision, the act of prescribing or ordering a drug or device as authorized through a prescriptive authority agreement between the physician and the advanced practice registered nurse or physician assistant, as applicable.” Tex. Occ. Code Ann. § 157.0512(a) (2024).

Here, the undisputed evidence in the record is that Respondent lacks authority to handle controlled substances in Texas because she does not have a prescriptive authority delegation agreement with a physician. As discussed above, a Texas advanced practice registered nurse must have a prescriptive authority delegation agreement with a physician to dispense controlled substances in Texas. Thus, because Respondent lacks authority to handle controlled substances in Texas, Respondent is not eligible to maintain a DEA registration. RD, at 8. Accordingly,

the Agency will order that Respondent’s DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. MD7143960 issued to Maria Dewitt, N.P. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Maria Dewitt, N.P., to renew or modify this registration, as well as any other pending application of Maria Dewitt, N.P., for additional registration in Texas. This Order is effective January 29, 2025.

Signing Authority

This document of the Drug Enforcement Administration was signed on December 20, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2024–31330 Filed 12–27–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Robert Esser, D.D.S.; Decision and Order

On December 18, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Robert Esser, D.D.S., of Erie, Pennsylvania (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 2, at 1, 3. The OSC proposed the revocation of Registrant’s Certificate of Registration No. BE3510193, alleging that Registrant’s registration should be revoked because Registrant is “currently without authority to handle controlled substances in the Commonwealth of Pennsylvania, the state in which [he is] registered with DEA.” *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.gov.

⁶In her Opposition, Respondent argues that there are material facts in dispute that require a hearing, specifically mentioning her state and federal authority to handle controlled substances. Respondent’s Opposition, at 6. However, as the ALJ correctly notes in the RD, Respondent does not actually dispute the material fact that she lacks state and federal authority to handle controlled substances, with Respondent admitting that she has no current prescriptive authority delegation agreement with a physician. RD, at 9; Respondent’s Opposition, at 2, 11. The Agency also agrees with the ALJ’s finding that the other facts in dispute, such as Respondent’s address, are immaterial and not dispositive to the adjudication of the current matter. RD, at 9 n.7 (citing *Michael Jones, M.D.*, 86 FR 20728, 20729 (2021)).

⁷This rule derives from the text of two provisions of the CSA. First, Congress defined the term “practitioner” to mean “a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. 823(g)(1). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper, M.D.*, 76 FR at 71371–72; *Sheran Arden Yeates, M.D.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51104, 51105 (1993); *Bobby Watts, M.D.*, 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton*, 43 FR at 27617.

The OSC notified Registrant of his right to file a written request for hearing, and that if he failed to file such a request, he would be deemed to have waived his right to a hearing and be in default. *Id.* (citing 21 CFR 1301.43). Here, Registrant did not request a hearing, RFAA, at 2.¹ “A default, unless excused, shall be deemed to constitute a waiver of the [registrant’s] right to a hearing and an admission of the factual allegations of the [OSC].” 21 CFR 1301.43(e).

Further, “[i]n the event that a registrant . . . is deemed to be in default . . . DEA may then file a request for final agency action with the Administrator, along with a record to support its request. In such circumstances, the Administrator may enter a default final order pursuant to [21 CFR] § 1316.67.” *Id.* § 1301.43(f)(1). Here, the Government has requested final agency action based on Registrant’s default pursuant to 21 CFR 1301.43(c), (f), 1301.46. RFAA, at 3; *see also* 21 CFR 1316.67.

Findings of Fact

The Agency finds that, in light of Registrant’s default, the factual allegations in the OSC are admitted. According to the OSC, on October 20, 2022, the Pennsylvania State Board of Dentistry suspended Registrant’s Pennsylvania dental license. RFAAX 2, at 2. According to Pennsylvania online records, of which the Agency takes official notice, Registrant’s Pennsylvania dental license remains suspended.²

¹ Based on the Government’s submissions in its RFAA dated March 4, 2024, the Agency finds that service of the OSC on Registrant was adequate. Specifically, the included Declaration from a DEA Diversion Investigator (DI) indicates that on January 3, 2024, the DI emailed a copy of the OSC to Registrant’s registered email address and received confirmation that the email was successfully delivered. RFAAX 3, at 2, Attachment B; *Mohammed S. Aljanaby, M.D.*, 82 FR 34552, 34552 (2017) (finding that service by email satisfies due process where the email is not returned as undeliverable and other methods have been unsuccessful). On December 28, 2023, the DI had attempted in-person service of the OSC at Registrant’s registered address, and after receiving no response, left a business card on the premises. RFAAX 3, at 2. Further, on January 3, 2024, DEA had mailed a copy of the OSC to Registrant’s registered address via certified mail, but the mailing was returned. *Id.* at 2, Attachment A.

² Under the Administrative Procedure Act, an agency “may take official notice of facts at any stage in a proceeding—even in the final decision.” United States Department of Justice, Attorney General’s Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), “[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.” Accordingly, Registrant may dispute the Agency’s finding by filing a properly supported motion for

Pennsylvania Licensing System Verification Service, <https://www.pals.pa.gov/#!/page/search> (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not licensed to practice dentistry in Pennsylvania, the state in which he is registered with DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under 21 U.S.C. 823 “upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” With respect to a practitioner, DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *Gonzales v. Oregon*, 546 U.S. 243, 270 (2006) (“The Attorney General can register a physician to dispense controlled substances ‘if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.’ . . . The very definition of a ‘practitioner’ eligible to prescribe includes physicians ‘licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices’ to dispense controlled substances. § 802(21).”). The Agency has applied these principles consistently. *See, e.g., James L. Hooper, M.D.*, 76 FR 71371, 71372 (2011), *pet. for rev. denied*, 481 F. App’x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27616, 27617 (1978).³

reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to the DEA Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.gov.

³ This rule derives from the text of two provisions of the Controlled Substances Act (CSA). First, Congress defined the term “practitioner” to mean “a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. 823(g)(1). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction whenever he is no longer

According to Pennsylvania statute, “dispense” means “to deliver a controlled substance, other drug or device to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare such item for that delivery.” 35 Pa. Stat. and Cons. Stat. Ann. section 780–102(b) (West 2024). Further, a “practitioner” means “a physician . . . dentist . . . or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance, other drug or device in the course of professional practice or research in the Commonwealth of Pennsylvania.” *Id.*

Here, the undisputed evidence in the record is that Registrant lacks authority to practice dentistry in Pennsylvania. As discussed above, an individual must be a licensed practitioner to dispense a controlled substance in Pennsylvania. Thus, because Registrant lacks authority to practice dentistry in Pennsylvania and, therefore, is not authorized to handle controlled substances in Pennsylvania, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant’s DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. BE3510193 issued to Robert Esser, D.D.S. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Robert Esser, D.D.S., to renew or modify this registration, as well as any other pending application of Robert Esser, D.D.S., for additional registration in Pennsylvania. This Order is effective January 29, 2025.

Signing Authority

This document of the Drug Enforcement Administration was signed on December 20, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal

authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper*, 76 FR 71371–72; *Sheran Arden Yeates, D.O.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci, D.O.*, 58 FR 51104, 51105 (1993); *Bobby Watts, D.O.*, 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton*, 43 FR 27617.

Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,
Federal Register Liaison Officer, Drug Enforcement Administration.
[FR Doc. 2024–31318 Filed 12–27–24; 8:45 am]
BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE
Drug Enforcement Administration

[Docket No. DEA–1475]

Importer of Controlled Substances Application: Siegfried USA, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Siegfried USA, LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before January 29, 2025. Such persons may also file a written request for a hearing on the application on or before January 29, 2025.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be

aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA **Federal Register** Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on November 20, 2024, Siegfried USA, LLC, 33 Industrial Park Road, Pennsville, New Jersey 08070, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Phenylacetone	8501	II
Opium, Raw	9600	II
Poppy Straw Concentrate	9670	II

The company plans to import the listed controlled substances to manufacture bulk Active Pharmaceuticals Ingredients for distribution to its customers. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant’s business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration approved or non-approved finished dosage forms for commercial sale.

Matthew Strait,
Deputy Assistant Administrator.
[FR Doc. 2024–31301 Filed 12–27–24; 8:45 am]
BILLING CODE P

DEPARTMENT OF JUSTICE
Drug Enforcement Administration

Matthew Okeke, M.D.; Decision and Order

On February 14, 2024, the Drug Enforcement Administration (DEA or Government) issued an Order to Show

Cause (OSC) to Matthew Okeke, M.D., of Las Vegas, Nevada (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 1, at 1, 3. The OSC proposed the revocation of Registrant’s Certificate of Registration No. FO4173845, alleging that Registrant’s registration should be revoked because Registrant is “currently without authority to handle controlled substances in Nevada, the state in which [he is] registered with DEA.” *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

The OSC notified Registrant of his right to file a written request for hearing, and that if he failed to file such a request, he would be deemed to have waived his right to a hearing and be in default. *Id.* (citing 21 CFR1301.43). Here, Registrant did not request a hearing. RFAA, at 2.¹ “A default, unless

excused, shall be deemed to constitute a waiver of the registrant’s/applicant’s right to a hearing and an admission of the factual allegations of the [OSC].” 21 CFR 1301.43(e).

Further, “[i]n the event that a registrant . . . is deemed to be in default . . . DEA may then file a request for final agency action with the Administrator, along with a record to support its request. In such circumstances, the Administrator may enter a default final order pursuant to [21 CFR] § 1316.67.” *Id.* § 1301.43(f)(1). Here, the Government has requested

also id., Attachments D–E. Finally, on February 28, 2024, the DI left another copy of the OSC at Registrant’s residential address. *Id.* at 2–3. The Agency finds that Registrant was successfully served the OSC by email on February 26, 2024, as the emails to Registrant’s registered email address and to Registrant’s attorney were not returned as undeliverable. *Mohammed S. Aljanaby, M.D.*, 82 FR 34,552, 34,552 (2017) (finding that service by email satisfies due process where the email is not returned as undeliverable and other methods have been unsuccessful). The Agency finds that the DI’s efforts to serve Registrant by other means were “reasonably calculated, under all the circumstances, to apprise [Registrant] of the pendency of the action.” *Jones v. Flowers*, 547 U.S. 220, 226 (2006) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). Therefore, due process notice requirements have been satisfied.

¹ Based on the Government’s submissions in its RFAA dated April 16, 2024, the Agency finds that service of the OSC on Registrant was adequate. The included declaration from a DEA Diversion Investigator (DI) indicates that on February 26, 2024, the DI left a copy of the OSC at Registrant’s registered address. RFAAX 2, at 2. On the same date, the DI emailed a copy of the OSC to Registrant’s registered email address and to Registrant’s attorney. *Id.* at 2; *see also id.*, Attachment C. On February 27, 2024, the OSC was mailed to Registrant’s residential address, with delivery confirmed on March 2, 2024. *Id.* at 2; *see*

final agency action based on Registrant's default pursuant to 21 CFR 1301.43(c), (f), 1301.46. RFAA, at 1; *see also* 21 CFR 1316.67.

Findings of Fact

The Agency finds that, in light of Registrant's default, the factual allegations in the OSC are admitted. According to the OSC, Registrant's Nevada medical license is inactive. RFAAX 1, at 1. Further, on January 17, 2024, Registrant's Nevada controlled substance registration was revoked. *Id.* at 2. According to Nevada online records, of which the Agency takes official notice, Registrant's Nevada medical license and Nevada controlled substance registration are currently listed as "Inactive-Probation" and "Inactive" respectively.² Nevada State Board of Medical Examiners Licensee Search, <https://nsbme.us.thentiacloud.net/webs/nsbme/register> (last visited date of signature of this Order); Nevada State Board of Pharmacy License Verification, <https://online.nvbop.org/#/verifylicense> (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not licensed to practice medicine nor to handle controlled substances in Nevada, the state in which he is registered with DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under 21 U.S.C. 823 "upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances."

With respect to a practitioner, DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining

a practitioner's registration. *Gonzales v. Oregon*, 546 U.S. 243, 270 (2006) ("The Attorney General can register a physician to dispense controlled substances 'if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.' . . . The very definition of a 'practitioner' eligible to prescribe includes physicians 'licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices' to dispense controlled substances. § 802(21)."). The Agency has applied these principles consistently. *See, e.g., James L. Hooper, M.D.*, 76 FR 71371, 71372 (2011), *pet. for rev. denied*, 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27616, 27617 (1978).³

According to Nevada statute, "[e]very practitioner or other person who dispenses any controlled substance within th[e] State or who proposes to engage in the dispensing of any controlled substance within th[e] State shall obtain biennially a registration issued by the [Nevada State Board of Pharmacy] in accordance with its regulations." Nev. Rev. Stat. § 453.226(1) (2023). Further, according to Nevada statute, "dispense" means "to deliver a controlled substance to an ultimate user, patient or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for that delivery." *Id.* at § 453.056(1).

Here, the undisputed evidence in the record is that Registrant lacks authority to dispense controlled substances in Nevada because his Nevada controlled substance registration is inactive. As discussed above, an individual must

³ This rule derives from the text of two provisions of the CSA. First, Congress defined the term "practitioner" to mean "a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice." 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that "[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices." 21 U.S.C. 823(g)(1). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper, M.D.*, 76 FR at 71,371–72; *Sheran Arden Yeates, M.D.*, 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 FR 11,919, 11,920 (1988); *Frederick Marsh Blanton, M.D.*, 43 FR at 27,617.

hold a Nevada controlled substance registration to dispense a controlled substance in Nevada. Thus, because Registrant lacks authority to handle controlled substances in Nevada, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant's DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. FO4173845, issued to Matthew Okeke, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Matthew Okeke, M.D., to renew or modify this registration, as well as any other pending application of Matthew Okeke, M.D., for additional registration in Nevada. This Order is effective January 29, 2025.

Signing Authority

This document of the Drug Enforcement Administration was signed on December 20, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2024–31325 Filed 12–27–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Kevin Petersen, M.D.; Decision and Order

On November 22, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Kevin Petersen, M.D., of Las Vegas, Nevada (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 2, at 1, 3. The OSC proposed the revocation of Registrant's Certificate of Registration No. BP0967818, alleging that Registrant's registration should be revoked because

² Under the Administrative Procedure Act, an agency "may take official notice of facts at any stage in a proceeding—even in the final decision." United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), "[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary." Accordingly, Registrant may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to the DEA Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.gov.

Registrant is “currently without authority to prescribe, administer, dispense, or otherwise handle controlled substances in the State of Nevada, the state in which [he is] registered with DEA.” *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).¹

The OSC notified Registrant of his right to file a written request for hearing, and that if he failed to file such a request, he would be deemed to have waived his right to a hearing and be in default. *Id.* (citing 21 CFR 1301.43). Here, Registrant did not request a hearing. RFAA, at 3.² “A default, unless excused, shall be deemed to constitute a waiver of the registrant’s/applicant’s right to a hearing and an admission of the factual allegations of the [OSC].” 21 CFR 1301.43(e).

Further, “[i]n the event that a registrant . . . is deemed to be in default . . . DEA may then file a request for final agency action with the Administrator, along with a record to support its request. In such circumstances, the Administrator may enter a default final order pursuant to [21 CFR] § 1316.67.” *Id.* § 1301.43(f)(1). Here, the Government has requested final agency action based on Registrant’s default pursuant to 21 CFR 1301.43(c),

¹ According to Agency records, Registrant’s registration expired on March 31, 2024. The fact that a registrant allows his registration to expire during the pendency of an OSC does not impact the Agency’s jurisdiction or prerogative under the Controlled Substances Act (CSA) to adjudicate the OSC to finality. *Jeffrey D. Olsen, M.D.*, 84 FR 68474, 68476–79 (2019).

² Based on the Government’s submissions in its RFAA dated March 15, 2024, the Agency finds that service of the OSC on Registrant was adequate. The included declaration from the DEA Diversion Investigator (DI) indicates that on November 27, 2023, under the belief that Registrant no longer lived in Nevada, the DI sent a copy of the OSC to DEA’s California Riverside Office for DEA investigators from that office to attempt to personally serve Registrant with a copy of the OSC at two California addresses associated with Registrant. RFAAX 1, at 1. Registrant was not present at either California address. *Id.* On November 30, 2023, the DI sent copies of the OSC, via certified mail, to three different addresses associated with Registrant, including two in California and one in Nevada. *Id.* at 2. On or about December 13, 2023, the DI received all three certified mailings back as undeliverable. *Id.* Finally, on or about January 30, 2024, the DI sent a copy of the OSC via email to two email addresses Registrant previously provided to DEA. *Id.* The Agency finds that Registrant was successfully served the OSC by email and that the DI’s efforts to serve Registrant by other means were “reasonably calculated, under all the circumstances, to apprise [Registrant] of the pendency of the action.” *Jones v. Flowers*, 547 U.S. 220, 226 (2006) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)); see also *Mohammed S. Aljanaby, M.D.*, 82 FR 34552, 34552 (2017) (finding that service by email satisfies due process where the email is not returned as undeliverable and other methods have been unsuccessful). Therefore, due process notice requirements have been satisfied.

(f), 1301.46. RFAA, at 1; see also 21 CFR 1316.67.

Findings of Fact

The Agency finds that, in light of Registrant’s default, the factual allegations in the OSC are admitted. According to the OSC, Registrant’s Nevada medical license expired on June 30, 2023. RFAAX 1, at 2. Further, according to the OSC, Registrant’s Nevada controlled substance license was suspended and set to expire on October 31, 2024. *Id.* According to Nevada online records, of which the Agency takes official notice,³ Registrant’s Nevada medical license is revoked. Nevada State Board of Medical Examiners Licensee Search, <https://nsbme.us.thenticcloud.net/webs/nsbme/register/#> (last visited date of signature of this Order).⁴

Accordingly, the Agency finds that Registrant is not licensed to practice medicine in Nevada, the state in which he is registered with DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under 21 U.S.C. 823 “upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” With respect to a practitioner, DEA has also long held that the possession of

³ Under the Administrative Procedure Act, an agency “may take official notice of facts at any stage in a proceeding—even in the final decision.” United States Department of Justice, Attorney General’s Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), “[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.” Accordingly, Registrant may dispute the Agency’s finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to the DEA Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.gov.

⁴ According to Nevada online records, Registrant’s Nevada controlled substance license referenced in the OSC is revoked; however, there is an additional Nevada controlled substance license, not referenced in the OSC, that is active and is recorded under the same name as Registrant. Nevada State Board of Pharmacy License Verification, <https://online.nvbop.org/#/verifylicense> (last visited date of signature of this Order). Nonetheless, because Registrant’s Nevada medical license is undoubtedly revoked, even if this active Nevada controlled substance license belongs to Registrant, Registrant would still lack authority to handle controlled substances in Nevada. See *infra* (Discussion).

authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *Gonzales v. Oregon*, 546 U.S. 243, 270 (2006) (“The Attorney General can register a physician to dispense controlled substances ‘if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.’ . . . The very definition of a ‘practitioner’ eligible to prescribe includes physicians ‘licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices’ to dispense controlled substances. § 802(21).”). The Agency has applied these principles consistently. See, e.g., *James L. Hooper, M.D.*, 76 FR 71371, 71372 (2011), *pet. for rev. denied*, 481 F. App’x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27616, 27617 (1978).⁵

According to Nevada statute, “dispense” means “to deliver a controlled substance to an ultimate user, patient or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.” Nev. Rev. Stat. § 453.056(1) (2023). Further, a “practitioner” includes a “physician . . . who holds a license to practice his or her profession in [Nevada] and is registered pursuant to [the Nevada Uniform Controlled Substances Act].” *Id.* at § 453.126(1).

Here, the undisputed evidence in the record is that Registrant lacks authority to practice medicine in Nevada. As discussed above, an individual must be a licensed practitioner to dispense a

⁵ This rule derives from the text of two provisions of the CSA. First, Congress defined the term “practitioner” to mean “a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. 823(g)(1). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. See, e.g., *James L. Hooper, M.D.*, 76 FR at 71,371–72; *Sheran Arden Yeates, M.D.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51104, 51105 (1993); *Bobby Watts, M.D.*, 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton, M.D.*, 43 FR at 27617.

controlled substance in Nevada. Thus, because Registrant lacks authority to practice medicine in Nevada, and, therefore, is not authorized to handle controlled substances in Nevada, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant's DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. BP0967818 issued to Kevin Petersen, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Kevin Petersen, M.D., to renew or modify this registration, as well as any other pending application of Kevin Petersen, M.D., for additional registration in Nevada. This Order is effective January 29, 2025.

Signing Authority

This document of the Drug Enforcement Administration was signed on December 20, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2024-31323 Filed 12-27-24; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 24-67]

Jason Lee Ray, PA-C; Decision and Order

On August 22, 2024, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Jason Lee Ray, PA-C, of Marbleton, Wyoming (Respondent). OSC, at 1, 4. The OSC proposed the revocation of Respondent's DEA Certificate of Registration No. MR4038293, alleging that Respondent's DEA registration should be revoked

because Respondent is "without authority to prescribe, administer, dispense, or otherwise handle controlled substances in the State of Wyoming, the state in which [he is] registered with DEA." *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

On September 4, 2024, Respondent requested a hearing and filed an Answer. On September 11, 2024, the Government filed a Motion for Summary Disposition, to which Respondent did not respond. On September 20, 2024, Administrative Law Judge Paul E. Soeffing (the ALJ) granted the Government's Motion for Summary Disposition and recommended the revocation of Respondent's registration, finding that because Respondent lacks state authority to handle controlled substances in Wyoming, the state in which he is registered with DEA, "there is no other fact of consequence for th[e] tribunal to decide." Order Granting the Government's Motion for Summary Disposition, and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (RD), at 5-6. Respondent did not file exceptions to the RD.

Having reviewed the entire record, the Agency adopts and hereby incorporates by reference the entirety of the ALJ's rulings, findings of fact, conclusions of law, and recommended sanction as found in the RD and summarizes and expands upon portions thereof herein.

Findings of Fact

On February 15, 2024, the Wyoming Board of Medicine suspended Respondent's Wyoming physician assistant license. RD, at 3.¹ According to Wyoming online records, of which the Agency takes official notice, Respondent's Wyoming physician assistant license remains suspended.²

¹ See also Government's Submission of Evidence and Motion for Summary Disposition (Motion for Summary Disposition), Exhibit 2, Attachment C, at 11. The Agency notes that there is some inconsistency regarding the naming of the attachments included with the Government's Exhibit 2 (the submitted Declaration from a DEA Diversion Investigator) when comparing how the attachments are named in the Declaration versus the Motion for Summary Disposition itself; however, this inconsistency does not appear to be substantive.

² Under the Administrative Procedure Act, an agency "may take official notice of facts at any stage in a proceeding—even in the final decision." United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), "[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary." Accordingly,

Wyoming Board of Medicine, Physician and PA License Lookup, <https://wyomedboard.wyo.gov/consumers/license-lookup> (last visited date of signature of this Order). Accordingly, the Agency finds that Respondent is not currently licensed to practice as a physician assistant in Wyoming, the state in which he is registered with DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (CSA) "upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances." With respect to a practitioner, DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *Gonzales v. Oregon*, 546 U.S. 243, 270 (2006) ("The Attorney General can register a physician to dispense controlled substances 'if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.' . . . The very definition of a 'practitioner' eligible to prescribe includes physicians 'licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices' to dispense controlled substances. § 802(21)."). The Agency has applied these principles consistently. See, e.g., *James L. Hooper, M.D.*, 76 FR 71371, 71372 (2011), *pet. for rev. denied*, 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27616, 27617 (1978).³

Respondent may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.gov.

³ This rule derives from the text of two provisions of the CSA. First, Congress defined the term "practitioner" to mean "a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice." 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that "[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he

Continued

Under Wyoming law, “dispense” means “to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.” Wyo. Stat. Ann. section 35–7–1002(a)(vii) (2024). Further, a “practitioner” includes “[a] physician . . . or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in th[e] state.” *Id.* section 35–7–1002(a)(xx)(A).

Here, the undisputed evidence in the record is that Respondent currently lacks authority to practice as a physician assistant in Wyoming. As discussed above, a physician assistant must be a licensed practitioner to dispense controlled substances in Wyoming. Thus, because Respondent currently lacks authority to practice as a physician assistant in Wyoming and, therefore, is not currently authorized to handle controlled substances in Wyoming, Respondent is not eligible to maintain a DEA registration. RD, at 4–6. Accordingly, the Agency will order that Respondent’s DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. MR4038293 issued to Jason Lee Ray, PA–C. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Jason Lee Ray, PA–C, to renew or modify this registration, as well as any other pending application of Jason Lee Ray, PA–C, for additional registration in Wyoming. This Order is effective January 29, 2025.

Signing Authority

This document of the Drug Enforcement Administration was signed on December 20, 2024, by Administrator Anne Milgram. That document with the

practices.” 21 U.S.C. 823(g)(1). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper, M.D.*, 76 FR 71371–72; *Sheran Arden Yeates, M.D.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51104, 51105 (1993); *Bobby Watts, M.D.*, 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton, M.D.*, 43 FR 27617.

original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2024–31317 Filed 12–27–24; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 24–58]

Shiva Akula, M.D.; Decision and Order

On June 24, 2024, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Shiva Akula, M.D., of New Orleans, Louisiana (Respondent). OSC, at 1, 4. The OSC proposed the revocation of Respondent’s DEA Certificate of Registration No. BA7786013, alleging that Respondent’s DEA registration should be revoked because Respondent is “without authority to prescribe, administer, dispense, or otherwise handle controlled substances in the State of Louisiana, the state in which [he is] registered with DEA.” *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

By letter dated July 29, 2024, (filed August 7, 2024) Respondent requested a hearing. On August 29, 2024, the Government filed a Motion for Summary Disposition, to which Respondent did not respond. On September 26, 2024, Administrative Law Judge Teresa A. Wallbaum (the ALJ) granted the Government’s Motion for Summary Disposition and recommended the revocation of Respondent’s registration, finding that because Respondent lacks state authority to handle controlled substances in Louisiana, the state in which he is registered with DEA, “[t]here is no genuine issue of material fact in this case.” Order Granting the Government’s Motion for Summary Disposition, and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (RD), at 5.

Respondent did not file exceptions to the RD.¹

Having reviewed the entire record, the Agency adopts and hereby incorporates by reference the entirety of the ALJ’s rulings, findings of fact, conclusions of law, and recommended sanction as found in the RD and summarizes and expands upon portions thereof herein.

Findings of Fact

On January 12, 2024, the Louisiana State Board of Medical Examiners suspended Respondent’s Louisiana medical license. RD, at 4.² On March 31, 2024, Respondent’s Louisiana medical license expired. RD, at 3. On June 1, 2024, Respondent’s Louisiana controlled substance license expired. *Id.* at 4.

According to Louisiana online records, of which the Agency takes official notice, Respondent’s Louisiana medical license remains suspended.³ Louisiana State Board of Medical Examiners, License Verification, <https://online.lasbme.org/#/verifylicense> (last visited date of signature of this Order). Further, Respondent’s Louisiana controlled substance license status is “[l]apsed; not valid for practice.” Louisiana Board of Pharmacy, License Lookup, <https://secure.pharmacy.la.gov/Lookup/LicenseLookup.aspx> (last visited date of signature of this Order).

Accordingly, the Agency finds that Respondent is not currently licensed to practice medicine nor to handle controlled substances in Louisiana, the state in which he is registered with DEA.

¹ By letter dated September 18, 2024, (filed October 7, 2024) Respondent requested a 60-day extension to respond to the RD due to the pending appeal of an underlying conviction. Respondent’s Request for Extension to File Response to Pending Action on DEA License (Respondent’s Extension Request), at 1. The request was denied.

² *See also* Government’s Notice of Filing of Evidence and Motion for Summary Disposition, Exhibit 1.

³ Under the Administrative Procedure Act, an agency “may take official notice of facts at any stage in a proceeding—even in the final decision.” United States Department of Justice, Attorney General’s Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), “[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.” Accordingly, Respondent may dispute the Agency’s finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.gov.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (CSA) “upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” With respect to a practitioner, DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *Gonzales v. Oregon*, 546 U.S. 243, 270 (2006) (“The Attorney General can register a physician to dispense controlled substances ‘if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.’ . . . The very definition of a ‘practitioner’ eligible to prescribe includes physicians ‘licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices’ to dispense controlled substances. § 802(21).”). The Agency has applied these principles consistently. *See, e.g., James L. Hooper, M.D.*, 76 FR 71371, 71372 (2011), *pet. for rev. denied*, 481 F. App’x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27616, 27617 (1978).⁴

Under Louisiana statute, “dispense” means “to deliver a controlled dangerous substance to the ultimate user or human research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to

prepare the substance for such delivery.” La. Stat. Ann. section 40:961(14) (2024). A “practitioner” means “a physician . . . or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled dangerous substance in the course of professional practice or research in th[e] state.” *Id.* section 40:961(35).

Further, Louisiana statute states that “[e]very person who . . . distributes, procures, possesses, prescribes, or dispenses any controlled dangerous substance within th[e] state . . . shall obtain a controlled dangerous substance license issued by the Louisiana Board of Pharmacy in accordance with the rules and regulations promulgated by the board prior to engaging in such activity.” *Id.* section 40:973(A)(1).

Here, the undisputed evidence in the record is that Respondent currently lacks authority to handle controlled substances in Louisiana because Respondent’s Louisiana medical license is suspended, and Respondent’s Louisiana controlled substance license is lapsed. As discussed above, an individual must be a licensed practitioner and must hold a Louisiana controlled substance license to dispense controlled substances in Louisiana. Thus, because Respondent lacks authority to practice medicine in Louisiana, as well as lacks authority to handle controlled substances in Louisiana, Respondent is not eligible to maintain a DEA registration. RD, at 5–6. Accordingly, the Agency will order that Respondent’s DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. BA7786013 issued to Shiva Akula, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Shiva Akula, M.D., to renew or modify this registration, as well as any other pending application of Shiva Akula, M.D., for additional registration in Louisiana. This Order is effective January 29, 2025.

Signing Authority

This document of the Drug Enforcement Administration was signed on December 20, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal

Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2024–31320 Filed 12–27–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1463]

Importer of Controlled Substances Application: Curia New York, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Curia New York, Inc. has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants, therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before January 29, 2025. Such persons may also file a written request for a hearing on the application on or before January 29, 2025.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement

⁴ This rule derives from the text of two provisions of the CSA. First, Congress defined the term “practitioner” to mean “a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. 823(g)(1). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper, M.D.*, 76 FR 71371–72; *Sheran Arden Yeates, M.D.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51104, 51105 (1993); *Bobby Watts, M.D.*, 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton, M.D.*, 43 FR 27617.

Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator,

8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on November 13, 2024,

Curia New York, Inc., 33 Riverside Avenue, Rensselaer, New York 12144, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid	2010	I

The company plans to import the listed controlled substances for bulk manufacturing into other controlled substances to be distributed to their customers. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration approved or non-approved finished dosage forms for commercial sale.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2024–31292 Filed 12–27–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Samreen Riaz, D.D.S.; Decision and Order

On February 27, 2024, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Samreen Riaz, D.D.S., of Hawthorne, California (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 2, at 1, 3. The OSC proposed the revocation of Registrant's Certificate of Registration No. FR4257792, alleging that Registrant's registration should be revoked because Registrant is "currently without authority to prescribe, administer, dispense, or otherwise handle controlled substances in the State of California, the state in which [she is] registered with DEA." *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

The OSC notified Registrant of her right to file a written request for hearing, and that if she failed to file such a request, she would be deemed to have waived her right to a hearing and be in default. *Id.* (citing 21 CFR 1301.43). Here, Registrant did not request a

hearing. RFAA, at 3.¹ "A default, unless excused, shall be deemed to constitute a waiver of the [registrant's] right to a hearing and an admission of the factual allegations of the [OSC]." 21 CFR 1301.43(e).

Further, "[i]n the event that a registrant . . . is deemed to be in default . . . DEA may then file a request for final agency action with the Administrator, along with a record to support its request. In such circumstances, the Administrator may enter a default final order pursuant to [21 CFR] § 1316.67." *Id.* § 1301.43(f)(1). Here, the Government has requested final agency action based on Registrant's default pursuant to 21 CFR 1301.43(c), (f), 1301.46. RFAA, at 1; *see also* 21 CFR 1316.67.

Findings of Fact

The Agency finds that, in light of Registrant's default, the factual allegations in the OSC are admitted. According to the OSC, effective September 1, 2023, the Dental Board of

California revoked Registrant's California dental license. RFAAX 2, at 2. According to California online records, of which the Agency takes official notice, Registrant's California dental license remains revoked.² California DCA License Search, <https://search.dca.ca.gov> (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not licensed to practice as a dentist in California, the state in which she is registered with DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under 21 U.S.C. 823 "upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances." With respect to a practitioner, DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *Gonzales v. Oregon*, 546 U.S. 243, 270 (2006) ("The Attorney General can register a physician to dispense controlled substances 'if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.' . . . The very definition of a 'practitioner' eligible to

¹ Based on the Government's submissions in its RFAA dated May 23, 2024, the Agency finds that service of the OSC on Registrant was adequate. The included declaration from a DEA Diversion Investigator (DI) indicates that on March 12, 2024, the DI attempted to serve Registrant with the OSC at Registrant's registered address, a clinic. RFAAX 1, at 1. However, the clinic manager who was at the registered location claimed to not know Registrant, despite working at the location for nearly five years. *Id.* The DI then left several voicemails with the clinic's Human Resources department, which went unanswered. *Id.* at 2. On March 19, 2024, the DI mailed a copy of the OSC to a different address Registrant had on file with DEA; however, as of April 5, 2024, the mailing was never claimed by Registrant and was scheduled to be returned to DEA. *Id.* Finally, on April 5, 2024, the DI emailed a copy of the OSC to Registrant's registered email address. *Id.*; *see also id.*, Attachment A. The DI did not receive any error message in response to the email. *Id.* at 2. Accordingly, the Agency finds that Registrant was successfully served the OSC by email. *Mohammed S. Aljanaby, M.D.*, 82 FR 34552, 34552 (2017) (finding that service by email satisfies due process where the email is not returned as undeliverable and other methods have been unsuccessful). Further, the Agency finds that the DI's efforts to serve Registrant by other means were "reasonably calculated, under all the circumstances, to apprise [Registrant] of the pendency of the action." *Jones v. Flowers*, 547 U.S. 220, 226 (2006) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). Therefore, due process notice requirements have been satisfied.

² Under the Administrative Procedure Act, an agency "may take official notice of facts at any stage in a proceeding—even in the final decision." United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), "[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary." Accordingly, Registrant may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.gov.

prescribe includes physicians ‘licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices’ to dispense controlled substances. § 802(21).’). The Agency has applied these principles consistently. *See, e.g., James L. Hooper, M.D.*, 76 FR 71,371, 71,372 (2011), *pet. for rev. denied*, 481 F. App’x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27616, 27617 (1978).³

According to California statute, “dispense” means “to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, furnishing, packaging, labeling, or compounding necessary to prepare the substance for that delivery.” Cal. Health & Safety Code section 11010 (West 2024). Further, a “practitioner” means a person “licensed, registered, or otherwise permitted, to distribute, dispense, conduct research with respect to, or administer, a controlled substance in the course of professional practice or research in [the] state.” *Id.* section 11026(c).

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice as a dentist in California. As discussed above, an individual must be a licensed practitioner to dispense a controlled substance in California. Thus, because Registrant currently lacks authority to practice as a dentist in California and, therefore, is not currently authorized to handle controlled substances in California, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant’s DEA registration be revoked.

³ This rule derives from the text of two provisions of the CSA. First, Congress defined the term “practitioner” to mean “a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. 823(g)(1). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper, M.D.*, 76 FR 71371–72; *Sheran Arden Yeates, M.D.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51104, 51105 (1993); *Bobby Watts, M.D.*, 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton, M.D.*, 43 FR 27617.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. FR4257792 issued to Samreen Riaz, D.D.S. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Samreen Riaz, D.D.S., to renew or modify this registration, as well as any other pending application of Samreen Riaz, D.D.S., for additional registration in California. This Order is effective January 29, 2025.

Signing Authority

This document of the Drug Enforcement Administration was signed on December 20, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA **Federal Register Liaison Officer** has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2024–31319 Filed 12–27–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Jeffrey W. Young, Jr., N.P.; Decision and Order

On June 8, 2021, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Jeffrey W. Young, Jr., N.P., of Jackson, Tennessee (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 2, at 1, 4. The OSC proposed the revocation of Registrant’s Certificate of Registration No. MY1093424, alleging that Registrant’s registration should be revoked because Registrant is “currently without authority to handle controlled substances in Tennessee, the state in which [he is] registered with DEA.” *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

The OSC notified Registrant of his right to file a written request for hearing, and that if he failed to file such a request, he would be deemed to have waived his right to a hearing and be in

default. *Id.* at 2–3 (citing 21 CFR 1301.43). Here, Registrant did not request a hearing. RFAA, at 2.¹ “A default, unless excused, shall be deemed to constitute a waiver of the registrant’s/applicant’s right to a hearing and an admission of the factual allegations of the [OSC].” 21 CFR 1301.43(e).

Further, “[i]n the event that a registrant . . . is deemed to be in default . . . DEA may then file a request for final agency action with the Administrator, along with a record to support its request. In such circumstances, the Administrator may enter a default final order pursuant to [21 CFR] § 1316.67.” *Id.* § 1301.43(f)(1). Here, the Government has requested final agency action based on Registrant’s default pursuant to 21 CFR 1301.43(e). RFAA, at 1.

Findings of Fact

The Agency finds that, in light of Registrant’s default, the factual allegations in the OSC are admitted. According to the OSC, on September 30, 2019, Registrant’s Tennessee registered nurse license and Tennessee advanced practice registered nurse certificate both expired. RFAAX 2, 2. According to Tennessee online records, of which the Agency takes official notice, both Registrant’s Tennessee registered nurse license and Tennessee advanced practice registered nurse certificate are revoked.² NURSUS License Verification Search, <https://www.nursys.com/LQC/LQCSearch.aspx> (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not licensed to practice as a nurse

¹ Based on the Government’s submissions in its RFAA dated June 11, 2024, the Agency finds that service of the OSC on Registrant was adequate. Specifically, the included Declaration from a DEA Diversion Investigator (DI) indicates that on June 14, 2021, a DEA Task Force Officer (TFO) personally served a copy of the OSC to Registrant at the West Tennessee Detention Facility in Mason, Tennessee, where Registrant remained incarcerated. RFAAX 3, at 2–3, Attachment C.

² Under the Administrative Procedure Act, an agency “may take official notice of facts at any stage in a proceeding—even in the final decision.” United States Department of Justice, Attorney General’s Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), “[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.” Accordingly, Registrant may dispute the Agency’s finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to the DEA Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.gov.

practitioner in Tennessee, the state in which he is registered with DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under 21 U.S.C. 823 “upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” With respect to a practitioner, DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *Gonzales v. Oregon*, 546 U.S. 243, 270 (2006) (“The Attorney General can register a physician to dispense controlled substances ‘if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.’ . . . The very definition of a ‘practitioner’ eligible to prescribe includes physicians ‘licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices’ to dispense controlled substances. § 802(21).”). The Agency has applied these principles consistently. See, e.g., *James L. Hooper, M.D.*, 76 FR 71371, 71372 (2011), *pet. for rev. denied*, 481 F. App’x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27616, 27617 (1978).³

According to Tennessee statute, “dispense” means “to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including

the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.” Tenn. Code Ann. § 39–17–402(7) (2024). Further, a “practitioner” means “a physician . . . or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in [the] state.” *Id.* § 39–17–402(23)(A).

Here, the undisputed evidence in the record is that Registrant lacks authority to practice as a nurse practitioner in Tennessee. As discussed above, an individual must be a licensed practitioner to dispense a controlled substance in Tennessee. Thus, because Registrant lacks authority to practice as a nurse practitioner in Tennessee and, therefore, is not authorized to handle controlled substances in Tennessee, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant’s DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. MY1093424, issued to Jeffrey W. Young, Jr., N.P. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Jeffrey W. Young, Jr., N.P., to renew or modify this registration, as well as any other pending application of Jeffrey W. Young, Jr., N.P., for additional registration in Tennessee. This Order is effective January 29, 2025.

Signing Authority

This document of the Drug Enforcement Administration was signed on December 20, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this

document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2024–31329 Filed 12–27–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response Compensation and Liability Act

On December 19, 2024, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Western District of Virginia in the lawsuit entitled *United States and Commonwealth of Virginia, Secretary of Natural and Historic Resources v. FMC Corporation*, Civil Action No. 5:24–CR–108.

The lawsuit was initiated by a complaint filed by the United States and the Commonwealth of Virginia (the “Trustees”) in their capacity as the legally designated trustees for natural resources in Virginia. The complaint alleged, *inter alia*, that the Defendant was liable for damages for injury to, destruction of, or loss of natural resources resulting from the release of hazardous substances at and from the Avtex Fibers, Inc. Site (the “Site”) in Front Royal, Virginia, pursuant to three statutes: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Virginia State Water Control Law, and the Virginia Waste Management Act.

The Consent Decree resolves the claims of the Trustees against the Defendant for a total payment of \$1,674,361. Of this amount, \$1,393,219 will be paid into the United States’ Natural Resource Damages Assessment and Restoration (“NRDAR”) Fund managed by the U.S. Department of the Interior, which will reimburse the Department’s natural resource damages assessment activities and fund projects aimed at restoring the injured natural resources at the Site. The remaining \$281,142 will be paid to the Commonwealth of Virginia for restoration of injured natural resources arising from groundwater contamination at the Site, and to reimburse the Commonwealth’s natural resource damages assessment costs. In addition, as part of the settlement the United States will pay \$2,496,305 into the NRDAR Fund to support restoration projects. This latter amount will resolve the alleged liability of four settling

³ This rule derives from the text of two provisions of the CSA. First, Congress defined the term “practitioner” to mean “a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. 823(g)(1). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. See, e.g., *James L. Hooper, M.D.*, 76 FR at 71371–72; *Sheran Arden Yeates, M.D.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51104, 51105 (1993); *Bobby Watts, M.D.*, 53 FR 11919, 11,920 (1988); *Frederick Marsh Blanton, M.D.*, 43 FR at 27617.

federal agencies—the U.S. Department of Defense, the Department of Commerce, the General Services Administration, and the National Aeronautics and Space Administration—that allegedly contributed to the natural resource damages incurred at and from the Site. In return for these payments, the United States and the Commonwealth will confer on the Defendant and the settling federal agencies covenants not to sue for natural resource damages known or reasonably ascertainable as of the date of lodging of the Consent Decree.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and Commonwealth of Virginia, Secretary of Natural and Historic Resources v. FMC Corporation*, D.J. Ref. No. 90–11–3–10912. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	pubcomment-ees.enrd@usdoj.gov .
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decree/us-et-al-v-fmc-corporation>. If you require assistance accessing the proposed Consent Decree, you may request assistance by email or by mail to the addresses provided above for submitting comments.

Jason A. Dunn,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2024–30882 Filed 12–27–24; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On December 19, 2024, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Eastern District of

Wisconsin in the lawsuit entitled *United States v. The Manitowoc Company, Inc., et al.*, Civil Action No. 2:24–cv–1635.

The United States filed a Complaint, on behalf of the United States Environmental Protection Agency, against The Manitowoc Company, Inc. and its subsidiaries Grove U.S. L.L.C. and Manitowoc Crane Group Germany GMBH, alleging violations of sections 203(a) and 213(d) of the Clean Air Act, 42 U.S.C. 7522(a) and 7547(d), and implementing regulations, by their importation, introduction into commerce, and sale of heavy nonroad construction equipment containing diesel engines that were not certified to model year engine emission standards. The Complaint also alleges violations of labeling, bonding, and reporting requirements and seeks civil penalties and appropriate injunctive relief.

Under the proposed Consent Decree, the Defendants will pay a civil penalty of \$42,600,000 and will complete a project to mitigate harm caused by excess nitrogen oxide and particulate matter emissions from the noncompliant engines.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v. The Manitowoc Company, Inc., et al.*, D.J. Ref. No. 90–5–2–1–12216. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	pubcomment-ees.enrd@usdoj.gov .
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Any comments submitted in writing may be filed by the United States in whole or in part on the public court docket without notice to the commenter.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. If you require assistance accessing the proposed Consent Decree, you may request assistance by email or by mail

to the addresses provided above for submitting comments.

Jason A. Dunn,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2024–30971 Filed 12–27–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

Employment and Training Administration Program Year 2024 Workforce Innovation and Opportunity Act Section 167, National Farmworker Jobs Program Final State Allotments

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This Notice announces final allotments for the National Farmworker Jobs Program (NFJP) Career Services and Training grants for Program Year (PY) 2024, finalizing the preliminary planning estimates provided in a prior **Federal Register** notice.

DATES: The PY 2024 NFJP allotments are effective for the grant period that began July 1, 2024.

ADDRESSES: Questions on this notice can be submitted via email to NFJP@dol.gov.

FOR FURTHER INFORMATION CONTACT:

Steven Rietzke, Chief, Division of National Programs, Tools and Technical Assistance, Office of Workforce Investment, at 202–693–3980. (This is not a toll-free number). If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to Section 182(d) of the Workforce Innovation and Opportunity Act, Prompt Allotment of Funds.

I. Background

The Department is announcing final allotments for the National Farmworker Jobs Program (NFJP) Career Services and Training (CST) grants for Program Year (PY) 2024. Specifically, this notice provides information on the amount of funds available during PY 2024 to state service areas awarded through the PY 2024 Funding Opportunity Announcement (“the FOA”) for the NFJP CST grants (FOA–ETA–24–15). In distributing funds, the Employment and Training Administration (ETA) calculated allotments for CST grantees through an administrative formula. The

allotments are based on the funds appropriated in the Further Consolidated Appropriations Act, 2024, Public Law 118–47.

PY 2024 funding levels are based on the full-year funding levels for the NFJP program in PY 2023 as indicated in **Federal Register** notice 88 FR 31279, May 16, 2023, pro-rated based on the availability of funding for NFJP formula grants in PY 2024. For PY 2024, Congress has provided \$90,134,000 for formula grants (of which \$90,048,000 is available for formula grants after setting aside \$86,000 for program integrity). While Congress appropriated the same amount for formula grants in PY 2023 and PY 2024, ETA is setting aside less funding in PY 2024 for program integrity. Accordingly, as noted above and explained further below, ETA is calculating state allotment amounts by pro-rating the PY 2024 allotment amounts based on the results of the PY 2023 formula and the updated availability of formula funding after set-asides in PY 2024.

In the competition for CST grants, the Department did not receive competitive applications from eligible applicants for some states. The Department did not reopen the competition to seek prospective applicants to provide services in those states. In determining a course of action for those states’ funds, the Department followed the procedures described in the FOA for the competition. Thus, for states where the Department did not receive any competitive applications and did not award an NFJP grant under the PY 2024 competition, the Department instead redistributed the remaining funds among the grants awarded to other state service areas, distributing funds proportionally based on the NFJP allotment formula results for PY 2024.

As background, the PY 2024 appropriation also provides \$6,591,000 for migrant and seasonal farmworker

housing (of which \$6,585,000 was allotted after \$6,000 was set aside for program integrity and of which not less than 70 percent shall be for permanent housing), as well as \$671,000 for other discretionary purposes. The Housing grant allotments are distributed as a result of a separate competition and are not the subject of this Notice.

This notice includes the following sections:

- Section II of this notice provides a discussion of the data used to populate the formula.
- Section III describes the prorated method for allotments for the implementation year starting in PY 2024.
- Section IV provides final state allotments for PY 2024.

II. Description of Data Files and Allotment Formula

The formula’s original methodology is described in the **Federal Register** notice 64 FR 27390, May 19, 1999. In PY 2018, ETA incorporated two modifications to the allotment formula to provide more accurate estimates of each state service area’s relative share of persons eligible for the program. The formula also used updated data from each of the four data files serving as the basis of the formula since 1999. The revised formula methodology is described in the **Federal Register** notice 83 FR 32151, July 11, 2018. In PY 2021, ETA incorporated two modifications to the allotment formula. These modifications are described in **Federal Register** notice 86 FR 32063, June 16, 2021. The **Federal Register** notices are accessible at <https://www.federalregister.gov/>.

Like the PY 2023 appropriation, the PY 2024 appropriation includes language expanding program eligibility to farmworkers who are in families with total family incomes at or below 150 percent of the poverty line (rather than the higher of the poverty line or 70 percent of the lower living standard

income level). Because the PY 2024 allotments will be prorated based on the results of the PY 2023 formula, the PY 2024 allotment results continue to reflect modifications to the formula related to this expansion. ETA will subsequently revise relevant guidance regarding the definition of “low-income individual” as needed if the same expansion of eligibility is not included in subsequent appropriations.

III. Description of the Prorated Method for Allotments

The Department used a prorated method for PY 2024 allotments. For PY 2024, each state service area received a prorated allotment based on their PY 2023 allotment percentage, as applied to the PY 2024 formula funds available. ETA anticipates updating data and reimplementing a staged stop loss/stop gain in PY 2026. ETA will explain its approach to calculating allotments in PY 2026 in a subsequent notice at a later date.

IV. Program Year 2024 Final State Allotments

The allotments set forth in the Table appended to this notice reflect the distribution resulting from the prorated methodology described above, including redistribution of funds remaining after the PY 2024 competition.

For purposes of illustrating the effects of redistribution of funds remaining after the PY 2024 competition, columns 2 and 3 show the state allotments for PY 2024 prorated and PY 2024 prorated including redistribution.

José Javier Rodríguez,
Assistant Secretary, Employment and Training, Labor.

U.S. Department of Labor, Employment and Training Administration, National Farmworker Jobs Program—Career Services and Training Grants

PROGRAM YEAR 2024 ALLOTMENTS TO STATES INCLUDING REDISTRIBUTION OF FUNDS REMAINING AFTER THE PY 2024 COMPETITION

State	PY 2024 Prorated No StopLoss/ StopGain	PY 2024 Prorated Inc Redistribution No StopLoss/ StopGain
Total	\$90,048,000	\$90,048,000
Alabama	801,079	819,254
Alaska		
Arizona	2,635,284	2,695,075
Arkansas	1,306,038	1,335,670
California	23,906,708	24,449,119
Colorado	1,819,809	1,861,098
Connecticut	548,632	561,080
Delaware	169,201	173,040
Dist of Columbia		

PROGRAM YEAR 2024 ALLOTMENTS TO STATES INCLUDING REDISTRIBUTION OF FUNDS REMAINING AFTER THE PY 2024 COMPETITION—Continued

State	PY 2024 Prorated No StopLoss/ StopGain	PY 2024 Prorated Inc Redistribution No StopLoss/ StopGain
Florida	3,267,472	3,341,607
Georgia	1,813,107	1,854,244
Hawaii	247,292	.....
Idaho	2,402,012	2,456,510
Illinois	2,002,152	2,047,578
Indiana	1,345,291	1,375,814
Iowa	1,922,790	1,966,415
Kansas	1,360,937	1,391,815
Kentucky	864,825	884,447
Louisiana	856,583	876,018
Maine	446,602	456,735
Maryland	570,300	583,239
Massachusetts	561,237	.....
Michigan	2,269,521	2,321,013
Minnesota	1,721,621	1,760,682
Mississippi	953,985	975,630
Missouri	1,334,647	1,364,928
Montana	765,549	782,918
Nebraska	1,364,877	1,395,844
Nevada	245,085	250,646
New Hampshire	159,745	.....
New Jersey	842,606	861,724
New Mexico	1,168,767	1,195,285
New York	2,374,154	2,428,020
North Carolina	2,179,822	2,229,279
North Dakota	805,699	823,979
Ohio	1,573,024	1,608,714
Oklahoma	958,478	.....
Oregon	2,415,431	2,470,234
Pennsylvania	1,928,734	1,972,494
Puerto Rico	2,113,276	2,161,223
Rhode Island	70,988	.....
South Carolina	718,900	735,211
South Dakota	728,617	745,148
Tennessee	687,016	702,603
Texas	4,789,203	4,897,864
Utah	715,778	732,018
Vermont	224,069	229,153
Virginia	811,536	829,949
Washington	4,936,614	5,048,619
West Virginia	119,328	122,035
Wisconsin	1,881,508	1,924,197
Wyoming	342,071	349,832

[FR Doc. 2024–31019 Filed 12–27–24; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Request for Earnings Information Report**ACTION:** Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Workers' Compensation Programs (OWCP)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for

review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before January 29, 2025.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

Comments are invited on: (1) whether the collection of information is

necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: The Request for Earnings Information Report gathers information regarding an employee's average weekly wage. This information is needed for determination of compensation benefits in accordance with section 10 of the Longshore and Harbor Workers' Compensation Act. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on September 40, 2024 (89 FR 71935).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OWCP.

Title of Collection: Request for Earnings Information Report.

OMB Control Number: 1240–0025.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 100.

Total Estimated Number of Responses: 100.

Total Estimated Annual Time Burden: 25 hours.

Total Estimated Annual Other Costs Burden: \$3.00.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,
Senior PRA Analyst.

[FR Doc. 2024–31341 Filed 12–27–24; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Mingo Logan Coal, LLC.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before January 29, 2025.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2024–0117 by any of the following methods:

1. *Federal eRulemaking Portal:*

<https://www.regulations.gov>. Follow the instructions for submitting comments for MSHA–2024–0117.

2. *Fax:* 202–693–9441.

3. *Email:* petitioncomments@dol.gov.

4. *Regular Mail or Hand Delivery:*

MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk, 4th Floor West. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), Petitionsformodification@dol.gov (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2024–089–C.

Petitioner: Mingo Logan Coal, LLC, Sharples, WV 25183.

Mine: Mountaineer II Mine, MSHA ID No. 46–09029, located in Logan County, West Virginia.

Regulation Affected: 30 CFR 75.507–1(a), Permissible electric equipment.

Modification Request: The petitioner requests a modification of 30 CFR 75.507–1(a) to allow the use of an alternative method of respirable dust protection. Specifically, the petitioner is requesting to use the 3M Versaflo TR–800 Intrinsically Safe Powered Air Purifying Respirator (PAPR) and the CleanSpace EX PAPR in return air outby the last open crosscut.

The petitioner states that:

(a) Mountaineer II Mine has previously used the 3M Airstream Headgear-Mounted PAPR System to provide additional protection for its miners against exposure to respirable coal mine dust. There are clear long-term health benefits from using such technology. One of the benefits of PAPRs is that they provide a constant flow of air inside the headtop or helmet. This constant airflow helps to provide both respiratory protection and comfort in hot working environments.

(b) 3M elected to discontinue the 3M Airstream helmet, replacing it with the 3M Versaflo TR–800, which benefits from additional features and reduced weight. Because of its reduced weight, it provides significant ergonomic benefits.

(c) For more than 40 years the 3M Airstream has been used by many mine operators to help protect their workers. During those years there have been technological advancements in products and services for industrial applications. 3M indicated that they faced multiple key component supply disruptions for the Airstream product line that created issues with providing acceptable supply service levels. Because of those issues, 3M discontinued the Airstream in June 2020, and that discontinuation was global.

(d) 3M announced that February 2020 was the final time to place an order for systems and components and that June 2020 was the final date to purchase Airstream components.

(e) Currently there are no replacement 3M PAPRs that meet applicable MSHA standards for permissibility. Electronic equipment used in underground mines in potentially explosive atmospheres are required to be approved by MSHA in

accordance with 30 CFR. 3M and other manufacturers offer alternative products for many other environments and applications.

(f) Following the discontinuation, mines that currently use the Airstream do not have an MSHA-approved alternative PAPR to provide to miners.

(g) Application of the standard results in a diminution of safety at the mine.

(h) The 3M Versaflo TR-800 motor/blower and battery qualify as intrinsically safe in the U.S., Canada, and any other country accepting IECEx (International Electrotechnical Commission System for Certification to Standards Relating to Equipment for Use in Explosive Atmospheres) reports. The 3M Versaflo TR-800 has a blower that is UL-certified with an intrinsically safe (IS) rating of Division 1: IS Class I, II, III; Division 1 (includes Division 2) Groups C, D, E, F, G; T4, under the most current standard (UL 60079, 6th Edition, 2013). It is ATEX-certified with an IS rating of "ia." (ATEX refers to European directives for controlling explosive 2 atmospheres.) It is rated and marked with Ex ia I Ma, Ex ia IIB T4 Ga, Ex ia IIC 135 °C Da, -20 °C ≤ Ta ≤ +55 °C, under the current standard (IEC 60079).

(i) Mountaineer II Mine seeks modification to also permit the use of the CleanSpace EX powered respirator under the same conditions as it proposes with respect to the 3M Versaflo TR-800. It too has been determined to be intrinsically safe.

(j) The 3M Versaflo TR-800 is not MSHA approved as permissible, and 3M is not pursuing approval.

(k) The CleanSpace EX Power Unit is not MSHA approved as permissible, and CleanSpace is not pursuing approval.

(l) The standards for approval of these respirators are an acceptable alternative to MSHA's standards and provide an equivalent level of protection.

(m) The alternative method will guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

The petitioner proposes the following alternative method:

(a) Affected mine employees shall be trained in the proper use and maintenance of the 3M Versaflo TR-800 and the CleanSpace EX in accordance with established manufacturer guidelines. This training shall alert the affected employee that neither the 3M Versaflo TR-800 nor the CleanSpace EX is approved under 30 CFR part 18 and shall be deenergized when 1.0 or more percent methane is detected. The training shall also include the proper method to deenergize these PAPRs. In addition to manufacturer guidelines, the petitioner shall require that mine

employees be trained to inspect the units before use to determine if there is any damage to the units that would negatively impact intrinsic safety as well as all stipulations in the Proposed Decision and Order (PDO) granted by MSHA.

(b) The PAPRs, battery packs, and all associated wiring and connections shall be inspected before use to determine if there is any damage to the units that would negatively impact intrinsic safety. If any defects are found, the PAPR shall be removed from service.

(c) Mountaineer II Mine shall maintain a separate logbook for the 3M Versaflo TR-800 and CleanSpace EX PAPRs that shall be kept with the equipment or in a location with other mine record books and shall be made available to MSHA upon request. The equipment shall be examined at least weekly by a qualified person as defined in 30 CFR 75.512-1 and the examination results recorded in the logbook. Since float coal dust is removed by the air filter prior to reaching the motor, the PAPR user shall conduct regular examinations of the filter and perform periodic testing for proper operation of the "high filter load alarm" on the 3M Versaflo TR-800 and the "blocked filter" alarm on the CleanSpace EX. Examination entries may be expunged after one year.

(d) All 3M Versaflo TR-800 and CleanSpace EX PAPRs to be used in the return air outby the last open crosscut shall be physically examined prior to initial use, and each unit shall be assigned a unique identification number. Each unit shall be examined by the person who will be operating the equipment prior to taking the equipment underground to ensure the equipment is being used according to the original equipment manufacturer's recommendations and maintained in a safe operating condition.

(e) The examination for the 3M Versaflo TR-800 shall include:

(1) Check the equipment for any physical damage and the integrity of the case;

(2) Remove the battery and inspect for corrosion;

(3) Inspect the contact points to ensure a secure connection to the battery;

(4) Reinsert the battery and power up and shut down to ensure proper connections;

(5) Check the battery compartment cover or battery attachment to ensure that it is securely fastened; and

(6) For equipment utilizing lithium type cells, ensure that lithium cells and/or packs are not damaged or swelled in size.

(f) The CleanSpace EX does not have an accessible/removable battery. The battery and motor/blower assembly are both contained within the sealed four power pack assembly and cannot be removed, reinserted, or fastened. The pre-use examination is limited to inspecting the equipment for indications of physical damage.

(g) Mountaineer II Mine shall ensure that all 3M Versaflo TR-800 and CleanSpace EX PAPRs are serviced according to the manufacturer's recommendations. Dates of service shall be recorded in the equipment's logbook and shall include a description of the work performed.

(h) The 3M Versaflo TR-800 and CleanSpace EX PAPRs that will be used in the return air outby the last open crosscut, or in areas where methane may enter the air current, shall not be put into service until MSHA has initially inspected the equipment and determined that it is following all the terms and conditions of the PDO granted by MSHA.

(i) Prior to energizing the 3M Versaflo TR-800 or the CleanSpace EX in the return air outby the last open crosscut, methane tests shall be made in accordance with 30 CFR 75.323(a).

(j) All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as defined by 30 CFR 75.320. All methane detectors shall provide visual and audible warnings when methane is detected at or above 1.0 percent.

(k) A qualified person as defined in 30 CFR 75.151 shall continuously monitor for methane immediately before and during the use of the 3M Versaflo TR-800 or CleanSpace EX in the return air outby the last open crosscut or in areas where methane may enter the air current.

(l) Neither the 3M Versaflo TR-800 nor the CleanSpace EX shall be used if methane is detected in concentrations at or above 1.0 percent. When 1.0 percent or more of methane is detected while the 3M Versaflo TR-800 or CleanSpace EX is being used, the equipment shall be deenergized immediately and the equipment withdrawn outby the last open crosscut.

(m) Mountaineer II Mine shall use only the 3M TR-830 Battery Pack, which meets lithium battery safety standard UL 1642 or IEC 62133 in the 3M Versaflo TR-800. The petitioner shall use only the CleanSpace EX Power 5 Unit which meets lithium battery safety standard UL 1642 or IEC 62133 in the CleanSpace EX.

(n) The battery packs shall be "changed out" in intake air outby the

last open crosscut. Before each shift when the 3M Versaflo TR-800 or CleanSpace EX is to be used, all batteries and power units for the equipment shall be charged sufficiently so that they are not expected to be replaced on that shift.

(o) The following maintenance and use conditions shall apply to equipment containing lithium-type batteries:

(1) Always correctly use and maintain the lithium-ion battery packs. Neither the 3M TR-830 Battery Pack nor the CleanSpace EX Power Unit may be disassembled or modified by anyone other than persons permitted by the manufacturer of the equipment.

(2) The 3M TR-830 Battery Pack shall only be charged in an area free of combustible material, readily monitored, and located on the surface of the mine. The 3M TR-830 Battery Pack is to be charged by either:

(i) 3M Battery Charger Kit TR-641N, which includes one 3M Charger Cradle TR-640 and one 3M Power Supply TR-941N, or

(ii) 3M 4-Station Battery Charger Kit TR-644N, which includes four 3M Charger Cradles TR-640 and one 3M 4-Station Battery Charger Base/Power Supply TR-944N.

(iii) The CleanSpace EX Power Unit is to be charged only by the CleanSpace Battery Charger EX, Product Code PAF-0066.

(iv) The batteries shall not be allowed to get wet. This does not preclude incidental exposure of sealed battery packs.

(v) The batteries shall not be used, charged, or stored in locations where the manufacturer's recommended temperature limits are exceeded. The batteries shall not be placed in direct sunlight or used or stored near a source of heat.

(p) Personnel engaged in the use of the 3M Versaflo TR-800 and CleanSpace EX PAPRs shall be properly trained to recognize the hazards and limitations associated with the use of the equipment in areas where methane could be present. Additionally, personnel shall be trained regarding proper procedures for donning Self-Contained Self Rescuers (SCSRs) during a mine emergency while wearing the 3M Versaflo TR-800 or CleanSpace EX. The mine operator shall submit proposed revisions to update the Mine Emergency Evacuation and Firefighting Program of Instruction under 30 CFR 75.1502 to address this issue.

(q) Within 60 days after the PDO granted by MSHA becomes final, Mountaineer II Mine shall submit proposed revisions for its approved 30 CFR part 48 training plans to the Mine

Safety and Health Enforcement District Manager. These proposed revisions shall specify initial and refresher training regarding the terms and conditions stated in the PDO granted by MSHA. When training is conducted on the terms and conditions in the PDO granted by MSHA, an MSHA Certificate of Training (Form 5000-23) shall be completed. Comments shall be included on the Certificate of Training indicating that the training received was for use of the 3M Versaflo TR-800 or CleanSpace EX.

(r) All personnel who will be involved with or affected by the use of the 3M Versaflo TR-800 or CleanSpace EX shall receive training in accordance with 30 CFR 48.7 on the requirements of the PDO granted by MSHA within 60 days of the date the PDO granted by MSHA becomes final. Such training shall be completed before any 3M Versaflo TR-800 or CleanSpace EX can be used in return air outby the last open crosscut. The operator shall keep a record of such training and provide such record to MSHA upon request.

(s) Mountaineer II Mine shall provide annual retraining to all personnel who will be involved with or affected by the use of the 3M Versaflo TR-800 or CleanSpace EX in accordance with 30 CFR 48.8. The operator shall train new miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.5 and shall train experienced miners on the requirements of the PDO granted by MSHA in accordance with 30 CFR 48.6. The operator shall keep a record of such training and provide such record to MSHA upon request.

(t) Mountaineer II Mine shall post the PDO granted by MSHA in unobstructed locations on the bulletin boards and/or in other conspicuous places where notices to miners are ordinarily posted for a period of not less than 60 consecutive days.

(u) There are no representatives of miners at Mingo Logan Coal, LLC, Mountaineer II Mine. A copy of this petition has been posted on the bulletin board as of November 11, 2024.

The petitioner asserts that the alternative method will guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024-30943 Filed 12-27-24; 8:45 am]

BILLING CODE 4520-43-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Harrison County Coal Resources, Inc.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before January 29, 2025.

ADDRESSES: You may submit comments identified by Docket No. MSHA-2024-0118 by any of the following methods:

1. *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments for MSHA-2024-0118.

2. *Fax:* 202-693-9441.

3. *Email:* petitioncomments@dol.gov.

4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, 4th Floor West, Arlington, Virginia 22202-5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at 4th Floor West. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202-693-9455 to make an appointment.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202-693-9440 (voice), Petitionsformodification@dol.gov (email), or 202-693-9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2024–072–C.

Petitioner: Harrison County Coal Resources, Inc., 464 North Portal Rd., Wallace, WV 26448.

Mine: Harrison County Mine, MSHA ID No. 46–01318, located in Marion County, West Virginia.

Regulation Affected: 30 CFR 75.503, Permissible electric face equipment; maintenance; Specified in 30 CFR 18.35(a)(5)(i), Portable (trailing) cables and cords.

Modification Request: The petitioner requests a modification of 30 CFR 75.503 to increase the maximum length of trailing cables specified in 30 CFR 18.35(a)(5)(i) that supply power to loading machines to 1,000 feet.

The petitioner states that:

(a) The Harrison County Mine is developing longwall panels as part of a continuing mining cycle. The longwall development panels consist of a three-entry system with 300-foot deep cuts to improve roof and abutment pressure control during longwall mining. Ventilation is also improved by limiting the number of stoppings, which have a built-in ventilation pressure loss factor. The Harrison County Mine is also developing main and submain sections as part of the continuing mining cycle. The petitioner has provided typical section prints showing the need for cable lengths greater than 700 feet for this development system.

(b) The petitioner has also provided a summary of short-circuit calculations justifying the instantaneous trip setting for the circuit breakers protecting the trailing cables supplying power to 995 Volt loading machines in Harrison County Mine.

(c) The proposed alternative method will at all times guarantee no less than the same measure of protection to all miners as would be provided by the mandatory standard.

The petitioner proposes the following alternative method:

(a) The proposed decision and order (PDO) granted by MSHA shall apply only to trailing cables supplying three-phase, 995-volt power to loading machines.

(b) The maximum lengths of the trailing cables shall be 1,000 feet.

(c) All trailing cables exceeding 700 feet in length and supplying three-phase, 995-volt power to loading machines shall be No. 2 American wire gauge (AWG), or larger.

(d) All circuit breakers used to protect the No. 2 AWG trailing cables exceeding 700 feet in length shall have instantaneous trip units calibrated to trip at 800 amperes (amps). The trip setting of these circuit breakers shall be sealed or locked, and these circuit breakers shall have permanent, legible labels. The calibration, sealing and labeling shall be performed by the manufacturer or at a repair facility outfitted with calibrated test equipment. The labels shall be maintained in legible condition.

(e) Replacement circuit breakers and/or instantaneous trip units used to protect the No. 2 AWG trailing cables shall be calibrated to trip at 800 amperes, and this setting shall be sealed or locked. The calibration, sealing, and labeling shall be performed by the manufacturer or a repair facility outfitted with calibrated test equipment.

(f) During each production day, persons designated by the operator shall visually examine the trailing cables to ensure that the cables are in safe operating condition and that the instantaneous settings of the specially calibrated breakers do not have seals or locks removed and that they do not exceed the stipulated settings specified in items (d) and (e).

(g) Any trailing cable that is not in safe operating condition shall be removed from service immediately and repaired or replaced.

(h) Each splice or repair in the trailing cable shall be made in a workmanlike manner and in accordance with the instructions of the manufacturer of the splice or repair materials. The outer jacket of each splice or repair shall be vulcanized with flame-resistant material or made with material that has been accepted by MSHA as flame resistant.

(i) In the event the mining method or operating procedures cause or contribute to the damage of any trailing cable, the cable shall be removed from service immediately and repaired or replaced. Also, additional precautions shall be taken to ensure that, in the future, the cable is protected and maintained in safe operating condition.

(j) Permanent warning labels shall be installed and maintained on the cover(s) of the power center identifying the location of each sealed or locked short-circuit protective device. The label shall identify the circuit breakers as being suitable for protecting No. 2 AWG

cables and shall warn miners not to change or alter these short-circuit settings.

(k) The alternative method shall not be implemented until all miners, who have been designated to examine the integrity of seals and verify the short-circuit settings and proper procedures for examining trailing cables for defects and damage, have received the elements of training specified in item (l).

(l) Within sixty (60) days after the PDO is granted by MSHA, the petitioner shall submit proposed revisions for its approved 30 CFR part 48 training plan to the Coal Mine Safety and Health District Manager for the area in which the mine is located. The training shall include the following elements:

(1) Training in mining methods and operating procedures that shall protect the trailing cables against damage.

(2) Training in the proper procedures for examining the trailing cables to ensure that the cables are in safe operating condition.

(3) Training in hazards of setting the instantaneous circuit breakers too high to adequately protect the trailing cables.

(4) Training in how to verify that circuit interrupting devices protecting the trailing cables are properly set and maintained.

(m) The procedures of 30 CFR 48.3 for approval of proposed revisions to already approved training plans shall apply.

(n) The miners at Harrison County Coal Resources, Inc., Harrison County Mine, are represented by a labor organization and a copy of this petition has been provided to the representative of the miners at the mine on October 30, 2024.

In support of the proposed alternative method, the petitioner submitted: schematic diagrams showing the lengths and locations of trailing cables; a fault analysis summary; a short-circuit analysis including specific cable information for all high voltage cables from the utility service drop to the section power center; and one-line diagrams.

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2024–30945 Filed 12–27–24; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0039]

Intertek Testing Services NA, Inc.:
Grant of Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the final decision to expand the scope of recognition of Intertek Testing Services NA, Inc. as a Nationally Recognized Testing Laboratory (NRTL).

DATES: The expansion of the scope of recognition becomes effective on December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: meilinger.francis2@dol.gov.

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2300 or email: robinson.kevin@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition for Intertek Testing Services NA, Inc. (ITSNA), as a NRTL. ITSNA’s expansion

covers the addition of two test standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL’s scope of recognition includes: (1) the type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL’s scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides a final decision on the application. These notices set forth the NRTL’s scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including ITSNA, which details the NRTL’s scope of recognition. These pages are available from the OSHA website at <https://www.osha.gov/dts/otpca/nrtl/index.html>.

ITSNA submitted an application dated June 24, 2024 (OSHA–2007–

0039–0058), requesting the addition of two test standards to the NRTL scope of recognition. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

OSHA published the preliminary notice announcing ITSNA’s expansion application in the **Federal Register** on November 6, 2024 (89 FR 88064). The agency requested comments by November 21, 2024, but it received no comments in response to this notice. OSHA is now proceeding with this notice to grant expansion of ITSNA’s NRTL scope of recognition.

To obtain or review copies of all public documents pertaining to the ITSNA expansion application, go to www.regulations.gov or contact the Docket Office at (202) 693–2350 (TTY (877) 889–5627. Docket No. OSHA–2007–0039 contains all materials in the record containing ITSNA’s recognition.

II. Final Decision and Order

OSHA staff examined ITSNA’s expansion application and examined other pertinent information. OSHA did not conduct an on-site assessment in relation to this application. Based on review of this evidence, OSHA finds that ITSNA meets the requirements of 29 CFR 1910.7 for expansion of recognition, subject to the specified limitations and conditions listed in this notice. OSHA, therefore, is proceeding with this final notice to grant ITSNA’s scope of recognition. OSHA limits the expansion of ITSNA’s recognition to testing and certification of products for demonstration of conformance to the test standards listed below in Table 1.

TABLE 1—APPROPRIATE TEST STANDARDS FOR INCLUSION IN ITSNA’S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 60335–2–89	Household and Similar Electrical Appliances—Safety—Part 2–89: Particular Requirements for Commercial Refrigerating Appliances with an Incorporated or Remote Refrigerant Unit or Compressor.
UL 60335–2–24	Safety Requirements for Household and Similar Electrical Appliances, Part 2: Refrigerating Appliances, Ice-Cream Appliances, and Ice-Makers.

OSHA’s recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL’s scope

of recognition does not include these products.

A. Conditions

Recognition is contingent on continued compliance with 29 CFR 1910.7, including, but not limited to, abiding by the following conditions of the recognition:

1. ITSNA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);

2. ITSNA must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. ITSNA must continue to meet the requirements for recognition, including all previously published conditions on ITSNA's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of ITSNA as a NRTL, subject to the limitations and conditions specified above.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on December 19, 2024.

James S. Frederick

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–31021 Filed 12–27–24; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2019–0009]

DEKRA Certification Inc.: Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of DEKRA Certification Inc., for expansion of the recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before January 14, 2025.

ADDRESSES: Comments may be submitted as follows:

Electronically: You may submit comments, including attachments, electronically at <http://www.regulations.gov>, the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA–2019–0009). All comments, including any personal

information you provide, are placed in the public docket without change and may be made available online at <https://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security numbers and birthdates.

Docket: To read or download comments or other material in the docket, go to <http://www.regulations.gov>. Documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Extension of comment period: Submit requests for an extension of the comment period on or before January 14, 2025 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, phone: (202) 693–1999 or email: meilinger.francis2@dol.gov.

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, phone: (202) 693–1911 or email: robinson.kevin@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

OSHA is providing notice that DEKRA Certification Inc. (DEKRA), is applying for expansion of the current recognition as a NRTL. DEKRA requests the addition six test standards to the NRTL scope of recognition.

OSHA's recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes: (1) the type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides a final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including DEKRA, which details the NRTL's scope of recognition. These pages are available from the OSHA website at <http://www.osha.gov/dts/otpc/nrtl/index.html>.

II. General Background on the Application

DEKRA submitted an application to OSHA for expansion of the NRTL scope of recognition on January 5, 2023 (OSHA–2019–0009–0013), requesting the addition of six recognized testing standards. OSHA staff performed a detailed analysis of the application packets and reviewed other pertinent information. OSHA did not perform an on-site review associated with this application. OSHA staff has preliminarily determined that OSHA should grant the application.

Table 1, below, lists the appropriate test standards found in DEKRA's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED APPROPRIATE TEST STANDARDS FOR INCLUSION IN DEKRA'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
FM 3600	Electrical Equipment for Use in Hazardous (Classified) Locations, General Requirements.
FM 3610 *	Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II and III, Division 1 Hazardous (Classified) Locations.
FM 3611	Electrical Equipment for Use in Class I, Division 2; Class II, Division 2; and Class III, Division 1 and 2 Hazardous Locations.
FM 3615 *	Explosion-proof Electrical Equipment, General Requirements.
FM 3810 *	Electrical and Electronic Test, Measuring and Process Control Equipment.
UL 857	Electric Busways and Associated Fittings.

* OSHA notes that the title to this standard in the table is taken from OSHA's List of Appropriate Test Standards (see <https://www.osha.gov/nationally-recognized-testing-laboratory-program/list-standards>). This title is not the same as the title currently used by the Standards Developing Organization that issued the test standard. OSHA intends to update the List of Appropriate Test Standards to reflect the currently used title in the near future.

III. Preliminary Findings on the Application

DEKRA submitted an acceptable application for expansion of the scope of recognition. OSHA's review of the application files and pertinent documentation indicates that DEKRA has met the requirements prescribed by 29 CFR 1910.7 for expanding the recognition to include the addition of the six test standards for NRTL testing and certification listed in Table 1. This preliminary finding does not constitute an interim or temporary approval of DEKRA's application.

OSHA seeks comment on this preliminary determination.

IV. Public Participation

OSHA welcomes public comment as to whether DEKRA meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified.

To review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. These materials also are generally available online at <https://www.regulations.gov> under Docket No. OSHA-2019-0009 (for further information, see the "Docket" heading in the section of this notice titled ADDRESSES).

OSHA staff will review all comments to the docket submitted in a timely manner. After addressing the issues raised by these comments, staff will make a recommendation to the Assistant Secretary of Labor for Occupational

Safety and Health on whether to grant DEKRA's application for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of the final decision in the **Federal Register**.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8-2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on December 20, 2024.

James S. Frederick

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024-31343 Filed 12-27-24; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2010-0046]

QPS Evaluation Services, Inc.: Grant of Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the final decision to expand the scope of recognition for QPS Evaluation Services, Inc. as a Nationally Recognized Testing Laboratory (NRTL).

DATES: The expansion of the scope of recognition becomes effective on December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone (202) 693-1999 or email meilinger.francis2@dol.gov.

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; telephone (202) 693-1911 or email robinson.kevin@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of QPS Evaluation Services, Inc. (QPS) as a NRTL. QPS's expansion covers the addition of five test standards to the NRTL scope of recognition.

OSHA's recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes: (1) the type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides a final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including QPS which details the NRTL's scope of recognition. These pages are available from the OSHA website at <https://www.osha.gov/dts/otpc/nrtl/index.html>.

QPS submitted an application to OSHA for expansion of the NRTL scope of recognition on February 13, 2024 (OSHA-2010-0046-0021), requesting the addition of five standards to the NRTL scope of recognition. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform an on-site review related to this application.

OSHA published the preliminary notice announcing QPS's expansion application in the **Federal Register** on November 7, 2024 (89 FR 88306). The agency requested comments by November 22, 2024, however no comments were received in response to this notice.

To obtain or review copies of all public documents pertaining to the QPS's application, go to <https://www.regulations.gov> or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. Docket No. OSHA-2010-0046 contains all materials in the record concerning QPS's recognition. Contact the OSHA Docket Office at (202) 693-2350 (TTY (877) 889-5627) for assistance in locating docket submissions.

II. Final Decision and Order

OSHA staff examined QPS's expansion application, its capability to meet the requirements of the test standards, and other pertinent information. Based on its review of this evidence, OSHA finds that QPS meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitations and conditions listed in this notice. OSHA, therefore, is proceeding with this final notice to grant QPS's application for an expansion of the scope of recognition. OSHA limits the expansion of QPS's

recognition to testing and certification of products for demonstration of conformance to the test standards listed below in table 1.

TABLE 1—APPROPRIATE TEST STANDARDS FOR INCLUSION IN QPS'S NRTL SCOPE OF RECOGNITION

Test Standard	Test standard title
UL 22	Amusement and Gaming Machines.
UL 751	Vending Machines.
UL 1012	Power Units Other Than Class 2.
UL 891	Standard for Switchboards.
ASME A17.5 ¹	Elevator and Escalator Electrical Equipment.

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, we may use the designation of the standards-developing organization for the standard as opposed to the ANSI designation. Under the NRTL Program's policy (see OSHA Instruction CPL 1-0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, QPS must abide by the following conditions of the recognition:

1. QPS must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);
2. QPS must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and
3. QPS must continue to meet the requirements for recognition, including all previously published conditions on

¹ The preliminary notice announcing QPS's expansion application contained a typographical error. The designation of the Elevator and Escalator Electrical Equipment test standard was incorrectly listed as ASME 17.5. See 89 FR 88307. OSHA corrects this typographical error in this Notice.

QPS's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of QPS as a NRTL, subject to the limitations and conditions specified above.

III. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8-2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on December 19, 2024.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024-31245 Filed 12-27-24; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2007-0042]

TUV Rheinland of North America, Inc.: Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of TUV Rheinland of North America, Inc., for expansion of the scope of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before January 14, 2025.

ADDRESSES: Comments may be submitted as follows:

Electronically: You may submit comments, including attachments, electronically at <http://www.regulations.gov>, the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA-2007-0042). All comments, including any personal information you provide, are placed in

the public docket without change and may be made available online at <https://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security numbers and birthdates.

Docket: To read or download comments or other material in the docket, go to <http://www.regulations.gov>. Documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693-2350 (TTY (877) 889-5627) for assistance in locating docket submissions.

Extension of comment period: Submit requests for an extension of the comment period on or before January 14, 2025 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-3653, Washington, DC 20210, or by fax to (202) 693-1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693-1999; email: meilinger.francis2@dol.gov.

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693-1911 or email: robinson.kevin@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

OSHA is providing notice that TUV Rheinland of North America, Inc. (TUVRNA), is applying for an expansion of current recognition as a NRTL. TUVRNA requests the addition of one test site to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the

requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition, as well as for an expansion or renewal of recognition, following requirements in appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including TUVRNA, which details that NRTL's scope of recognition. These pages are available from the OSHA website at <http://www.osha.gov/dts/otpc/nrtl/index.html>.

TUVRNA currently has ten facilities (sites) recognized by OSHA for product testing and certification, with the headquarters located at: TUV Rheinland of North America, Inc., 295 Foster Street, Suite 100, Littleton, Massachusetts 01460. A complete list of TUVRNA sites recognized by OSHA is available at <https://www.osha.gov/nationally-recognized-testing-laboratory-program/tuv>.

II. General Background on the Application

TUVRNA submitted an application, dated November 16, 2020 (OSHA-2007-0042-0081), to expand recognition as a NRTL to include one additional testing site located at: TUV Rheinland Taiwan Ltd. Taoyuan Testing Laboratories, 4F-1, No. 38, Huaya 1st Road Guishan District, Taoyuan City 333, Taiwan, R.O.C. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA performed an on-site review of TUVRNA's Taoyuan facility on May 1-

6, 2024, in which assessors found some nonconformances with the requirements of 29 CFR 1910.7. TUVRNA has addressed these issues sufficiently, and OSHA staff has preliminarily determined that OSHA should grant the application.

III. Preliminary Finding on the Application

TUVRNA submitted an acceptable application for expansion of the scope of recognition. OSHA's review of the application files and pertinent documentation preliminarily indicates that TUVRNA can meet the requirements prescribed by 29 CFR 1910.7 for expanding its recognition to include one additional test site for NRTL testing and certification. This preliminary finding does not constitute an interim or temporary approval of TUVRNA's application.

OSHA seeks public comment on this preliminary determination.

IV. Public Participation

OSHA welcomes public comment as to whether TUVRNA meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified.

To review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. These materials also are generally available online at <https://www.regulations.gov> under Docket No. OSHA-2007-0042 (for further information, see the "Docket" heading in the section of this notice titled **ADDRESSES**).

OSHA staff will review all comments to the docket submitted in a timely manner. After addressing the issues raised by these comments, staff will make a recommendation to the Assistant Secretary of Labor for Occupational Safety and Health on whether to grant TUVRNA's application for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of the final decision in the **Federal Register**.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393; Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on December 20, 2024.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–31342 Filed 12–27–24; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL CREDIT UNION ADMINISTRATION

Revision of Agency Information Collection of a Previously Approved Collection; Request for Comments

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of submission to the Office of Management and Budget.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the National Credit Union Administration (NCUA) is submitting the following revision of currently approved collection to the Office of Management and Budget (OMB) for renewal. The revisions are proposed to take effect with the March 31, 2025, report date.

DATES: Written comments should be received on or before January 29, 2025 to be assured consideration.

ADDRESSES: You may submit written comments on the information collection by any of the following methods identified by the OMB Control Number 3133–0004 or by Document Number (Please send comments by one method only):

Federal Register Portal: <https://www.federalregister.gov> Find this information collection by searching for “National Credit Union Administration”, then selecting “Past 90 days”, and scrolling through the list of documents.

Regulations.gov: <https://www.regulations.gov/search?filter=ncua> Find this information collection by scrolling through the search results and looking for Call Report Form 2025–Q1.

Rulemakings and Proposals for Comment: <https://ncua.gov/regulation->

supervision/rulemakings-proposals-comment NCUA will post a link to the [regulations.gov](https://www.regulations.gov) web page where you can submit a comment by selecting Comment.

Mail: 1775 Duke Street, Suite 5067, Alexandria, Virginia 22314.

Fax: 703–519–8161.

Email: PRAComments@NCUA.gov.

FOR FURTHER INFORMATION CONTACT:

Copies of the submission may be obtained by contacting Dacia Rogers at (703) 518–6547, emailing PRAComments@ncua.gov, or viewing the entire information collection request at www.reginfo.gov. Enhanced content is also available from the Notice on the **Federal Register** website. (www.federalregister.gov). In addition, copies of the NCUA Form 5300, Call Report Form and Instructions can be obtained at the NCUA's website (<https://ncua.gov/regulation-supervision/regulatory-reporting/cuonline>).

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0004.

Title: NCUA Call Report.

Type of Review: Revision of a currently approved collection.

Abstract: Sections 106 and 202 of the Federal Credit Union Act require federally insured credit unions to submit financial reports to the NCUA. Section 741.5 of the NCUA regulations describes the method federally insured credit unions must use to submit this information to NCUA. Specifically, credit unions use NCUA Form 5300, Call Report to file quarterly financial and statistical data through NCUA's online portal, CUOnline. This financial and statistical information is essential to NCUA's supervision of federal credit unions and the data gathered through the Form 5300, Call Report facilitates NCUA's monitoring of other credit unions with share accounts insured by the National Credit Union Share Insurance Fund (Share Insurance Fund).

Form 5300 Credit Union Call Report—Proposed Changes and Comments Received

In the September 16, 2024, notice, the NCUA proposed revisions to the Form 5300, Call Report including revisions to Schedule A, Section 4; Schedule C, Section 4; Schedule D, Section 2; and Schedule D, Section 3.¹ The comment period for the September 2024 notice ended on November 15, 2024. The NCUA received 20 comment letters, 2 of which did not apply to the actual information collection.

¹ 89 FR 75590 (September 16, 2024).

Schedule A, Section 4

The NCUA proposed two additional accounts for credit unions to report the year-to-date number and amount of loans granted to credit union officials and senior executive staff. Four commenters objected to reporting the year-to-date number and amount of loans granted to credit union officials and senior executive staff because the information is included in the Items Needed List for an examination. These commenters did not see the benefit of providing this information quarterly. After considering these comments, the NCUA will not proceed with the proposed changes.

The NCUA proposed to remove two accounts for credit unions to report information related to Purchased Credit Impaired Loans. No comments were received related to removing these accounts.

Schedule C, Section 4

The NCUA proposed to remove three accounts where credit unions previously reported information related to FRB Paycheck Protection Program Lending Facility loans. No comments were received related to removing these accounts.

The NCUA also proposed to add an account for credit unions to report assets pledged to secure deposits, other funding arrangements, and other counterparty requirements. No comments were received related to adding this account.

Schedule D, Section 2

The NCUA proposed adding or changing accounts on Schedule D, Section 2 as noted in the September 16, 2024, **Federal Register** Notice. One commenter objected to adding the accounts related to non-member term deposits because this information is already reported in the same section. Reporting these deposits in Items 15 and 16 assists the NCUA in monitoring compliance with NCUA regulations § 701.32(b). The NCUA will proceed with the proposed change.

Schedule D, Section 3

The NCUA proposed adding three accounts for credit unions to report the maturity distribution of total uninsured shares and deposits. Ten commenters indicated that the instructions needed more detail to enable credit unions to determine how to report the maturity distribution. The NCUA revised the proposed instructions for Schedule D, Section 3. The proposed instruction changes indicate credit unions should assume the longest maturity term shares are insured first.

One commenter was concerned that the reporting of the maturity distribution of uninsured shares contradicted NCUA regulations § 745.200(c), which states that insurance coverage will be prorated among the member's interest in all accounts. The maturity distribution information reported on the Form 5300, Call Report will not be used to determine share insurance coverage and will be used to monitor uninsured share behavior. Shares will be evaluated by NCUA to determine insurance coverage only when a credit union fails.

One commenter stated the reason NCUA provided for adding these accounts was not sufficient. Regulators and industry analysts cite uninsured deposit runoff as a contributing factor in postmortem assessments of the 2023 banking failures. Uninsured deposits are not as important to the funding mix for credit unions as they are for banks; however, the amount of uninsured shares has been increasing in the credit union system. Trends in uninsured depositor behavior can signal emerging risks to credit union system stability and the share insurance fund.

The NCUA already collects total uninsured deposit information on the Form 5300, Call Report. The maturity distribution will enable a more complete assessment of depositor behavior at the system and individual institution levels.

Four commenters were also concerned that the core processor would not be able to implement these changes in time to accurately report for the March 2025 quarter. While the NCUA continues to believe the information obtained will be useful for evaluating depositor behavior and the movement between uninsured non-maturity shares and share certificates, the need for additional time to develop adequate reporting systems is understandable. To provide time for credit unions to work with their core processors, the NCUA will not require credit unions to report the maturity distribution of uninsured shares in March 2025.

Other Comments Received

The NCUA also received comments related to the added burden on credit unions, the requirement to add negative share accounts to loans, and a Community Development Financial Institution (CDFI) designator.

Burden

Seven commenters were concerned with the increase in burden. Before the NCUA proposes adding items to the Form 5300, Call Report, it weighs the burden on credit unions against the

benefit of the information. The NCUA feels the modest increase in burden is justified to protect the Share Insurance Fund and facilitate offsite development of an examination scope. While the NCUA understands these concerns, the agency does not expect these revisions will result in a material increase in reporting burden.

Negative Shares Added to Loans

One commenter wanted to eliminate the requirement to add negative shares to unsecured loans and to shares. The NCUA cannot eliminate this requirement because it is a requirement of generally accepted accounting principles.

Community Development Financial Institution Designator

One commenter suggested that the NCUA add a designator for credit unions to self-report as a CDFI. CDFI is a designation given by the CDFI Fund to financial institutions that provide financial services in low-income communities and to people who lack access to financing. The NCUA does not give CDFI designations, therefore the agency does not maintain a database of CDFI credit unions. Interested parties may obtain a list of CDFI credit unions at the CDFI Fund website—(<https://www.cdfifund.gov/programs-training/certification/cdfi>).

The NCUA will consider adding a checkbox for credit unions to voluntarily disclose their CDFI designation on a future Form 4501A, Profile. If the NCUA adds a CDFI designator, the Form 4501A, Profile would be the appropriate form because the designation, once reported, would not need to be changed every quarter.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Number of Respondents: 4,499.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Responses: 17,996.

Estimated Hours per Response: 4.

Estimated Total Annual Burden Hours: 71,984.

Reason for Change: Burden decreased due to a decrease in the number of respondents.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) whether the collection of information is necessary for the proper performance of the function of the

agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By the National Credit Union Administration Board.

Melane Conyers-Ausbrooks,
Secretary of the Board.

[FR Doc. 2024-31250 Filed 12-27-24; 8:45 am]

BILLING CODE 7535-01-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Tribal Consultation

AGENCY: National Endowment for the Arts.

ACTION: Request for comments.

SUMMARY: In accordance with the National Endowment for the Arts (NEA) tribal consultation policy, the NEA solicits written comments from federally recognized tribes.

DATES: Written comments for the FY2025 Tribal Consultation will be solicited for a 60-day window or until March 6, 2025. Comments must be submitted to the office listed in the address section below on or before the close of business on March 6, 2025. Comments received after that date will be considered to the extent practicable. A summary report of the written comments, NEA responses, recommendations, and items identified for follow-up or additional action will be drafted and distributed via the **Federal Register** no later than 30 days after the closing of the comment period. Following dissemination of the draft summary, the record will remain open for 21 days to allow tribes to submit written testimony or additional comments before the report is finalized and published on the NEA website.

ADDRESSES: Please send comments to Native Arts Working Group, National Endowment for the Arts, via email at NativeArts@arts.gov.

SUPPLEMENTARY INFORMATION: Through this Request for Comments, the NEA is seeking input and comments from elected or appointed tribal leaders and

officials or their authorized representatives. This Request for Comments also will be posted to the agency's website.

Subject issues for consultation and related questions are listed below.

1. NEA Resources

The NEA, established by Congress in 1965, is an independent federal agency that is the largest funder of the arts and arts education in communities nationwide and a catalyst of public and private support for the arts. By advancing equitable opportunities for arts participation and practice, the NEA aims to foster and sustain an environment in which the arts benefit everyone in the United States. This is accomplished primarily by providing resources to support the creative lives of all communities in the United States.

Grants are awarded for specific projects to 501(c)(3) nonprofit organizations, federally recognized tribes, or units of state or local government. Individual makers, artists, and culture bearers are recognized and supported through programs such as the NEA National Heritage Fellowships, NEA Jazz Masters Fellowships, and Creative Writing Fellowships. Forty percent of the NEA's program budget is granted to State Arts Agencies and Regional Arts Organizations, which make subgrants to support additional arts activities across the nation.

i. What is your awareness of our agency's efforts in your community and nationally?

ii. Have NEA resources affected your tribal community? If so, how?

iii. To what extent do you see the arts and cultural activities of your tribal community reflected in the resources we offer?

iv. The review criteria for our primary grant program, Grants for Arts Projects, includes artistic excellence, which is defined as "The quality of the artists and other key individuals, creative process, works of art, organizations, arts education providers, artistic partners, and/or services involved in the project and their relevance to the audience or communities the project aims to serve." Does this definition of artistic excellence resonate with the artistic and cultural activities of your tribal community? How could this criteria better assess the creative projects of applicants from your community?

2. Executive Order 14112

The NEA is committed to adhering to the provisions outlined in E.O. 14112: Reforming Federal Funding and Support for Tribal Nations To Better Embrace Our Trust Responsibilities and Promote

the Next Era of Tribal Self-Determination, dated December 11, 2023. The NEA has made progress on those commitments as outlined in our Equity Action Plan, outreach to Native communities to participate in our Grants for Arts Projects grant opportunities, and our overall tribal consultation approach. As we continue to improve our outreach to Native communities, we will provide updates on changes that are implemented to better serve Native constituents. The NEA is in the process of recruiting a new NEA Director of Native Arts & Tribal Affairs to lead agency efforts to better reach and serve the tribal communities.

i. How can the NEA best prioritize its support for tribal sovereignty and self-governance?

ii. How can NEA programs provide your community with the flexibility to improve its economic growth and address your community's specific needs?

iii. What funding and programmatic needs do you have?

3. Tribal Engagement

In recent years, the NEA has made grants to tribal governments and Tribal Colleges & Universities (TCUs). We also have recognized Indigenous artists with NEA National Heritage Fellowships. These direct grants to tribes, tribal citizens, and TCUs are in addition to the grants we make to Native-serving nonprofits.

i. How can the NEA expand on this engagement with tribes and increase awareness of these opportunities?

ii. If the NEA has the resources to send staff representatives to in-person events (e.g. national conferences and regional convenings of importance to tribal communities), where would our participation be most effective? Can you provide a point-of-contact for follow up?

4. Federal Resources for Native Arts & Cultural Activities

The NEA has previously provided annual updates of the Federal Resources for Native Arts & Cultural Activities, which is a consolidation of opportunities offered by federal agencies for organizations looking for funding and other resources to support Native arts and cultural activities.

i. Have you ever accessed this publication? Is this publication a useful resource to make available to tribal communities?

5. Tribal Consultation

The NEA's Tribal Consultation Policy, formally established in October 2021, is

being reviewed for any necessary updates. In order to assist us in our review of the Policy, please share your thoughts on the following questions:

i. What recommendations do you have regarding the NEA's Tribal Consultation Policy?

Dated: December 20, 2024.

RaShaunda Thomas,

Deputy Director, Office of Administrative Services & Contracts, National Endowment for the Arts.

[FR Doc. 2024–31224 Filed 12–27–24; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Humanities

Civil Penalty Adjustments for 2025

AGENCY: National Endowment for the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Notice of civil penalty adjustments for 2025.

SUMMARY: The National Endowment for the Humanities (NEH) is giving notice of the adjusted maximum and minimum civil monetary penalties that may be imposed for violations of its New Restrictions on Lobbying and Program Fraud Civil Remedies Act regulations to reflect the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The updated penalty amounts are adjusted for inflation and are effective from January 15, 2025, through January 14, 2026.

DATES: The updated civil penalties in this notice are applicable to penalties assessed on or after January 15, 2025, if the associated violations occurred after November 2, 2015.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Deputy General Counsel, Office of the General Counsel, National Endowment for the Humanities, 400 7th Street SW, Room 4060, Washington, DC 20506; (202) 606–8322; gencounsel@neh.gov.

SUPPLEMENTARY INFORMATION:

1. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the Inflation Adjustment Act)¹ directs each Executive agency to make an annual inflation adjustment for each

¹ 28 U.S.C. 2461 note.

civil monetary penalty provided by law within the jurisdiction of the agency, and to publish notice of each such adjustment in the **Federal Register**. An agency adjusts a civil monetary penalty by increasing the maximum amount of such penalty (or the range of minimum and maximum amounts, as applicable) by the percentage by which the Consumer Price Index for All Urban Consumers (CPI-U) for the month of October preceding the date of adjustment (in this case, October 2024) exceeds the CPI-U for the October one year prior to the October immediately preceding the date of the adjustment (in this case, October 2023), then rounding each amount to the nearest dollar.

NEH administers two civil monetary penalties subject to adjustment pursuant to the Inflation Adjustment Act: A civil monetary penalty that NEH may impose for violation of its New Restrictions on Lobbying regulation (the Lobbying Civil Monetary Penalty)² and a civil monetary penalty that NEH may impose under its Program Fraud Civil Remedies Act Regulations (the PFCRA Civil Monetary Penalty).³ NEH made the initial “catch-up” adjustments to the Lobbying Civil Monetary Penalty for years 2016–2020 when it amended its New Restrictions on Lobbying regulation on April 21, 2020,⁴ and to the PFCRA Civil Monetary Penalty for years 2016–2021 when it adopted its Program Fraud Civil Monetary Penalties Act regulations on August 13, 2021.⁵ NEH then adjusted the amount of those civil monetary penalties accordingly when it codified the statutory formula for inflation adjustments in NEH’s New Restrictions on Lobbying and Program Fraud Civil Remedies Act regulations on March 30, 2023.⁶ Each regulation provides for subsequent annual adjustment of its respective civil monetary penalty by notice in the **Federal Register**.⁷

2. 2025 Adjustments for Inflation

OMB has issued guidance on implementing and calculating the 2025 adjustment under the Inflation Adjustment Act.⁸ Per this guidance, the CPI-U adjustment multiplier for this annual adjustment is 1.02598.⁹ The post-adjustment penalty or range is obtained by multiplying the pre-adjustment penalty or range by the

percent change in the CPI-U over the relevant time period and rounding to the nearest dollar. Between October 2023 and October 2024, the CPI-U increased by a multiplier of 102.598%. Therefore, NEH will adjust each civil monetary penalty amount by multiplying it by 1.02598 and rounding to the nearest dollar.

A. 2025 Adjustment to Lobbying Civil Monetary Penalty

For 2024, the Lobbying Civil Monetary Penalty had a minimum amount of \$24,496 and a maximum amount of \$244,958. Therefore, the adjusted minimum Lobbying Civil Monetary Penalty for 2025 is \$25,132 (\$24,496 multiplied by 1.02598) and the adjusted maximum Lobbying Civil Monetary Penalty for 2025 is \$251,322 (\$244,958 multiplied by 1.02598).

Thus, the Lobbying Civil Monetary Penalty, following the 2025 adjustment, has a minimum amount of \$25,132 and a maximum amount of \$251,322.

B. 2025 Adjustment to PFCRA Civil Monetary Penalty

For 2024, the PFCRA Civil Monetary Penalty had a maximum amount of \$13,946. Therefore, the new, post-adjustment maximum penalty for 2025 under NEH’s PFCRA regulation is \$14,308 (\$13,946 multiplied by 1.02598).

Dated: December 20, 2024.

Jessica Graves,

Paralegal Specialist, National Endowment for the Humanities.

[FR Doc. 2024–30963 Filed 12–27–24; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Open to the Public Meetings of the Networking and Information Technology Research and Development (NITRD) Program

AGENCY: Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO), National Science Foundation.
ACTION: Notice of public meetings.

SUMMARY: The NITRD Joint Engineering Team (JET) and Middleware And Grid Interagency Coordination (MAGIC) Communities of Practice (COPs) hold meetings that are open to the public to attend. The JET and MAGIC COPs provide an opportunity for the public to engage and participate in information sharing with federal agencies. The JET and MAGIC COPs report to the NITRD Large Scale Networking Interagency Working Group.

DATES: January 2025–December 2025.

FOR FURTHER INFORMATION CONTACT: Paul Love for the JET COP and Mallory Hinks for the MAGIC COP at nco@nitrd.gov or (202) 459–9674. *Mail:* Attn: Paul Love or Mallory Hinks, 2415 Eisenhower Avenue, Alexandria, VA 22314, USA. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday, except for U.S. Federal Government holidays.

SUPPLEMENTARY INFORMATION: The Joint Engineering Team (JET) COP, established in 1997, provides an opportunity for information sharing among Federal agencies and non-Federal participants who have an interest in high-performance research and engineering or research and education networking (REN) and networking to support science applications.

The MAGIC COP, established in 2002, provides an opportunity for information sharing among Federal agencies and non-Federal participants involved in middleware, grid, and cloud research and infrastructure; implementing or operating grids and clouds; or the use of grids, clouds, and middleware.

The JET and MAGIC COPs’ meetings are hosted by the NITRD NCO with Zoom participation available for each meeting.

Public Meetings Website: The JET and MAGIC COPs’ meetings are scheduled 30 days in advance of the meeting date. Please reference the NITRD Public Meetings web page (<https://www.nitrd.gov/public-meetings/>) for each COP’s upcoming meeting dates and times, in addition to the agendas, minutes, and other meeting materials and information.

Public Meetings Mailing Lists: Members of the public may be added to the mailing lists by sending their full name and email address to jet-signup@nitrd.gov for JET and magic-signup@nitrd.gov for MAGIC, with the subject line: “Add to JET” and/or “Add to MAGIC”, respectively. Meeting notifications and information are shared via the mailing lists.

Public Comments: The government seeks individual input; attendees/participants may provide individual advice only. Members of the public are welcome to submit their comments for JET to jet-comments@nitrd.gov and for MAGIC to magic-comments@nitrd.gov. Please note that under the provisions of the Federal Advisory Committee Act (FACA), all public comments and/or presentations will be treated as public

² 45 CFR 1168.400(a), (b), (e).

³ 45 CFR 1174.3(a), (b).

⁴ 85 FR 22025.

⁵ 86 FR 44626.

⁶ 88 FR 18998.

⁷ 45 CFR 1168.400(g), (h), 1174.3(f), (g).

⁸ Office of Management and Budget (OMB) Memorandum M–25–02 (December 17, 2024).

⁹ *Id.*

documents and may be made available to the public via the JET (<https://www.nitrd.gov/coordination-areas/lisn/jet/>) and MAGIC (<https://www.nitrd.gov/coordination-areas/lisn/magic/>) web pages.

Reference Website: NITRD website at: <https://www.nitrd.gov/>.

Submitted by the National Science Foundation in support of the Networking and Information Technology Research and Development National Coordination Office on December 20, 2024.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2024–31221 Filed 12–27–24; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

RIN 3145–AA58

Notice on Penalty Inflation Adjustments for Civil Monetary Penalties

AGENCY: National Science Foundation.

ACTION: Notice announcing updated penalty inflation adjustments for civil monetary penalties for 2025.

SUMMARY: The National Science Foundation (NSF or Foundation) is providing notice of its adjusted maximum civil monetary penalties, effective January 15, 2025. These adjustments are required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

FOR FURTHER INFORMATION CONTACT: Bijan Gilanshah, Assistant General Counsel, Office of the General Counsel, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314. Telephone: 703.292.5055.

SUPPLEMENTARY INFORMATION: On June 27, 2016, NSF published an interim final rule amending its regulations to adjust, for inflation, the maximum civil monetary penalties that may be imposed for violations of the Antarctic Conservation Act of 1978 (ACA), as amended, 16 U.S.C. 2401 *et seq.*, and the Program Fraud Civil Remedies Act of 1986 (PFCRA), 31 U.S.C. 3801, *et seq.* These adjustments are required by the 2015 Act. The 2015 Act also requires agencies to make subsequent annual adjustments for inflation. Pursuant to OMB guidance dated December 17, 2024, the cost-of-living adjustment multiplier for 2025 is 1.02598. Accordingly, the 2025 annual inflation adjustments for the maximum penalties under the ACA are \$21,568 (\$21,022 $\times$ 1.02598) for violations and \$36,498

(\$35,574 $\times$ 1.02598) for knowing violations of the ACA. Finally, the 2025 annual inflation adjustment for the maximum penalty for violations under PFCRA is \$14,308 (\$13,946 $\times$ 1.02598).

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2024–31057 Filed 12–27–24; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Annual and Final Report Template

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to establish this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing an opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by February 28, 2025 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to the address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Room E6447, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: Grantee Reporting Requirements for the NSF Accelerating Research through International Network-to-Network Collaboration (AccelNet) Program.

OMB Control No.: 3145–New.

Expiration Date of Approval: Not applicable.

Abstract: We are proposing a modified annual/final report template specific to the Accelerating Research through International Network-to-Network Collaborations program (AccelNet, as described in the following program solicitations: NSF 19–501, NSF

21–511, and NSF 23–619). Briefly, the program funds planning and implementation awards to investigators forming international networks of networks that will work collaboratively to create a research agenda that will advance science in a way not possible with a concerted international cooperative effort. More information on the current solicitation can be found on the program website: <https://new.nsf.gov/funding/opportunities/accelerating-research-through-international>. While NSF requires awardees to submit annual reports each year of the award and a final report at the end of the award period, the template is focused on research outcomes at the national scale whereas our program is focused on networking activities and workforce development at the international scale. The NSF standard report template does not include prompts that are meaningful to the scope of work awarded and does not provide program directors useful information about achievements and international activities.

Respondents: Awardees.

Estimated Number of Annual Respondents: 70.

Burden on the Public: 8 hours or 1 workday per award.

Dated: December 20, 2024.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2024–31241 Filed 12–27–24; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Extend an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than three years.

DATES: Written comments on this notice must be received by February 28, 2025 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science

Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314; telephone (703) 292-7556; or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays). You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection: Grantee Reporting Requirements for Science and Technology Centers (STC): Integrative Partnerships.

OMB No.: 3145-0194.

Expiration Date of Approval: February 28, 2022.

Type of Request: Intent to seek approval to extend an information collection.

Proposed Project:

The Science and Technology Centers (STC): Integrative Partnerships Program supports innovation in the integrative conduct of research, education and knowledge transfer. Science and Technology Centers build intellectual and physical infrastructure within and between disciplines, weaving together knowledge creation, knowledge integration, and knowledge transfer. STCs conduct world-class research through partnerships of academic institutions, national laboratories, industrial organizations, and/or other public/private entities. New knowledge thus created is meaningfully linked to society.

STCs enable and foster excellent education, integrate research and education, and create bonds between learning and inquiry so that discovery and creativity more fully support the learning process. STCs capitalize on diversity through participation in center activities and demonstrate leadership in the involvement of groups underrepresented in science and engineering.

Centers selected will be required to submit annual reports on progress and plans, which will be used as a basis for performance review and determining the level of continued funding. To support this review and the management of a Center, STCs will be required to develop a set of management and performance indicators for submission annually to NSF via an NSF evaluation technical assistance contractor. These indicators are both quantitative and descriptive and may include, for example, the characteristics of center personnel and students;

sources of financial support and in-kind support; expenditures by operational component; characteristics of industrial and/or other sector participation; research activities; education activities; knowledge transfer activities; patents, licenses; publications; degrees granted to students involved in Center activities; descriptions of significant advances and other outcomes of the STC effort. Part of this reporting will take the form of a database which will be owned by the institution and eventually made available to an evaluation contractor. This database will capture specific information to demonstrate progress towards achieving the goals of the program. Such reporting requirements will be included in the cooperative agreement which is binding between the academic institution and the NSF.

Each Center's annual report will address the following categories of activities: (1) research, (2) education, (3) knowledge transfer, (4) partnerships, (5) diversity, (6) management and (7) budget issues.

For each of the categories the report will describe overall objectives for the year, problems the Center has encountered in making progress towards goals, anticipated problems in the following year, and specific outputs and outcomes.

Use of the Information: NSF will use the information to continue funding of the Centers, and to evaluate the progress of the program.

Estimate of Burden: 100 hours per center for twelve centers for a total of 1,200 hours.

Respondents: Non-profit institutions; federal government.

Estimated Number of Responses per Report: One from each of the twelve centers.

Comments: Comments are invited on (a) whether the proposed 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 proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: December 20, 2024.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2024-30933 Filed 12-27-24; 8:45 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-498, 50-499, and 72-1041; NRC-2024-0169]

In the Matter of STP Nuclear Operating Company; South Texas Project, Units 1 and 2 and the Associated Independent Spent Fuel Storage Installation; Direct Transfer of License

AGENCY: Nuclear Regulatory Commission.

ACTION: Order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an order approving the application dated July 31, 2024, filed by STP Nuclear Operating Company, acting on behalf of the City of San Antonio, Texas, acting by and through the City Public Service Board of San Antonio (CPS Energy) and Constellation South Texas, LLC. Specifically, the order approves the direct transfer of a two percent ownership interest of Renewed Facility Operating License Nos. NPF-76 and NPF-80 for South Texas Project, Units 1 and 2, respectively, and its generally licensed independent spent fuel storage installation from Constellation South Texas, LLC to CPS Energy.

DATES: The order was issued on December 11, 2024, and is effective for 1 year.

ADDRESSES: Please refer to Docket ID NRC-2024-0169 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-2024-0169. Address questions about Docket IDs in [Regulations.gov](https://www.regulations.gov) to Stacy Schumann; telephone: 301-415-0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select

“Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to PDR.Resource@nrc.gov. The order and safety evaluation supporting the order are available in ADAMS under Package Accession No. ML24319A032.

- *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:

Thomas Byrd, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3719; email: Thomas.Byrd@nrc.gov.

SUPPLEMENTARY INFORMATION: The text of the order is attached.

Dated: December 20, 2024.

For the Nuclear Regulatory Commission.

Thomas J. Byrd,

Project Manager, Licensing Branch 4, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Order Approving the Direct Transfer of License

United States of America

Nuclear Regulatory Commission

In the Matter of: STP Nuclear Operating Company, (South Texas Project, Units 1 and 2 and 72–1041 the Associated Independent Spent Fuel Storage Installation), Docket Nos. 50–498, 50–499, and, Renewed License Nos. NPF–76 and NPF–80

Order Approving Direct Transfer of License

I.

STP Nuclear Operating Company (STPNOC) is the licensed operator, and the City of San Antonio, Texas, acting by and through the City Public Service Board of San Antonio (CPS Energy), Constellation South Texas, LLC (Constellation South Texas), and the City of Austin, Texas, are the licensed owners for Renewed Facility Operating License Nos. NPF–76 and NPF–80 and the general license for the independent spent fuel storage installation (ISFSI) (collectively, the licenses), which authorize the possession, use, and operation of South Texas Project, (STP), Units 1 and 2 and the STP ISFSI, respectively (the facilities). The

facilities are located in Matagorda County, Texas.

II.

Pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.80, “Transfer of licenses,” and 10 CFR 72.50, “Transfer of license,” and by letter dated July 31, 2024 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML24213A084), STPNOC, acting on behalf of Constellation South Texas, and CPS Energy (collectively, the “Applicants”), requested that the U.S. Nuclear Regulatory Commission (NRC, the Commission) consent to the transfer of a 2 percent ownership interest of STP, Units 1 and 2 and its generally licensed ISFSI from Constellation South Texas to CPS Energy. Currently, Constellation South Texas holds a 44 percent ownership interest in the facilities, while CPS Energy holds a 40 percent ownership interest in the facilities. Upon completion of the proposed direct transfer, Constellation South Texas and CPS Energy would each hold a 42 percent ownership in the facilities. The proposed direct transfer does not involve the City of Austin’s 16 percent ownership interest in the facilities.

On October 4, 2024, the NRC published a notice of consideration of approval of the application in the **Federal Register** (89 FR 80965). This notice provided an opportunity to comment, request a hearing, and petition for leave to intervene on the application. The NRC did not receive any written comments or hearing requests in response to the notice.

Pursuant to 10 CFR 50.80, no license for a utilization facility, or any right thereunder, shall be transferred, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing. Pursuant to 10 CFR 72.50, no license or any part included in a license issued under 10 CFR part 72 for an ISFSI shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission gives its consent in writing. Upon review of the information in the application, and other information before the Commission, and relying upon the representations contained in the application, the NRC staff has determined that the Applicants are qualified to hold the licenses, to the extent described in the application, and that the transfer of the licenses is otherwise consistent with applicable

provisions of law, regulations, and orders issued by the Commission pursuant thereto, subject to the condition set forth below.

The findings set forth above are supported by an NRC staff safety evaluation dated the same date as this order, which is available at Agencywide Documents Access and Management System (ADAMS) Accession No. ML24319A034.

III.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80 and 10 CFR 72.50, *it is hereby ordered* that that the application regarding the proposed direct license transfer is approved for STP, Units 1 and 2, and the ISFSI.

It is ordered that after receipt of all required regulatory approvals of the proposed transaction, the Applicants shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt no later than 5 business days prior to the planned closing of the proposed transaction. Should the proposed transaction not be completed within 1 year of the date of this order, this order shall become null and void, provided, however, that upon written application to the Director of the Office of Nuclear Reactor Regulation and for good cause shown, such date may be extended by order. The condition of this order may be amended upon application by the Applicants and approval by the NRC.

This Order is effective upon issuance.

For further details with respect to this Order, see the application dated July 31, 2024, and the associated NRC safety evaluation dated the same date as this order. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by email to pdr.resource@nrc.gov.

For the Nuclear Regulatory Commission
/RA/
Aida Rivera-Varona, Deputy Director
Division of Operating Reactor Licensing
Office of Nuclear Reactor Regulation

Dated: December 11, 2024

[FR Doc. 2024–30973 Filed 12–27–24; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-238; NRC-2024-0207]

United States Department of Transportation Maritime Administration; Nuclear Ship Savannah; Environmental Assessment and Finding of No Significant Impact

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering a license amendment request to approve the License Termination Plan (LTP) of License No. NS-1 for the Nuclear Ship Savannah (NSS) located at Pier 13, Canton Marine Terminal, in Baltimore, Maryland. If approved, the amendment would add a condition to the NSS license reflecting the NRC's approval of the LTP and establishing criteria for determining when changes to the LTP require prior NRC approval. The NRC staff has prepared an environmental assessment (EA) for this proposed license amendment in accordance with NRC regulations. Based on the EA, the NRC has concluded that a finding of no significant impact (FONSI) is appropriate. Therefore, in accordance with NRC regulations, preparation of an environmental impact statement (EIS) is not warranted for the proposed action. The NRC staff also is conducting a safety evaluation of the proposed license amendment.

DATES: The EA and FONSI referenced in this document are available on December 30, 2024.

ADDRESSES: Please refer to Docket ID NRC-2024-0207 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-2024-0207. Address questions about Docket IDs to Stacy Schumann; telephone: 301-415-0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For

problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to PDR.Resource@nrc.gov. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the "Availability of Documents" section.

- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Diana Diaz Toro, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-0930, email: Diana.Diaz-Toro@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of a license amendment request to approve the LTP for NSS, located at Pier 13, Canton Marine Terminal, in Baltimore, Maryland, as part of the United States Department of Transportation Maritime Administration's (MARAD) part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), "Domestic Licensing of Production and Utilization Facilities," License No. NS-1. If granted, the license amendment would add a condition to the NSS license reflecting the NRC's approval of MARAD's LTP and establishing criteria for determining when changes to the LTP require prior NRC approval. As required by 10 CFR part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," the NRC staff prepared an EA.

Based on the EA, the NRC staff has determined that an EIS is not required for this proposed action and a FONSI is appropriate. The NRC staff is also conducting a safety evaluation of the proposed license renewal request pursuant to 10 CFR part 50 and the results will be documented in a separate safety evaluation report.

II. Summary of Environmental Assessment

Description of the Proposed Action

The proposed action is the review and approval, if appropriate, of MARAD's LTP for NSS located in Pier 13, Canton Marine Terminal, in Baltimore,

Maryland. If approved by the NRC, the NSS license will be amended by adding a license condition that documents approval of the LTP and stipulating the changes that MARAD can make to the LTP without prior NRC approval. If the NRC approves the LTP, MARAD would implement the LTP to complete NSS decommissioning activities. Once decommissioning is complete, MARAD plans to submit a request to the NRC to terminate the license.

Purpose and Need for the Proposed Action

The purpose and need for the proposed action is to authorize MARAD to complete decommissioning of NSS to meet the unrestricted use criteria as specified in 10 CFR 20.1402, "Radiological criteria for unrestricted use." If the NRC approves the LTP, MARAD would complete decommissioning of NSS, followed by a request to terminate the NSS license. Upon NRC's termination of the license, MARAD would proceed to disposition the ship (e.g., preservation, shipbreaking, or artificial reefing) consistent with the process established in the Programmatic Agreement (PA) executed in accordance with the National Historic Preservation Act (NHPA).

Environmental Impacts of the Proposed Action

The NRC staff has assessed the potential environmental impacts of the proposed action. The results of the NRC's environmental review can be found in the EA. The NRC staff performed its environmental review in accordance with the requirements in 10 CFR part 51. The NRC staff relied on the NRC's NUREG-0586, Supplement 1, "Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities" (Decommissioning GEIS), as appropriate. In the Decommissioning GEIS, the NRC previously evaluated the potential environmental impacts of nuclear reactor decommissioning from the time that a licensee certifies it has permanently ceased power operations until the license is terminated. While NSS is not a nuclear power plant in the traditional sense, the ship was powered by an 80-megawatt thermal (MW_{th}) pressurized water reactor (PWR). Therefore, some of the analyses and conclusions in the Decommissioning GEIS are applicable to the decommissioning of the ship.

NSS ceased operations in 1970 and the 80 MW_{th} PWR was defueled in 1971. In 1972, the spent fuel elements were shipped to the U.S. Department of

Energy's Savannah River Site in Aiken, South Carolina. In 1976 the NRC license was changed to a possession-only license.

The ship was operated as a museum from 1981 to 1994 at the Patriots Point Naval and Maritime Museum in Mount Pleasant, South Carolina. In 1983, the ship was listed in the National Register of Historic Places and in 1991 it was designated as a National Historic Landmark for exhibiting exceptional value in illustrating the nuclear, maritime, transportation, and political heritages of the United States. The ship was moved to Baltimore, Maryland in 2008.

The license boundary for NSS is defined as the hull of the ship, therefore everything outside of the ship itself is considered off-site area. The site contains no soils or groundwater. There are no residences within 1.6 kilometers (km) (1 mile [mi]), however, NSS is berthed within the Port of Baltimore, a large industrial facility supporting over 15,000 direct jobs. There are two communities within 3.2 km (2 mi) of NSS with residences, medical facilities, schools, and parks. There are no nearby off-site wells or potable water sources.

Because MARAD's decommissioning, license termination, and final disposition involve dismantlement and remediation activities, including removal of some systems, structures, and components of the ship's nuclear power plant, MARAD determined that these activities would have an adverse effect per 36 CFR 800, "Protection of Historic Properties." In March 2023, MARAD executed a PA to minimize harm to landmarks, to the maximum extent possible, consistent with under section 110(f) of the NHPA. The purpose of the PA is to facilitate preservation of NSS during decommissioning. The PA was signed by Advisory Council on Historic Preservation, the NRC, and the Maryland State Historic Preservation Officer. The NRC is a signatory to the PA and, accordingly, has satisfied its obligations under the NHPA. The PA includes several concurring parties, including the National Park Service, Smithsonian Institution, on behalf of the National Museum of American History, the Steamship Historical Society of America, the N/S Savannah Association, the National Museum of Nuclear Science and History, and the Health Physics Society.

As part of the license termination plan, the ship itself would not be dismantled, and license termination activities would be conducted, to the greatest extent practicable, within the ship's license site boundary (*e.g.*, onboard the ship). To minimize impacts

to adjacent facilities and the environment and to avoid changes to the license boundary, MARAD separates and packages waste onboard NSS for subsequent transport of the waste for disposal at a permitted facility.

Chapter 3 of the LTP describes the activities that MARAD has completed as well as the remaining decommissioning activities. MARAD has dismantled the reactor auxiliary systems and components outside of the reactor compartment and disposed of it as low-level radiological waste (LLRW) in 2022. MARAD has completed the removal of major components including the control rod drive tower, port and starboard steam generator tubes and tube sheets, and the reactor pressure vessel head and internal components. In 2023, MARAD removed the lower section of the pressurizer and shipped it offsite as LLRW. MARAD plans to retain the remaining portions of the pressurizer as well as the containment vessel and secondary shield. Primary ship structures such as the decks, bulkheads, and contaminated liquid storage tanks will be decontaminated and remediated to meet the criteria for unrestricted use. After decontamination, the final status survey will be performed to verify that residual radioactivity has been reduced to meet the radiological criteria for unrestricted use in 10 CFR 20.1402.

The license termination activities would not impact the water quality of the port where the ship is moored as all waste is handled onsite to avoid impacting adjacent lands and water quality. Compliance with all Federal, State, and local permits pertaining to water quality throughout decommissioning activities ensures that surface water impacts are either minimal or evaluated in an appropriate environmental review. During current ship operations, anticipated discharges would consist of stormwater and condensate from the heating, ventilation and air conditioning system. MARAD has consulted with the Maryland Department of the Environment to ensure all liquid discharges from the ship are within state limits. The Maryland Department of the Environment concluded NSS did not require a permit, thus, MARAD does not have a National Pollutant Discharge Elimination System permit. Wastewater was collected in drums during decommissioning activities and shipped and disposed of offsite.

MARAD has been conducting remediation throughout the decommissioning process based on the results of radiological surveys. Routine radiological surveys along with historical survey data indicate that

minimal contamination has been identified to date. MARAD's occupational exposure as of September 30, 2023, is approximately 0.02168 person-Sv (2.168 person-rem) and the estimated exposure from all remaining activities would be approximately 0.02178 person-Sv (2.178 person-rem). MARAD does not anticipate any radioactive releases to unrestricted areas during the remaining decommissioning activities. The non-radiological hazards are typical of decommissioning activities, such as operation of heavy equipment, falling objects, or fires. MARAD would implement operating procedures and safety measures in accordance with Occupational Safety Health Administration regulations. Accordingly, no significant radiological or non-radiological impacts are expected to result from approval of the LTP. Therefore, the NRC staff does not anticipate impacts to public or workers' health and safety from radiological and non-radiological hazards, air quality, and transportation beyond those discussed in the Decommissioning GEIS, which concluded that the impact level for these issues was SMALL. Additionally, the NRC staff finds that impacts to off-site land use, geology and soils, water quality (surface and groundwater), visual resources, noise, socioeconomics, and waste management would be SMALL and not be significant. As discussed in section 3.8 of the EA, the NRC staff determined that impacts to terrestrial and aquatic ecology from the proposed license termination activities would be SMALL and not significant. Also, there would be no disproportionately high and adverse impacts on minority and low-income populations as a result of license termination activities at NSS.

The NRC staff determined that the proposed action would have no effect on any Federally listed species under the Endangered Species Act (ESA) because no Federally listed species are expected to occur within the action area as the action area does not provide suitable habitat for the listed species. Therefore, the NRC staff concludes that the proposed action would have no effect on any Federally listed, proposed, or candidate species. No critical habitats occur within the action area. Shortnose sturgeons are known to be present in Chesapeake Bay, however, they are unlikely to be present in the vicinity of the ship. Federal agencies are not required to consult with the U.S. Fish and Wildlife Service if they determine that an action will have no effect on Federally listed species or critical habitats. Thus, the ESA does not require

consultation on the proposed license termination activities at NSS. The NRC staff considers its obligations under ESA section 7 to be fulfilled for the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

The NRC staff also assessed the potential environmental impacts of alternatives to the proposed action, including alternative sites and the no-action alternative.

MARAD evaluated the environmental impacts of decommissioning NSS at three different ports: Baltimore, Maryland; Philadelphia, Pennsylvania; and Hampton Roads, Virginia. All three sites are in industrial areas along a deep-water waterfront with restricted access. Decommissioning activities would be similar regardless of the location; therefore, most of the environmental impacts anticipated at the Philadelphia or Hamptons Roads locations would not be significantly different from the environmental impacts discussed in the EA for the Port of Baltimore. The Port of Baltimore was selected as the location for decommissioning NSS using the DECON method because the ship is

currently docked there, therefore selecting any other location would require MARAD to tow the ship to the new location, which could result in additional potential environmental impacts.

The no-action alternative would consist of the NRC's denial of MARAD's LTP. Decommissioning and onsite maintenance activities would continue at the site. MARAD would not be able to request license termination until a revised LTP was submitted and approved by the NRC. Under this scenario, until MARAD resubmits an updated LTP, berthing of NSS at the Port in Baltimore would likely continue, including maintenance activities. Environmental impacts would neither significantly increase nor decrease because of the additional time, except for the costs associated with continuing to maintain the ship in a protective storage condition.

Agencies and Persons Consulted

On August 22, 2024, the NRC staff submitted the draft EA to the State of Maryland for their review and comment. On September 30, 2024, the State of Maryland provided comments regarding: (i) National Ambient Air

Quality Standards (NAAQS) designation (attainment/nonattainment status) for the State of Maryland, (ii) air emissions from NAAQS-criteria pollutants, (iii) and coastal effects in accordance with the Coastal Zone Management Act. The NRC staff addressed all comments from the State of Maryland in the final EA.

III. Finding of No Significant Impact

In accordance with the requirements in 10 CFR part 51, the NRC staff has concluded that the proposed action will not significantly affect the quality of the human environment. Therefore, the NRC staff has determined, pursuant to 10 CFR 51.31, "Determinations based on environmental assessment," that preparation of an EIS is not required for the proposed action, and pursuant to 10 CFR 51.32, "Finding of no significant impact," a FONSI is appropriate. Consistent with 10 CFR 51.32(a)(4), this FONSI incorporates the EA set forth in this notice by reference.

IV. Availability of Documents

The documents identified in the following table are available to interested persons through ADAMS, as indicated.

Document description	ADAMS accession No.
MARAD's Docket No. 50-238; License No. NS-1; N.S. Savannah, Submittal of Finding of No Significant Impact and Environmental Assessment, transmitted to NRC on October 3, 2008.	ML082810182.
MARAD's Docket No. 50-238; License No. NS-1; N.S. Savannah, Supplemental Environmental Assessment and Finding of No Significant Impact, CR-137, transmitted to NRC on May 21, 2024.	ML24145A128.
MARAD's Programmatic Agreement among the U.S. Department of Transportation, Maritime Administration, the U.S. Nuclear Regulatory Commission, the Advisory Council on Historic Preservation, and the Maryland State Historic Preservation Officer for the Decommissioning and Disposition of the Nuclear Ship Savannah, Baltimore, Maryland, dated March 17, 2023.	ML24191A138 (Package).
MARAD's Docket No. 50-238; License No. NS-1; N.S. Savannah, License Amendment Request No. LAR 2023-01. Submittal and Request for Approval of the License Termination Plan, dated October 23, 2023.	ML23298A041.
MARAD's Docket No. 50-238; License No. NS-1; N.S. Savannah, License Amendment Request No. LAR 2023-01, Response to Requests for Additional Information, dated June 27, 2024.	ML24183A271.
MARAD's Docket No. 50-238; License No. NS-1; N.S. Savannah, License Amendment Request No. LAR 2023-01, Response to Second Request for Additional Information, dated October 16, 2024.	ML24292A030.
NRC's NUREG-0586, Supplement 1, "Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities," dated November 2002	ML023470304, ML023470323, ML023500187, ML023500211, ML023500223.
Environmental Assessment for the License Termination Plan for the Nuclear Ship Savannah in Baltimore, Maryland, dated December 2024.	ML24351A024.

Dated: December 20, 2024.

For the Nuclear Regulatory Commission.

Robert Sun,

*Chief, Environmental Project Management,
Branch 2, Division of Rulemaking,
Environment, and Financial Support, Office
of Nuclear Material Safety and Safeguards.*

[FR Doc. 2024-30982 Filed 12-27-24; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2024-0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of December 30, 2024 and January 6, 13, 20, 27, and February 3, 2025. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: <https://www.nrc.gov/public-involve/public-meetings/schedule.html>.

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301-287-0745, by videophone at 240-428-3217, or by email at Anne.Silk@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301-415-1969, or by email at

Betty.Thweatt@nrc.gov or
Samantha.Miklaszewski@nrc.gov.

MATTERS TO BE CONSIDERED:

Week of December 30, 2024

There are no meetings scheduled for the week of December 30, 2024.

Week of January 6, 2025—Tentative

There are no meetings scheduled for the week of January 6, 2025.

Week of January 13, 2025—Tentative

Tuesday, January 14, 2025

9:00 a.m. Strategic Programmatic Overview of the Decommissioning and Low-Level Waste and Nuclear Materials Users Business Lines (Public Meeting) (Contact: Araceli Billoch Colon: 301-415-3302)

Additional Information: The meeting will be held in the Commissioners' Hearing Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—<https://video.nrc.gov/>.

Week of January 20, 2025—Tentative

There are no meetings scheduled for the week of January 20, 2025.

Week of January 27, 2025—Tentative

There are no meetings scheduled for the week of January 27, 2025.

Week of February 3, 2025—Tentative

Thursday, February 6, 2025

9:00 a.m. Briefing on ADVANCE Act Activities (Public Meeting) (Contact: Wesley Held: 301-287-3591)

Additional Information: The meeting will be held in the Commissioners' Hearing Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via

webcast at the Web address—<https://video.nrc.gov/>.

CONTACT PERSON FOR MORE INFORMATION:

For more information or to verify the status of meetings, contact Wesley Held at 301-287-3591 or via email at Wesley.Held@nrc.gov.

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: December 26, 2024.

For the Nuclear Regulatory Commission.

Richard Laufer,

Technical Coordinator, Office of the Secretary.

[FR Doc. 2024-31390 Filed 12-26-24; 11:15 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2025-907 and K2025-908; MC2025-908 and K2025-909; MC2025-909 and K2025-910; MC2025-911 and K2025-912; MC2025-912 and K2025-913; MC2025-913 and K2025-914; MC2025-916 and K2025-917; MC2025-917 and K2025-918; MC2025-918 and K2025-919; MC2025-929 and K2025-930; MC2025-930 and K2025-931; MC2025-931 and K2025-932; MC2025-932 and K2025-933; MC2025-933 and K2025-934; MC2025-934 and K2025-935; MC2025-935 and K2025-936; MC2025-936 and K2025-937; MC2025-940 and K2025-941; MC2025-942 and K2025-943; MC2025-943 and K2025-944; MC2025-944 and K2025-945; MC2025-945 and K2025-946; MC2025-946 and K2025-947; MC2025-947 and K2025-948; MC2025-949 and K2025-949; MC2025-950 and K2025-950; MC2025-951 and K2025-951; MC2025-952 and K2025-952; MC2025-953 and K2025-953; MC2025-954 and K2025-954; MC2025-955 and K2025-955; MC2025-956 and K2025-956; MC2025-957 and K2025-957]

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:* December 31, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

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

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. 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 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): MC2025–907 and K2025–908; Filing Title: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1126 to the Competitive Product List and Notice of Filing Materials Under Seal; Filing Acceptance Date: December 19, 2024; Filing Authority: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; Public Representative: Almaroof Agoro; Comments Due: December 31, 2024.

2. Docket No(s): MC2025–908 and K2025–909; Filing Title: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1127 to the Competitive Product List and Notice of Filing Materials Under Seal; Filing Acceptance Date: December 19, 2024; Filing Authority: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; Public Representative: Almaroof Agoro; Comments Due: December 31, 2024.

3. Docket No(s): MC2025–909 and K2025–910; Filing Title: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1128 to the Competitive Product List and Notice of Filing Materials Under Seal; Filing Acceptance Date: December 19, 2024; Filing Authority: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; Public

Representative: Almaroof Agoro; Comments Due: December 31, 2024.

4. Docket No(s): MC2025–911 and K2025–912; Filing Title: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1129 to the Competitive Product List and Notice of Filing Materials Under Seal; Filing Acceptance Date: December 19, 2024; Filing Authority: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; Public Representative: Almaroof Agoro; Comments Due: December 31, 2024.

5. Docket No(s): MC2025–912 and K2025–913; Filing Title: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1130 to the Competitive Product List and Notice of Filing Materials Under Seal; Filing Acceptance Date: December 19, 2024; Filing Authority: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; Public Representative: Almaroof Agoro; Comments Due: December 31, 2024.

6. Docket No(s): MC2025–913 and K2025–914; Filing Title: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 557 to the Competitive Product List and Notice of Filing Materials Under Seal; Filing Acceptance Date: December 19, 2024; Filing Authority: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; Public Representative: Almaroof Agoro; Comments Due: December 31, 2024.

7. Docket No(s): MC2025–916 and K2025–917; Filing Title: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1133 to the Competitive Product List and Notice of Filing Materials Under Seal; Filing Acceptance Date: December 19, 2024; Filing Authority: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; Public Representative: Almaroof Agoro; Comments Due: December 31, 2024.

8. Docket No(s): MC2025–917 and K2025–918; Filing Title: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1134 to the Competitive Product List and Notice of Filing Materials Under Seal; Filing Acceptance Date: December 19, 2024; Filing Authority: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; Public Representative: Almaroof Agoro; Comments Due: December 31, 2024.

9. Docket No(s): MC2025–918 and K2025–919; Filing Title: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1135 to the Competitive Product List and Notice of Filing Materials Under Seal; Filing Acceptance Date: December 19, 2024; Filing

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).

26. Docket No(s).: MC2025-950 and K2025-950; Filing Title: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1164 to the Competitive Product List and Notice of Filing Materials Under Seal; Filing Acceptance Date: December 19, 2024; Filing Authority: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; Public

Representative: Maxine Bradley;
Comments Due: December 31, 2024.

27. Docket No(s): MC2025–951 and K2025–951; Filing Title: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1165 to the Competitive Product List and Notice of Filing Materials Under Seal; Filing Acceptance Date: December 19, 2024; Filing Authority: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; Public Representative: Gregory Stanton; Comments Due: December 31, 2024.

28. Docket No(s): MC2025–952 and K2025–952; Filing Title: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1166 to the Competitive Product List and Notice of Filing Materials Under Seal; Filing Acceptance Date: December 19, 2024; Filing Authority: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; Public Representative: Gregory Stanton; Comments Due: December 31, 2024.

29. Docket No(s): MC2025–953 and K2025–953; Filing Title: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1167 to the Competitive Product List and Notice of Filing Materials Under Seal; Filing Acceptance Date: December 19, 2024; Filing Authority: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; Public Representative: Gregory Stanton; Comments Due: December 31, 2024.

30. Docket No(s): MC2025–954 and K2025–954; Filing Title: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1168 to the Competitive Product List and Notice of Filing Materials Under Seal; Filing Acceptance Date: December 19, 2024; Filing Authority: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; Public Representative: Katalin Clendenin; Comments Due: December 31, 2024.

31. Docket No(s): MC2025–955 and K2025–955; Filing Title: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1169 to the Competitive Product List and Notice of Filing Materials Under Seal; Filing Acceptance Date: December 19, 2024; Filing Authority: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; Public Representative: Katalin Clendenin; Comments Due: December 31, 2024.

32. Docket No(s): MC2025–956 and K2025–956; Filing Title: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1170 to the Competitive Product List and Notice of Filing Materials Under Seal; Filing Acceptance

Date: December 19, 2024; Filing Authority: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; Public Representative: Katalin Clendenin; Comments Due: December 31, 2024.

33. Docket No(s): MC2025–957 and K2025–957; Filing Title: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 560 to the Competitive Product List and Notice of Filing Materials Under Seal; Filing Acceptance Date: December 19, 2024; Filing Authority: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; Public Representative: Katalin Clendenin; Comments Due: December 31, 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. 2024–31313 Filed 12–27–24; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 18, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1143 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–927, K2025–928.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–31111 Filed 12–27–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 18, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1138 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–921, K2025–922.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–31107 Filed 12–27–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 20, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract*

1185 to Competitive Product List. Documents are available at www.prc.gov, Docket Nos. MC2025–980, K2025–979.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–31163 Filed 12–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 18, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1142 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–926, K2025–927.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–31118 Filed 12–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 16, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 546 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–865, K2025–866.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–30845 Filed 12–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 17, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 554 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–899, K2025–900.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–31009 Filed 12–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal

Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 20, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1152 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–937, K2025–938.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–31112 Filed 12–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 19, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1134 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–917, K2025–918.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–31102 Filed 12–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 19, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1170 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–956, K2025–956.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–31159 Filed 12–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 17, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract*

1109 to Competitive Product List.

Documents are available at www.prc.gov, Docket Nos. MC2025–888, K2025–889.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–30992 Filed 12–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 19, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1165 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–951, K2025–951.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–31154 Filed 12–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT:

Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 17, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1125 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–906, K2025–907.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–31098 Filed 12–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 18, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1136 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–919, K2025–920.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–31105 Filed 12–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 18, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 559 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-928, K2025-929.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-31164 Filed 12-27-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 16, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1085 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-853, K2025-854.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-30834 Filed 12-27-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 16, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1083 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-851, K2025-852.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-30832 Filed 12-27-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 13, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 541 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2025-844, K2025-845.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-30806 Filed 12-27-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 18, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 553 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-886, K2025-887.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-31008 Filed 12-27-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby

gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 18, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1139 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–922, K2025–923.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–31108 Filed 12–27–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.
DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 19, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1135 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–918, K2025–919.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–31103 Filed 12–27–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a

domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 20, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1183 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–978, K2025–977.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–31161 Filed 12–27–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 20, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1182 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–977, K2025–976.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–31160 Filed 12–27–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 19, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1157 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–942, K2025–943.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–31113 Filed 12–27–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 19, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract*

1164 to Competitive Product List. Documents are available at www.prc.gov, Docket Nos. MC2025–950, K2025–950.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–31153 Filed 12–27–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 19, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1169 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–955, K2025–955.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–31158 Filed 12–27–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 16, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1086 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–854, K2025–855.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–30835 Filed 12–27–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 17, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1108 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–887, K2025–888.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–30991 Filed 12–27–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 19, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1162 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–947, K2025–948.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–31151 Filed 12–27–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 17, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1113 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–892, K2025–893.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–30996 Filed 12–27–24; 8:45 am]
BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 19, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1158 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–943, K2025–944.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–31114 Filed 12–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 17, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract*

1120 to Competitive Product List.

Documents are available at www.prc.gov, Docket Nos. MC2025–900, K2025–901.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–31003 Filed 12–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 13, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1069 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–829, K2025–830.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–30811 Filed 12–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT:

Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 19, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1166 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–952, K2025–952.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–31155 Filed 12–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 16, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1092 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–860, K2025–861.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–30841 Filed 12–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 18, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1132 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-915 K2025-916.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-31100 Filed 12-27-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 13, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 542 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-840, K2025-841.

Sean Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-30843 Filed 12-27-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 17, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1110 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-889 K2025-890.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-30993 Filed 12-27-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 17, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract*

1111 to Competitive Product List. Documents are available at www.prc.gov, Docket Nos. MC2025-890, K2025-891.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-30994 Filed 12-27-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 16, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1082 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-850, K2025-851.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-30831 Filed 12-27-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT:

Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION:

The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 20, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1184 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–979, K2025–978.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–31162 Filed 12–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement**

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT:

Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION:

The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 17, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1123 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–904, K2025–905.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–31006 Filed 12–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement**

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024

FOR FURTHER INFORMATION CONTACT:

Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION:

The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 19, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1163 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–949, K2025–949.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–31152 Filed 12–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement**

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT:

Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION:

The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 19, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1168 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–954, K2025–954.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–31157 Filed 12–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement**

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT:

Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION:

The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 19, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 560 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–957, K2025–957.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–31165 Filed 12–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement**

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT:

Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION:

The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 17, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1116 to Competitive Product List*. Documents are available at

www.prc.gov, Docket Nos. MC2025–895, K2025–896.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–30999 Filed 12–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT:

Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 19, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1167 to Competitive Product List*.

Documents are available at *www.prc.gov*, Docket Nos. MC2025–953, K2025–953.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–31156 Filed 12–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT:

Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 18, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1137 to Competitive Product List*. Documents are available at *www.prc.gov*, Docket Nos. MC2025–920, K2025–921.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–31106 Filed 12–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT:

Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 16, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1079 to Competitive Product List*. Documents are available at *www.prc.gov*, Docket Nos. MC2025–847, K2025–848.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–30828 Filed 12–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal

Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT:

Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 16, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1089 to Competitive Product List*. Documents are available at *www.prc.gov*, Docket Nos. MC2025–857, K2025–858.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–30838 Filed 12–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT:

Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 19, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1160 to Competitive Product List*. Documents are available at *www.prc.gov*, Docket Nos. MC2025–945, K2025–946.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–31116 Filed 12–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 18, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1131 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–914 K2025–915.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–31099 Filed 12–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 13, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract*

1075 to Competitive Product List.

Documents are available at www.prc.gov, Docket Nos. MC2025–838, K2025–839.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–30817 Filed 12–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 18, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1141 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–924, K2025–925.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–31110 Filed 12–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT:

Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 18, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & USPS Ground Advantage® Contract 558 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–925, K2025–926.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–31117 Filed 12–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 17, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1115 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025–894, K2025–895.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–30998 Filed 12–27–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement****AGENCY:** Postal Service™.**ACTION:** Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 13, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1076 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-839, K2025-840.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-30818 Filed 12-27-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 18, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1140 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-923, K2025-924.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-31109 Filed 12-27-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 19, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1161 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-946, K2025-947.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-31150 Filed 12-27-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 19, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract*

1133 to Competitive Product List. Documents are available at www.prc.gov, Docket Nos. MC2025-916, K2025-917.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-31101 Filed 12-27-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 17, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1114 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-893, K2025-894.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024-30997 Filed 12-27-24; 8:45 am]
BILLING CODE 7710-12-P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® Negotiated Service Agreement

AGENCY: Postal Service™.
ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* December 30, 2024.

FOR FURTHER INFORMATION CONTACT:

Sean C. Robinson, 202-268-8405.

SUPPLEMENTARY INFORMATION:

The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 19, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 1159 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2025-944, K2025-945.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024-31115 Filed 12-27-24; 8:45 am]

BILLING CODE 7710-12-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102005; File No. SR-NYSEARCA-2024-112]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Amend Rule 7.31-E To Adopt the Selective Midpoint Order

December 19, 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 December 18, 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.31-E to adopt the Selective Midpoint Order. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of,

and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7.31-E(h)(3) to decommission the Discretionary Pegged Order (“DPO”) and introduce the Selective Midpoint Order (“SeMi Order”). The SeMi Order will be similar to the DPO in that it is a discretionary order type, but will, unlike the current DPO, provide price protection during periods of market instability based on input from a gradient-boosting machine learning model.

Background

The Exchange currently offers the DPO, which is a non-displayed order to buy (sell) that is pegged to the same side of the PBBO and assigned a working price equal to the lower (higher) of the midpoint of the PBBO (the “Midpoint Price”) or the limit price of the order.³ Any untraded shares of such order are assigned a working price equal to the lower (higher) of PBB (PBO) or the order’s limit price, which is automatically adjusted in response to changes to the PBB (PBO) for buy (sell) orders up (down) to the order’s limit price. A DPO will exercise the least amount of discretion necessary from its working price to its discretionary price (defined as the lower (higher) of the Midpoint Price or the limit price of the order) to trade with contra-side interest.

Prior to November 2022, the DPO would not exercise discretion if the PBBO was determined to be unstable via a “quote instability calculation” that assessed the probability of a change to the PBB or PBO.⁴ The Exchange used the quote instability calculation along with real-time relative quoting activity of protected quotations to assess the

probability of an imminent change to the PBBO (the “quote instability factor”). When the quoting activity met certain predefined criteria and the quote instability factor calculated was greater than the Exchange’s predefined quote instability threshold, the Exchange treated the quote as unstable and restricted DPOs from exercising discretion. In November 2022, the Exchange amended Rule 7.31-E(h)(3) to eliminate the quote stability calculation, allowing DPOs to exercise discretion even during potential periods of quote instability.⁵

Proposed Rule Change

The Exchange proposes to modify Rule 7.31-E(h)(3) to replace the DPO with the SeMi Order. The SeMi Order will share the same basic attributes as the DPO. Like the DPO, the SeMi Order would be a non-displayed order to buy (sell) that is pegged to the same side of the PBBO and assigned a working price equal to the lower (higher) of the Midpoint Price or the limit price of the order. Any untraded shares of a SeMi Order would be assigned a working price equal to lower (higher) of the PBB (PBO) or the order’s limit price and automatically adjusted in response to changes to the PBB (PBO) for buy (sell) orders up (down) to the order’s limit price. In order to trade with contra-side orders on the NYSE Arca Book, a SeMi Order to buy (sell) would exercise the least amount of price discretion necessary from its working price to its discretionary price, which is defined as the lower (higher) of the Midpoint Price or the SeMi Order’s limit price.

SeMi Orders would not be displayed, must be designated Day, and would be eligible to be designated for the Core Trading Session only. SeMi Orders designated for the Early Trading Session or Late Trading Session would be rejected.

When exercising discretion, SeMi Orders (like DPOs today) would maintain their time priority at their working price as Priority 3—Non-Display Orders and are prioritized behind Priority 3—Non-Display Orders with a working price equal to the discretionary price of a SeMi Order at the time of execution. If multiple SeMi

³ See Rule 7.31-E(h)(3). As defined in NYSE Arca Rule 1.1, “PBBO” means the Best Protected Bid and the Best Protected Offer. Rule 1.1 also defines “PBB” as the highest Protected Bid and “PBO” as the lowest Protected Offer.

⁴ See Securities Exchange Act Release No. 95154 (June 24, 2022), 87 FR 39134 (June 30, 2022) (SR-NYSEARCA-2022-13) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To Amend Rule 7.31-E(h)(3) Relating to Discretionary Pegged Orders).

⁵ See Securities Exchange Act Release No. 96322 (November 15, 2022), 87 FR 69376 (November 18, 2022) (SR-NYSEARCA-2022-76) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 7.31-E). The Exchange resumed offering the DPO in November 2022, after previously filing to temporarily suspend its use in August 2022. See Securities Exchange Act Release No. 95584 (August 23, 2022), 87 FR 52826 (August 29, 2022) (SR-NYSEARCA-2022-54) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.31-E).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Orders are exercising price discretion during the same book processing action, they would maintain their relative time priority at the discretionary price.

Accordingly, the Exchange proposes to replace existing references to the “Discretionary Pegged Order” in Rule 7.31–E(h)(3) and subparagraphs (A) and (B) thereunder with references to the “Selective Midpoint Order.”⁶

The Exchange proposes to add new Rule 7.31–E(h)(3)(C) to provide that the SeMi Order, as proposed, would exercise price discretion to its discretionary price, except during periods of quote instability as identified by the Selective Midpoint Indicator (“SMI”) (as discussed in further detail below). If the SMI determines the PBBO for a particular security to be an unstable quote, both an arriving and resting SeMi Order would wait for a PBBO that is stable before the order’s working price is adjusted and the order becomes eligible to trade. In other words, a SeMi Order would be ineligible to trade when the SMI identifies unstable market conditions and would remain in that state until the SMI determines that market conditions have stabilized, thereby preventing potentially undesirable executions during volatile or unstable market conditions. Whereas the DPO previously relied on one static logistical regression model to forecast market instability and prevented DPOs in any symbol from exercising discretion to trade when the model anticipated an unstable market, the SeMi Order, as proposed, would rely on the SMI to predict market instability using a symbol-specific gradient-boosting machine learning model and would protect SeMi Orders from trading when the SMI predicts quote instability for a given symbol.

The Exchange also proposes new Rule 7.31–E(h)(3)(D) to provide for SeMi Orders to be optionally designated as Liquidity Providing. Proposed Rule 7.31–E(h)(3)(D)(i) would provide that a SeMi Order designated as Liquidity Providing will only execute on arrival against resting orders that include a Non-Display Remove Modifier and are priced within the Liquidity Providing SeMi Order’s discretionary range.⁷

⁶ The Exchange also proposes conforming changes in Rules 7.18–E(b)(1), 7.18–E(c)(1) and (5), 7.31–E(i)(3), and 7.34–E(c)(1)(A) to replace references to “Discretionary Pegged Orders” with references to “Selective Midpoint Orders.”

⁷ The Exchange also proposes related conforming changes to Rules 7.31–E(d)(2)(B), 7.31–E(d)(3)(F), and 7.31–E(e)(1)(C) to provide that Non-Displayed Limit Orders, MPL Orders, and Non-Routable Limit Orders designated with a Non-Display Remove Modifier will trade as takers against Liquidity Providing SeMi Orders.

Proposed Rule 7.31–E(h)(3)(D)(ii) would provide that if a resting contra-side order that does not include a Non-Display Remove Modifier is priced within an arriving Liquidity Providing SeMi Order’s discretionary range, the Liquidity Providing SeMi Order will be placed on the NYSE Arca Book, and its discretionary range will be adjusted to equal the resting price of a non-displayed contra-side order or to one MPV less aggressive than the resting price of a displayed contra-side order.⁸

Proposed Rule 7.31–E(h)(3)(D)(iii) provides that a Liquidity Providing SeMi Order resting on the NYSE Arca Book will not trade with an arriving contra-side order that cannot remove liquidity.⁹ Once such arriving contra-side order is placed on the NYSE Arca Book, the discretionary range of the Liquidity Providing SeMi Order will be adjusted to equal the resting price of a non-displayed contra-side order or to one MPV less aggressive than the resting price of a displayed contra-side order.

Proposed Rule 7.31–E(h)(3)(D)(iv) would provide that, once resting on the NYSE Arca Book, the discretionary range of a Liquidity Providing SeMi Order will be adjusted based on resting contra-side interest as described in proposed subparagraphs (ii) and (iii) of this Rule when its working price Changes. In addition, proposed Rule

⁸ The Exchange notes that allowing Liquidity Providing SeMi Orders to trade with resting orders with a Non-Display Remove Modifier, as well as adjusting the discretionary range of such orders, would be consistent with how similar discretionary order types function on other equities exchanges. See, e.g., Cboe EDGX Exchange, Rule 11.8(g)(5) (“[Midpoint Discretionary Orders (“MDOs”)] that are not entered with a [Quote Depletion Protection (“QDP”)] instruction, as defined in Rule 11.8(g)(10), will only act as the liquidity provider. MDOs entered with a QDP instruction will instead be allowed to remove liquidity, by default, unless the User chooses to require that the MDO only act as a liquidity provider. If the instructions included on an MDO do not permit the MDO to remove liquidity, it will only execute on entry against resting orders that include a Super Aggressive instruction priced at the MDO’s pegged price if the MDO also contains a Displayed instruction, and against resting orders that include an NDS instruction priced either at the MDO’s pegged price or within its discretionary range. If a resting contra-side order that does not include [a Non-Displayed Swap] instruction is priced within the discretionary range of an incoming MDO that is not permitted to remove liquidity, the incoming MDO will be placed on the EDGX Book and its discretionary range will be shortened to equal the limit price of the resting contra-side order. Likewise, where an incoming order with a Post Only instruction does not remove liquidity on entry pursuant to Rule 11.6(n)(4) against a resting MDO, the discretionary range of the resting MDO will be shortened to equal the limit price of the incoming contra-side order with a Post Only instruction.”).

⁹ The Exchange notes that this proposed handling is also consistent with the handling of similar discretionary order types by other equities exchanges. See *id.*

7.31–E(h)(3)(D)(iv)(a) and (b) provide that a Liquidity Providing SeMi Order to buy (sell) will not be eligible to trade at a price equal to or above (below) any sell (buy) orders that are displayed and that have a working price equal to or below (above) the working price of such Liquidity Providing SeMi Order, or at a price above (below) any sell (buy) orders that are not displayed and that have a working price below (above) the working price of such Liquidity Providing SeMi Order.

Finally, the Exchange proposes to renumber current Rule 7.31–E(h)(3)(C) as 7.31–E(h)(3)(E). The Exchange proposes that, as with DPOs, if the PBBO is locked or crossed, SeMi Orders would wait for a PBBO that is not locked or crossed before the working price is adjusted and the order becomes eligible to trade. Accordingly, the Exchange proposes to substitute “Selective Midpoint Order” for “Discretionary Pegged Order” in the text of proposed Rule 7.31–E(h)(3)(E).

Selective Midpoint Indicator

As described in further detail in the white paper attached as Exhibit 3 to this proposed rule change,¹⁰ the SMI was developed using a decision tree model, which is a supervised learning algorithm used for classification and regression tasks. A decision tree model is trained sequentially, and each successive model seeks to improve on errors in the previous model by focusing on accurately predicting where the previous model performs poorly.

The Exchange determined to use a decision tree model in developing the SMI in large part because of the transparency it offers to its designers. The output of a decision tree is a hierarchy of questions that allows a user to follow the model’s decision-making process, assess the importance of a given feature to the model’s output, and examine the reasons underlying a specific output from the model. The Exchange believed it was important to build a model that could be interpreted and understood in this way to allow for the evaluation of, among other things, the relationships between market shifts, feature selection, and feature weightings, as well as to be able to assess overall model performance.

Market Instability Assessment

The Exchange set out to develop a model that would allow the SMI to predict market instability. For purposes of the model, the Exchange defined

¹⁰ See Exhibit 3, Selective Midpoint Indicator (SMI): A Gradient Boosted Signal Enabling Stable Order Executions (the “White Paper”).

“instability” at a high level as relatively large price moves during a relatively short time frame. The Exchange chose PBBO updates as the fundamental data points for the model based on the evenly distributed nature of PBBO updates throughout the trading day and the granular level of information such updates offer. The model’s objective is to identify windows where changes to the PBBO are unstable, in order to predict unstable markets in real time and prevent SeMi Order trading accordingly.

The Exchange established the concept of a “price jump” to further understand and categorize periods of instability. A price jump is defined as a PBBO mid-price change of a pre-defined percentage of a symbol’s spread (referred to as the spread threshold X), in either direction, within a configurable time interval (referred to as the time horizon G). The Exchange sought to identify price jumps following a PBBO update, whether positive or negative. A price jump is marked at a given point in time if, looking back to the start of the time horizon, the mid-price was at least the spread threshold in difference from the current mid-price. This approach identifies discrete price jumps over configurable time intervals, thereby offering the Exchange flexibility to adjust the spread threshold and/or time horizon parameters according to symbol-specific dynamics.¹¹

To build the SMI as a continuous signal of market instability, the Exchange next applied the price jump definition to delineate continuous periods of market instability. At each PBBO update (at index time i), the Exchange determined whether there had been a price jump. If there was no price jump, the market would be considered stable. If there was a price jump, the Exchange continued to look for price jumps within the time horizon G , until no price jump occurred. At that point, the Exchange would mark an unstable time window starting at the PBBO update that occurred at $i-1$ or 50 microseconds prior to the PBBO update at time i , whichever is closest to i , and ending at the last price jump identified.¹²

Finally, the Exchange employed an additional parameter for a minimum time increment g to establish that unstable windows identified using the spread threshold and time horizon parameters are indicative of persistent

price instability. If multiple price jumps occur within a small timeframe, such that the distance between the first and last price jumps is less than g , the Exchange would not mark the window as unstable. The application of the minimum time increment parameter allows the Exchange to more accurately identify true periods of instability by filtering out temporary price jumps that are quickly followed by a reversion to the price prior to the observed price jump.¹³

In developing the SMI to facilitate the SeMi Order’s ability to provide protection against potentially unfavorable executions, the Exchange also wanted to be able to differentiate between quote instability on the bid side and ask side. For example, the Exchange would not want to prevent executions of buy orders based on upwards instability of the mid-price of the PBBO because executions under those conditions would likely be favorable. Accordingly, if the mid-price of the PBBO is higher at the end of an unstable window, the Exchange would only mark PBBO updates during such window as unstable for the ask side (and vice versa for the bid side).

Model Development

To develop and train the models underlying the SMI, the Exchange used data from the NYSE Arca Book from August 29, 2024 through October 22, 2024 for a set of 500 symbols selected to reflect a representative sample of the U.S. equity markets.¹⁴ The Exchange created evaluation data points for each PBBO update that include the closest book depth state at the time of that update. This merged data set of PBBO updates and book depth data has the benefit of the information from both types of data without overinflating the size of the data set. All features and parameters used by the models are calculated based on this merged data set.

The Exchange identified a set of features based on NYSE Arca Book data—*e.g.*, book depth information, PBBO updates, number of IOC orders—that would contribute to the models. The Exchange selected 83 unique

features that could be considered for incorporation into the model.¹⁵ These features were identified based on an iterative process, and features were selected based on their ability to explain unstable periods identified by the application of the parameters discussed above and, going forward, to predict market instability on a real-time basis so that the SMI can effectively protect SeMi Orders from potentially unfavorable executions. In production, the Exchange proposes to select a subset of these 83 features to be weighted in the model’s assessment of market instability (rather than having the model utilize all available features), because focusing on the features that have been identified as most important in predicting market instability for a given symbol would both optimize prediction accuracy and processing speed.¹⁶

Symbol-Specific Models

The Exchange proposes that the SMI will rely on symbol-specific models to leverage the ability of the models to incorporate different features and weightings to respond to individual symbols’ unique profiles (*e.g.*, the features most likely to accurately predict instability for a given symbol). To explore how symbol-specific models should be distributed, the Exchange ranked each of the 500 symbols in the representative data set according to the total number of unstable data points. The Exchange trained a model for each of the 500 symbols and used the model trained for the symbol SPY as a default “market model.”

The Exchange found that the SMI performed better with a symbol-specific model for more active symbols (*i.e.*, those with more unstable data points) than on the market model (*i.e.*, testing showed sharp declines in precision and increases in overlocking behavior using the market model), whereas the SMI with a market model performed well for less active symbols (*i.e.*, high recall with relatively small loss of precision and minimally more overlocking). The Exchange concluded that, for the SMI to provide optimal information and protection to SeMi Orders, more active symbols would benefit significantly from symbol-specific models, while less active symbols (which have fewer unstable data points to inform a symbol-

¹¹ Figure 1 in Section 4.1 of the White Paper provides a detailed example of how a price jump is calculated.

¹² Figure 2 in Section 4.2 of the White Paper provides an example of the identification of unstable windows.

¹³ Figure 3 in Section 4.2 of the White Paper demonstrates the operation of the minimum time increment parameter.

¹⁴ The full symbol list is included in Appendix B of the White Paper. Symbols were chosen based on criteria including absolute price level, spread in dollars, spread in basis points, and liquidity (daily ADV). Because stable periods generally far outnumber unstable periods in the U.S. equity markets, the Exchange used under-sampling methods where appropriate to reduce the number of stable data points in the data set and randomly shuffled data before training.

¹⁵ The full list of features is included in Appendix A to the White Paper. Appendix A also identifies the subset of features that were selected for the model training described in the White Paper.

¹⁶ Once the SMI is implemented in production, the full list of features currently calculated in real-time and available for evaluation for inclusion in the SMI models will be published daily on the Exchange’s website.

specific model) could successfully default to a market model.

The Exchange believes that models tailored to individual symbols' specific characteristics would provide for better performance by the SMI and thus enhanced price protection by the SeMi Order. Accordingly, in production, the Exchange anticipates that at least 200 (and up to approximately 1,000) symbols that trade on the Exchange will have an individualized model that incorporates features that have been specifically identified for predicting market stability for that symbol. The remaining symbols that trade on the Exchange would use the market model, which would apply the same features and weightings for all symbols.¹⁷ Each day, the Exchange will identify the 1,000 symbols with most unstable data points and evaluate those symbols to determine whether a symbol-specific model or market model would yield better performance. The Exchange will publish on its website a list of the symbols that have an individual model to provide transparency to market participants regarding the operation of SeMi Orders.

Performance Metrics

The Exchange strategically prioritized developing the models to have a high rate of recall, which was intended to maximize the models' ability to accurately capture unstable PBBO updates while accepting that the models might identify more periods of instability than would exist in realistic market conditions. The Exchange focused on three metrics: (1) recall, or the model's ability to accurately identify true unstable data points; (2) precision, or the model's ability to identify only true unstable data points (*i.e.*, to not misidentify stable data points as unstable); and (3) overlocking, or the model's ability to minimize the amount of time (measured in seconds) that the model incorrectly predicts unstable market conditions.¹⁸ The Exchange intends for the models to maximize recall and precision, while minimizing overlocking.

To evaluate the performance of the models, the Exchange selected initial baseline values for each the three parameters X , G , and g to maximize these performance metrics. To define an

unstable PBBO period, the Exchange selected a minimum time increment g of 100 microseconds; spread threshold X of 25%; and time horizon G of one millisecond.¹⁹

In final performance testing of the model, the aggregate results demonstrate that the model achieves an average recall rate or 90% and average precision of 30%, with overlocking occurring for an additional 3.8 seconds on average.²⁰

Production Integration

The models' compact size and average prediction speed of approximately two microseconds allows for seamless integration of the model's prediction process into the NYSE Pillar trading platform ("Pillar") on which the Exchange operates.²¹ The Exchange believes that it has designed the SMI to produce an output rapidly enough to keep up with real-time trading, without overburdening Exchange systems or otherwise impacting current system performance.

Pillar will have access to full real-time trading data and will continuously maintain required features for the model, including PBBO updates, order entries, order cancellations, and book depth information. The models are invoked as soon as an evaluation trigger (*e.g.*, a PBBO update) is received.²² The evaluation process concludes by sending a message the Pillar matching engine to indicate the beginning and end of an unstable period, which would inform whether SeMi Orders are eligible to trade. For example, when Pillar receives a SeMi Order, the SMI will indicate whether the market is stable or unstable. If the market is stable, the SeMi Order will be allowed to post to the NYSE Arca Book and trade. If the market is unstable, the order will be prevented from trading until the SMI

next predicts that the market is stable. For as long as the SMI predicts that the market will be unstable, a SeMi Order will remain ineligible to trade and will not execute until the SMI evaluates the market as stable.

On a given trading day, the SMI models will use the feature weights determined from the previous night's training, and the features will be calculated using real-time intraday data. The list of symbols with individualized models will be dynamically constructed daily and published before the start of trading each day.

The model will not change intra-day. The Exchange proposes to continue to retrain the model within the parameters described in this filing and the White Paper daily, outside of the Core Trading Session (on days when trading takes place on the Exchange). Retraining will be based on the last three trading days' worth of historical data. Retraining may result in changes to the features used by the model and/or the weighting of such features. The values assigned to the three parameters X , G , and g will not be adjusted as a result of regular model training but may be updated periodically based on the Exchange's analysis of overall model performance. Retraining is a standard and accepted process in the use of machine learning models like the ones underlying the SMI. The retraining process is not intended to result in significant or unexpected changes to the performance of the SMI or the behavior of the SeMi Order. Rather, retraining would help ensure that the SMI continues to perform well in dynamic circumstances, by allowing the models to learn from and incorporate more recent data points and would facilitate improved model performance over time. The Exchange also notes that retraining would build on the models' existing state (*i.e.*, existing data inputs and knowledge base) and would not alter the model's objectives; retraining would result in new behaviors only to the extent that the model had not previously encountered a given scenario, and even then, any new behavior would be consistent with the model's objectives. If the Exchange determines that a retrained model would not be as successful as an existing model in achieving its objectives based on the metrics defined above, the Exchange will not implement the retrained model in production.

The Exchange will file a subsequent proposed rule change if it seeks to modify the underlying structure of the models underlying the SMI, such as the parameters X , G , and g used to label unstable windows or new features that

¹⁷ The Exchange proposes that a new symbol will operate on the market model until the Exchange has gathered at least three days' worth of data to be able to train a symbol-specific model and determine whether it outperforms the market model for that symbol.

¹⁸ Recall, precision, and overlocking are discussed in more detail in Section 6.1 of the White Paper.

¹⁹ The analysis the Exchange performed to arrive at these parameter values is discussed in more detail in Section 6.2 of the White Paper. The Exchange expects that the parameter values may change over time to ensure proper calibration. The Exchange anticipates implementing the SMI in production with these parameter values, but will continue to analyze data and train the models until the date of implementation and may update these values to the extent that its analysis suggests that different values would improve performance.

²⁰ Additional discussion of the Exchange's performance testing of the models appears in Section 6.4 of the White Paper.

²¹ Section 7 of the White Paper discusses the Exchange's analysis of the model's prediction time in more detail, as well as the integration of the model into the Pillar platform (*see* Figure 9).

²² In addition to PBBO updates, Pillar will respond to a timer-based evaluation trigger. The timer-based trigger is intended to ensure that the model remains updated when the NYSE Arca Book changes in the absence of a PBBO update (such as when non-displayed liquidity is added to the NYSE Arca Book).

could be incorporated into the models, but will not seek Commission approval prior to retraining the models to adjust the weighting of features that have been disclosed as potential inputs for the models or modifications to the value of any of the three identified parameters. The Exchange will also retain copies of each historical iteration of the models as part of its books and records and will make such records available to the Commission upon request. The Exchange will also publish a Trader Update in advance of implementing a retrained version of the SMI models when the Exchange has a reasonable belief that the retrained version(s) would yield results that differ materially from the prior version(s).

* * * * *

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation of this change by Trader Update. Subject to approval of this rule filing, the Exchange is prepared to implement the proposed rule change in 2025.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,²³ in general, and furthers the objectives of Section 6(b)(5),²⁴ 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 change to eliminate the DPO and introduce the SeMi Order would remove impediments to, and perfect the mechanism of, a free and open market and a national market system, as well as protect investors and the public interest, by continuing to provide market participants with the benefits of an order type that can exercise discretion to trade with contra-side interest. The SeMi Order will operate in a substantially similar manner to the existing DPO, with the benefit of the SMI to provide price protection to SeMi Orders during periods of market instability. The Exchange also believes that the proposed rule change would remove impediments to, and perfect the mechanism of, a free and open market

and a national market system and protect investors and the public interest because the SMI would provide improved functionality as compared to the regression model previously used by the DPO to predict market instability, which used static parameters for all symbols. Specifically, the Exchange believes that the SMI would provide enhanced price protection for SeMi Orders because its fast, lightweight, and transparent models can be seamlessly integrated into Pillar to predict future microsecond-level market stability on a symbol-specific basis. The Exchange believes that SeMi Orders, as proposed, would perfect the mechanism of, a free and open market and a national market system and protect investors and the public interest by relying on the SMI to restrict SeMi Orders from trading during times of predicted high market volatility, thereby avoiding potentially undesirable executions and increasing the potential for price improvement for such orders at the cost of slightly reduced fill rates.

The Exchange further believes that the proposed change to allow SeMi Orders to be designated as Liquidity Providing (an option that was not previously available to DPOs) would remove impediments to, and perfect the mechanism of, a free and open market and a national market system and protect investors and the public interest because it would afford increased flexibility to users of the order type.

The Exchange believes that the proposed change would remove impediments to, and perfect the mechanism of, a free and open market and a national market system and promote just and equitable principles of trade because the SeMi Order and SMI will operate within strict, well-defined, and transparent parameters. Although the SMI models will undergo daily retraining (outside of market hours), such retraining will aim to improve the performance of the SMI in achieving its stated objectives; retraining is not intended to alter the basic design parameters, features, or objectives of the models without prior Commission approval.²⁵ Moreover, the Exchange will not deploy a retrained model if it fails to achieve performance improvements based on the metrics described above. As noted above, a list of all features that may be incorporated in the models will

²⁵ As discussed above, the Exchange will not seek Commission approval prior to allowing the models, as part of its retraining process, to vary the weighting of the features it uses. The Exchange believes this is appropriate because such variance will only occur to the extent that it will improve a model's performance with respect to pre-defined objectives.

be publicly available, and the Exchange will publish on its website daily the full list of features used for real-time calculation and available for inclusion in the SMI models. The Exchange will also retain each historical iteration of models employed by the SMI as part of its books and records and make such information available to the Commission upon request. The Exchange will also publish a Trader Update in advance of implementing a retrained version of an SMI model when the Exchange has a reasonable belief that the retrained version(s) would yield results that differ materially from the prior version(s).

The Exchange notes that neither the SMI nor the SeMi Order are designed or intended to further the performance of any participant or any category of participant over others. The Exchange believes the models underlying the SMI are objective and designed to avoid bias and discrimination. Use of the SeMi Order (like use of the DPO) remains voluntary for all market participants. Accordingly, if any market participant feels that the SeMi Order does not meet their needs, they are free to pursue other trading strategies.

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 would promote competition by offering market participants the optional use of an order type designed to protect against potentially undesirable executions by preventing trading during periods of market instability as identified by the SMI.

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 Exchange consents, the Commission will:

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(5).

- A. by order approve or disapprove such 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-2024-112 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-2024-112. 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-2024-112 and should

be submitted on or before January 21, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Vanessa A. Countryman,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101993; File No. SR-FINRA-2024-022]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend the Codes of Arbitration Procedure To Make Clarifying, Technical, and Procedural Changes to the Arbitrator List Selection Process

December 19, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 19, 2024, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to amend the Code of Arbitration Procedure for Customer Disputes ("Customer Code") and the Code of Arbitration Procedure for Industry Disputes ("Industry Code") (together, "Codes") to make changes to certain provisions relating to arbitrator list selection.

The proposed rule change would amend FINRA Rules 12403 (Cases with Three Arbitrators) and 13403 (Generating and Sending Lists to the Parties) to increase the opportunity for public arbitrators who are not qualified to serve as chairpersons³ to be selected by a computer algorithm, known as the "list selection algorithm," for the list of arbitrators that is sent to the parties in

certain customer and industry disputes that have a three-arbitrator panel.

In addition, the proposed rule change would make changes to the Codes that are consistent with FINRA's focus on increasing the transparency of arbitrator list selection and with current practices that were developed to efficiently administer arbitrator list selection. Specifically, the proposed rule change would amend FINRA Rule 12402 (Cases with One Arbitrator), FINRA Rule 12403 (Cases with Three Arbitrators), FINRA Rule 13403 (Generating and Sending Lists to the Parties), FINRA Rules 12404 and 13407 (Additional Parties), FINRA Rule 13404 (Striking and Ranking Arbitrators), FINRA Rules 12407 and 13410 (Removal of Arbitrator by Director), and FINRA Rule 13804 (Temporary Injunctive Orders; Requests for Permanent Injunctive Relief). The proposed rule change also would make non-substantive, technical changes to FINRA Rules 13406 (Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on List) and 13411 (Replacement of Arbitrators) to update cross-references in those rules.

The text of the proposed rule change is available on FINRA's website at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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. FINRA 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

I. Overview of FINRA's Arbitrator List Selection Process

Decisions in the FINRA Dispute Resolution Services ("DRS") arbitration forum are made by independent arbitrators.⁴ To ensure fairness to all

⁴ As a neutral administrator of the arbitration forum, DRS does not participate in the decision-making process by arbitrators. DRS maintains a roster of over 8,300 arbitrators. See FINRA, Arbitration and Mediation, Dispute Resolution

²⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See *infra* note 9 and accompanying text.

parties during arbitrator list selection, FINRA uses a computer algorithm, known as the list selection algorithm, to generate lists of arbitrators on a random basis from its rosters of arbitrators for the selected hearing location.⁵ DRS maintains three rosters of arbitrators: public arbitrators, non-public arbitrators, and arbitrators who are eligible to serve as chairperson of a panel.⁶ In general, a public arbitrator is a person who is otherwise qualified to serve as an arbitrator and is not disqualified from service as a public arbitrator due to their current or past ties to the financial industry.⁷ A non-public arbitrator is a person who is otherwise qualified to serve as an arbitrator and is disqualified from service as a public arbitrator due to their current or previous association with the financial industry.⁸ An arbitrator is eligible to serve as a chairperson if they have completed FINRA's chairperson training and (1) have a law degree and are a member of a bar of at least one jurisdiction and have served as an arbitrator through award on at least one arbitration administered by a self-regulatory organization ("SRO") in which hearings were held; or (2) have served as an arbitrator through award on at least three arbitrations administered by an SRO in which hearings were held.⁹

The number and composition of the arbitrator lists that are generated using the list selection algorithm varies depending on the nature of the dispute and whether it will be heard by a panel of three arbitrators or by a single arbitrator. With respect to both customer disputes with three arbitrators and industry disputes involving associated persons with three arbitrators¹⁰—the two types of disputes affected by the proposed amendments to the procedures for generating lists of public arbitrators—DRS uses the list selection algorithm to generate three lists: (1) a list of 10 public arbitrators from the

FINRA chairperson roster ("Chairperson List"); (2) a list of 15 arbitrators (in customer disputes) or 10 arbitrators (in industry disputes involving associated persons) from the FINRA public arbitrator roster ("Public List"); and (3) a list of 10 arbitrators from the FINRA non-public arbitrator roster ("Non-Public List").¹¹

Once the lists of arbitrators are generated,¹² the Director¹³ sends the lists to the parties.¹⁴ The parties then select their arbitrators through a process that involves striking and ranking the arbitrators on the lists, which is described in more detail in Section III below in connection with the discussion of the proposed amendments to increase the transparency of the arbitrator selection process.¹⁵

II. Proposed Amendments to the Procedures for Generating Public Lists

Currently, under the Codes, when generating the three lists of arbitrators to send to the parties in both customer disputes with three-person panels and industry disputes involving associated persons with three-person panels, the list selection algorithm will first generate a Chairperson List from FINRA's roster of chair-qualified public arbitrators.¹⁶ When the list selection algorithm selects the chair-qualified public arbitrators for the Chairperson List for an arbitration, those chair-qualified public arbitrators will not be eligible to be selected for a Public List for the arbitration and, therefore, will be automatically removed from the list selection algorithm before the Public

List is generated for the arbitration.¹⁷ However, the chair-qualified public arbitrators who are not selected by the list selection algorithm for the Chairperson List for an arbitration will be eligible to be selected for the Public List for the arbitration.¹⁸ Thus, chair-qualified public arbitrators have two chances to be selected for lists for an arbitration: they may be selected for the Chairperson List, and if they are not selected for the Chairperson List, they may be selected for the Public List.¹⁹

Public arbitrators who are not chair-qualified do not have the same opportunity. Rather, public arbitrators who are not chair-qualified can only be selected for a Public List and, therefore, have only one chance to be selected for a list of arbitrators. As a result, public arbitrators who are not chair-qualified are less likely to be selected for a list than chair-qualified public arbitrators, even though the number of public arbitrators who are not chair-qualified greatly exceeds the number of chair-qualified public arbitrators.²⁰

To address this imbalance and increase the opportunity for public arbitrators who are not chair-qualified to be selected for the Public List, the proposed rule change would amend FINRA Rules 12403(a)(3) and 13403(b)(4) to provide that, in preparing the Public List, the list selection algorithm will provide two chances for selection to public arbitrators who are not chair-qualified, and will continue to provide one chance for selection to chair-qualified public arbitrators.²¹ The procedures for generating the Public List would not otherwise be modified under the proposed rule change.

FINRA believes it is appropriate to address this imbalance and increase the opportunity for public arbitrators who are not chair-qualified to be selected for Public Lists. By providing an additional

¹¹ See FINRA Rules 12403(a)(1) and 13403(b)(2).

¹² The list selection algorithm will automatically exclude arbitrators from the lists based upon current conflicts of interest identified within the list selection algorithm. See FINRA Rules 12402(b)(2), 12403(a)(3), 13403(a)(4), and 13403(b)(4). In addition, DRS conducts a review for other conflicts not identified within the list selection algorithm. See FINRA Rules 12402(b)(3), 12403(a)(4), 13403(a)(5), and 13403(b)(5). If any arbitrators are removed due to such conflicts, the list selection algorithm is used to generate replacement arbitrators. See FINRA Rules 12402(b)(3), 12403(a)(4), 13403(a)(5), and 13403(b)(5).

¹³ The term "Director" means the Director of DRS. Unless the Code provides that the Director may not delegate a specific function, the term includes FINRA staff to whom the Director has delegated authority. See FINRA Rules 12100 (m) and 13100(m).

¹⁴ See FINRA Rules 12403(b) and 13403(c).

¹⁵ See *infra* Section A.1.III. ("Proposed Amendments to Increase the Transparency of the Arbitrator Selection Process"); see also FINRA Rules 12400(a), 12403(c)-(e), 13400(a), 13404, 13405, and 13406. FINRA notes that the proposed rule change would impact all members, including members that are funding portals or have elected to be treated as capital acquisition brokers ("CABs"), given that the funding portal and CAB rule sets incorporate the impacted FINRA rules by reference.

¹⁶ See FINRA Rules 12403(a)(2) and 13403(b)(3).

¹⁷ See FINRA Rules 12403(a)(2) and 13403(b)(3).

¹⁸ See FINRA Rules 12403(a)(2) and 13403(b)(3).

¹⁹ An individual arbitrator cannot be selected for both the Chairperson List and the Public List for the same case. See FINRA Rules 12403(a)(2) and 13403(b)(3).

²⁰ See *infra* Section B.ii. (Economic Baseline).

²¹ See proposed FINRA Rules 12403(a)(3) and 13403(b)(4). The list selection algorithm would affect the proposed rule change by including the names of public arbitrators who are not chair-qualified twice on the roster of available public arbitrators used to randomly generate a Public List. For more information on how the list selection algorithm currently generates a Public List, see <https://www.finra.org/arbitration-mediation/about/arbitration-process/arbitrator-selection>. Although the proposed rule change would give public arbitrators who are not chair-qualified two chances to be selected for a Public List, proposed FINRA Rules 12403(a)(3) and 13403(b)(4) would provide that an individual arbitrator cannot appear more than once on the Public List selected for the same case.

Statistics, <https://www.finra.org/arbitration-mediation/dispute-resolution-statistics>; FINRA, Arbitration and Mediation, Become an Arbitrator, <https://www.finra.org/arbitration-mediation/become-arbitrator>.

⁵ See FINRA Rules 12400(a) and 13400(a).

⁶ See FINRA Rules 12400(b) and 13400(b).

⁷ See FINRA Rules 12100(aa) and 13100(x).

⁸ See FINRA Rules 12100(t) and 13100(r).

⁹ See FINRA Rules 12400(c) and 13400(c).

¹⁰ The panel will consist of three arbitrators in both customer and industry disputes when (1) the amount of the claim is more than \$50,000 but not more than \$100,000, exclusive of interest and expenses, and the parties agree in writing to three arbitrators; or (2) the amount of the claim is more than \$100,000, exclusive of interest and expenses, is unspecified, or the claim does not request money damages, unless the parties agree in writing to one arbitrator. See FINRA Rules 12401 and 13401.

opportunity to be selected for Public Lists, the proposed rule change may increase the likelihood for public arbitrators who are not chair-qualified to be selected by parties to serve as panelists, which could help FINRA retain these arbitrators on its roster. FINRA has observed that parties appear to prefer chair-qualified public arbitrators who have experience in the DRS arbitration forum and a record of previous arbitration award outcomes. If arbitrators who are new to the roster or have less experience in the forum are never selected by parties to serve as panelists, they may lose interest in serving as arbitrators in the DRS arbitration forum. The proposed rule change could help incent new or less experienced public arbitrators to remain on FINRA's arbitrator roster by providing a higher likelihood of selection by the parties as a panelist than currently exists under the Codes.²²

The proposed rule change also may help FINRA increase the roster of chair-qualified public arbitrators. By increasing the opportunity for public arbitrators who are not chair-qualified to be selected by the parties to serve as panelists, the proposed rule change would help these arbitrators to gain the experience they need to become chair-qualified. This, in turn, could help FINRA increase the number of local chairpersons across hearing locations.²³ Parties generally prefer chair-qualified public arbitrators who live near their hearing location and who are more likely to be familiar with local laws and customs. However, 78 percent of hearing locations lack a sufficient number of local chairpersons to generate enough arbitrators for Chairperson Lists, which means that the list selection algorithm must often generate lists that include chair-qualified public arbitrators from other hearing locations.²⁴ In over half of these hearing locations, the roster of local chair-qualified public arbitrators could be filled by non-chair-qualified public arbitrators if they became chair-qualified. By increasing the number of local chairpersons, the list selection algorithm would be able to generate Chairperson Lists that include more local chair-qualified public arbitrators to address parties' preferences.

III. Proposed Amendments To Increase the Transparency of the Arbitrator Selection Process

FINRA is also proposing to codify certain practices that DRS has

developed to efficiently administer arbitrator list selection, establish new timeframes for objecting to requests for additional information from arbitrators, withdrawing such requests for additional information, and filing motions to remove arbitrators after disclosures of causal challenges, and align provisions of the Codes related to the expungement of customer dispute information. These proposed amendments are explained in detail below.

A. Shortening the Time for Sending Arbitrator Lists to Parties

FINRA Rules 12402(c)(1), 12403(b)(1), and 13403(c)(1) currently provide that the Director will send lists of arbitrators generated by the list selection algorithm to all parties at the same time, within approximately 30 days after the last answer is due, regardless of the parties' agreement to extend any answer due date. In practice, however, DRS sends lists of arbitrators to the parties well within the 30-day timeframe provided by the rules.

To align FINRA Rules 12402(c)(1), 12403(b)(1), and 13403(c)(1) with current practice, which, in turn, would increase transparency and efficiency in arbitrator list selection, FINRA is proposing to decrease the number of days within which the Director sends the lists to the parties from 30 days to 20 days. Specifically, under the proposed rule change, FINRA Rules 12402(c)(1), 12403(b)(1), and 13403(c)(1) would be amended to provide that the Director will send the lists generated by the list selection algorithm to all parties at the same time, within approximately 20 days after the last answer is due, regardless of the parties' agreement to extend any answer due date.

B. Providing Arbitrator Disclosure Reports to Parties

FINRA Rules 12402(c)(1), 12403(b)(1), 12404(a), 13403(c)(1), 13407(a), and 13804(b)(3)(A)(i) and (B)(i) currently provide that when the Director sends lists of arbitrators to the parties, the parties will also receive employment history for the past 10 years and other background information for each arbitrator listed. In practice, however, DRS requests from arbitrators their full employment history after the completion of their education, and it sends this employment history and other background information to the parties in a document that DRS refers to as a "disclosure report."

To align FINRA Rules 12402(c)(1), 12403(b)(1), 12404(a), 13403(c)(1), 13407(a), and 13804(b)(3)(A)(i) and (B)(i) with current practice and increase

transparency, the proposed rule change would remove the language stating that the parties will be provided with each arbitrator's employment history only "for the past 10 years." These same rules would be amended to clarify that an arbitrator's employment history and other background information will be provided to the parties in a document called a "disclosure report."

C. Requesting Additional Information About Arbitrators

FINRA Rules 12405(a) and 13408(a) impose upon each arbitrator an obligation to make a reasonable effort to learn of, and disclose to DRS, any circumstances that might preclude the arbitrator from rendering an objective and impartial determination in a proceeding. This obligation to disclose interests, relationships, or circumstances that might preclude an arbitrator from rendering an objective and impartial determination is continuous, requiring an arbitrator who accepts appointment to an arbitration proceeding to disclose to DRS and the parties, at any stage of the proceeding, any such interests, relationships or circumstances that arise, or that the arbitrator recalls or discovers.²⁵

In addition to imposing these affirmative disclosure obligations on arbitrators, paragraph (c)(2) of FINRA Rules 12402 and 13403 and paragraph (b)(2) of FINRA Rule 12403 provide that if a party requests additional information about an arbitrator, the Director will request the additional information from the arbitrator, and will send any response to all of the parties at the same time.²⁶ Because these provisions appear in parts of the Codes that focus on the appointment of arbitrators, however, FINRA is concerned that they could be misinterpreted as only allowing parties to request additional information about arbitrators prior to panel appointment. In practice, DRS permits the parties to request additional information about an arbitrator at any point during the arbitration proceeding. If an opposing

²⁵ See FINRA Rules 12405(b) and 13408(b).

²⁶ FINRA is proposing to move this language to new paragraphs (c)(2)(D) of FINRA Rule 12402, (b)(2)(D) of FINRA Rule 12403, and (c)(2)(D) of FINRA Rule 13403, without any substantive changes. FINRA Rules 12402(c)(2), 12403(b)(2), and 13403(c)(2) also currently provide that when a party requests additional information, the Director may, but is not required to, toll the time for parties to return the ranked lists. FINRA is proposing to move this language to new paragraphs (c)(2)(E) of FINRA Rule 12402, (b)(2)(E) of FINRA Rule 12403, and (c)(2)(E) of FINRA Rule 13403, without any substantive changes. These technical changes would result from the proposed rule changes discussed below, which would create new subparagraphs under these rules.

²² See *infra* Section B.iii. (Economic Impact).

²³ See *infra* Section B.iii. (Economic Impact).

²⁴ See *infra* Section B.iii. (Economic Impact).

party does not object to the request for additional information, DRS will permit the request for additional information to be submitted to the arbitrator anonymously. If there is an objection, however, DRS will disclose to the arbitrator the identity of the party submitting the request and forward any requests and objections to the arbitrator who is the subject of the request.

The proposed rule change would align the Codes to DRS's current practice of allowing requests for additional information about an arbitrator at any stage of the proceeding. Specifically, the proposed rule change would amend FINRA Rules 12402, 12403, and 13403 to add new paragraphs (c)(2)(A), (b)(2)(A), and (c)(2)(A), respectively, to provide that a party may request additional information about an arbitrator "at any stage of the proceeding" by filing with the Director and serving all other parties with a written request.

FINRA believes it is appropriate to permit parties to request additional information about arbitrators at any stage of the proceeding because such requests could uncover circumstances that might preclude an arbitrator from rendering an objective and impartial decision. Although, as explained above, arbitrators have a continuing duty to disclose potential conflicts,²⁷ allowing the parties to request additional information at any stage of the proceeding complements arbitrators' continuing duty to disclose, further ensures the integrity of final awards, and helps to minimize the number of requests for vacatur based on an arbitrator's failure to disclose. Additionally, because DRS currently allows parties as a matter of practice to make requests for additional information at any stage of the proceeding, the proposed rule change would align the Codes to increase transparency and ensure that all parties are aware of their ability to request additional information about arbitrators at any stage of the proceeding.

The proposed rule change also would align the Codes to DRS's current practice of preserving the anonymity of parties who request additional information about arbitrators, unless an opposing party objects to the request for additional information within the specified timeframe. Specifically, the proposed rule change would provide in new paragraphs (c)(2)(A), (b)(2)(A), and (c)(2)(A) of FINRA Rules 12402, 12403, and 13403, respectively, that a written request for additional information about an arbitrator may omit any information

that would reveal the identity of the party making the request. The proposed rule change would further amend FINRA Rules 12402, 12403, and 13403 to add new paragraphs (c)(2)(C), (b)(2)(C), and (c)(2)(C), respectively, to provide that, if no opposing party objects to the request for additional information, the Director and the parties shall not disclose the identity of the requesting party to the arbitrator. FINRA believes it is appropriate to preserve the confidentiality of the requesting parties' identities to minimize any potential bias. However, when any opposing parties object to requests, FINRA believes it is then appropriate to disclose the requesting parties' identities to minimize the risk of any potential bias shifting to the opposing parties. Opposing parties have expressed concerns that an arbitrator or panel may erroneously attribute requests for additional information to opposing parties and make negative inferences against the opposing parties based on the request. Moreover, in cases involving only two parties, opposing parties may choose to file objections to requests that disclose their identities, which would result in the arbitrator or panel being able to identify the requesting party by process of elimination.

Finally, to increase efficiency in arbitrator list selection, the proposed rule change would establish new timeframes for an opposing party to object to a party's request for additional information, and for the Director to forward the request together with any objections to the arbitrator who is the subject of the request. In addition, the proposed rule change would make clear that the requesting party may withdraw their request for additional information prior to the Director forwarding the request and any objections to the arbitrator. Specifically, paragraphs (c)(2)(B), (b)(2)(B), and (c)(2)(B) of FINRA Rules 12402, 12403, and 13403, respectively, would be amended to provide that: (i) within ten days of receipt of the request for additional information, an opposing party may object to the request by filing objections with the Director and serving the objections on all other parties; and (ii) after five days have elapsed from the service of any objections and provided that the request for additional information has not been withdrawn, the Director will forward the request together with any objections to the arbitrator who is the subject of the request.

FINRA believes it is important for the proposed rules to establish timeframes for objecting to requests for additional

information and for withdrawing requests for additional information, so that the parties are aware of their ability to object to or to withdraw a request and the timeframes for doing so. Further, FINRA believes that the proposed ten days for an opposing party to object to a request for additional information, and the five days for a requesting party to withdraw a request for additional information following an objection, would help ensure that the arbitrator list selection process and the arbitration proceedings are efficient.

D. Allowing Parties to Strike Arbitrators From Lists for Any Reason

Once the parties receive the lists of arbitrators generated by the list selection algorithm, they have the opportunity to strike a certain number of arbitrators, as set forth in FINRA Rules 12402(d)(1), 12403(c)(1)(A), 12403(c)(2)(A), and 13404(a) and (b).²⁸ In describing the striking process, FINRA Rules 12402(d)(1), 12403(c)(2)(A), and 13404(a) and (b) provide that each separately represented party may strike arbitrators from lists "for any reason." Although Rule 12403(c)(1)(A) also describes the arbitrator striking process, unlike the other rules related to the striking process, it does not expressly provide that each separately represented party may strike arbitrators from the list "for any reason," even though there are no limitations on the reasons a party may strike an arbitrator. To make the provisions describing the striking process consistent, the proposed rule change would amend FINRA Rule 12403(c)(1)(A) to expressly provide that each separately represented party may strike any or all of the arbitrators from the Non-Public List *for any reason*.

E. Conducting List Selection Electronically

FINRA Rules 12402(d)(1), 12403(c)(1)(A) and (c)(2)(A), and

²⁸ See FINRA Rule 12402(d)(1) (allowing each separately represented party in a customer dispute with one arbitrator to strike up to four of the arbitrators from the list); FINRA Rule 12403(c)(1)(A) (allowing each separately represented party in a customer dispute with three arbitrators to strike any or all of the arbitrators from a Non-Public List); FINRA Rule 12403(c)(2)(A) (allowing each separately represented party in a customer dispute with three arbitrators to strike up to four of the arbitrators from a Chairperson List and up to six of the arbitrators from a Public List); FINRA Rule 13404(a) (allowing each separately represented party in an industry dispute to strike up to four of the arbitrators from each list, except for lists generated, pursuant to FINRA Rule 13403(a)(2), in disputes between members with a panel of three non-public arbitrators); and FINRA Rule 13404(b) (allowing each separately represented party in a dispute between members with a panel of three non-public arbitrators to strike up to eight of the arbitrators from a Non-Public List and up to four of the arbitrators from a non-public Chairperson List).

²⁷ See FINRA Rules 12405(b) and 13408(b).

13404(a) and (b) currently provide that each separately represented party may strike arbitrators from the list or lists of arbitrators “by crossing through the names of the arbitrators.” In practice, however, parties generally use the Party Portal, the web-based system that is accessible by arbitration and mediation parties and their representatives, to complete arbitrator list selection electronically.²⁹ To update the Codes and align them with the method by which parties generally select arbitrators, the proposed rule change would amend FINRA Rules 12402(d)(1), 12403(c)(1)(A) and (c)(2)(A), and 13404(a) and (b) to remove the phrase “by crossing through the names of the arbitrators.”

FINRA is aware that FINRA Rule 12300(a)(2) permits *pro se* customers to opt out of using the Party Portal. As a result, these parties may receive hard copy lists of arbitrators that would require them to manually strike names. However, FINRA believes that, even as amended to remove the phrase “by crossing through the names of the arbitrators,” FINRA Rules 12402(d)(1), 12403(c)(1)(A), and 12403(c)(2)(A) are broad enough to appropriately instruct *pro se* customers on how to strike arbitrators manually from hard copy lists.³⁰

F. Extensions of Time To Complete Ranked Lists

FINRA Rules 12402(d)(3), 12403(c)(3), 12404(a), 13404(d), and 13407(a) currently provide that, after striking arbitrators and ranking the remaining arbitrators according to preference, each separately represented party must complete and return their ranked lists to the Director (generally via the Party Portal)³¹ either within 20 days or no more than 20 days after the date upon which the Director sent the lists to the parties.³² If the Director does not receive

a party's ranked list within that time, the Director will proceed as though the party did not want to strike any arbitrator or have any preferences among the listed arbitrators. However, FINRA has observed that parties frequently file requests with the Director to extend the 20-day deadline only after it has elapsed. Though FINRA Rules 12207(c) and 13207(c) provide that the Director may extend or modify any deadline or time period set by the Code for good cause, in practice, the Director typically declines a party's request for an extension of time to complete the ranked list(s) when such request is filed after the 20-day deadline has elapsed, absent a showing of extraordinary circumstances.

In its cover letters to parties that accompany the lists of arbitrators, DRS currently advises parties of the due date for the ranked lists. In addition, the language in these cover letters provides that if the Director does not receive the party's ranked lists on or before the due date, the party will be deemed to have accepted all arbitrators on the lists.

FINRA is proposing to align FINRA Rules 12402(d)(3), 12403(c)(3), 12404(a), 13404(d), and 13407(a) with current practice, to expressly provide, that absent extraordinary circumstances, the Director will not grant a party's request for an extension to complete the ranked lists that is filed after the deadline has elapsed. FINRA believes it is appropriate for the Director to require a showing of extraordinary circumstances before granting parties' requests to extend the time to complete ranked list(s) when such requests are filed after the deadline has elapsed. FINRA is concerned that allowing the Director to grant parties' requests to extend the deadline for completing arbitrator list selection only by a showing of good cause, especially when such requests are filed after the deadline has elapsed, could lead to unnecessary delays in the appointment of arbitration panels and arbitration proceedings.

By requiring a showing of extraordinary circumstances, the proposed rule change would help ensure that the arbitrator list selection process and proceedings are efficient. FINRA believes it is appropriate to align the Codes with this practice, so that parties may be made aware of the deadline and encouraged to complete and return their ranked lists to the Director within the 20-day timeframe, or so that parties may be encouraged to file

requests with the Director for extensions of the deadline before it has elapsed.

G. Allowing Parties To Agree To Remove an Arbitrator

DRS makes clear in its training materials for arbitrators that, pursuant to the requirements of the ABA's Code of Ethics for Arbitrators in Commercial Disputes, an arbitrator must withdraw from a panel if all of the parties request that the arbitrator do so.³³ This requirement is also supported by *Notice to Members* 01–13, which announced approval of amendments to the Director's authority to remove arbitrators for cause and described how arbitrators could be removed when “all the parties agree that the arbitrator should be removed.”³⁴ To help ensure that parties are aware of the ability to remove an arbitrator upon party agreement, the proposed rule change would codify the current guidance by amending FINRA Rules 12407 and 13410 to add new paragraph (d)(1) to provide that, at any stage of the arbitration proceeding, the Director may remove an arbitrator if all of the named parties agree in writing to the arbitrator's removal.³⁵

The proposed rule change would also add new paragraph (d)(2) to FINRA Rules 12407 and 13410 that would provide that the parties may not agree to remove an arbitrator who is considering a request to expunge customer dispute information, except that a party shall be permitted to challenge any arbitrator selected for cause pursuant to FINRA Rule 12407(a)(1) or (b) or FINRA Rule 13410(a)(1) or (b).

FINRA rules specify a narrow set of circumstances in which expungement of customer dispute information from the Central Registration Depository (CRD®) is appropriate.³⁶ In addition, FINRA recently amended its rules to make a number of significant enhancements to address concerns with the expungement

²⁹ See FINRA Rules 12100(v) and 13100(t).

³⁰ See proposed FINRA Rule 12402(d)(1) (providing that “[e]ach separately represented party may strike up to four of the arbitrators from the list for any reason”); proposed FINRA Rule 12403(c)(1)(A) (providing that “[e]ach separately represented party may strike any or all of the arbitrators from the non-public arbitrator list for any reason”); proposed FINRA Rule 12403(c)(2)(A) (providing that “[e]ach separately represented party may strike up to four of the arbitrators from the chairperson list and up to six of the arbitrators from the public arbitrator list for any reason”).

³¹ If a party is a *pro se* customer who opted out of using the Party Portal, pursuant to FINRA Rule 12300(a), the party may return their ranked list to the Director by first-class mail, overnight mail service, overnight delivery service, hand delivery, email, or facsimile. See FINRA Rules 12402(d)(3) and 12403(c)(3).

³² FINRA Rules 12404(a) and 13407(a) provide that the parties must return their ranked lists “within 20 days” after the date upon which the

Director sent the lists to the parties. FINRA Rules 12402(d)(3), 12403(c)(3) and 13404(d) provide that the parties must return their ranked lists “no more than 20 days” after the date upon which the Director sent the lists to the parties.

³³ See FINRA, Basic Arbitrator Training, <https://www.finra.org/arbitration-mediation/rules-case-resources/arbitrator-training#basic>; ABA Code of Ethics for Arbitrators in Commercial Disputes, Canon II(G) (requiring that “[i]f an arbitrator is requested by all parties to withdraw, the arbitrator must do so.”), https://www.adr.org/sites/default/files/document_repository/Commercial_Code_of_Ethics_for_Arbitrators_2010_10_14.pdf.

³⁴ See *Notice to Members* 01–13 (March 2001), <https://www.finra.org/rules-guidance/notices/01-13>; see also Securities Exchange Act Release No. 43291 (September 14, 2000), 65 FR 57413 (September 22, 2000) (Notice of Filing of File No. SR–NASD–00–34).

³⁵ Requests to remove an arbitrator may not be granted when there are extraordinary circumstances which make removal inappropriate (e.g., requests based on discriminatory grounds).

³⁶ See FINRA Rules 12805(c)(8) and 13805(c)(9); see also FINRA Rule 2080(b)(1).

process and to provide additional safeguards for ensuring that the information in CRD is accurate and complete.³⁷ FINRA believes that the proposed rule change is consistent with these changes related to enhancing the expungement process. For example, proposed paragraph (d)(2) of FINRA Rule 12407 would align with FINRA Rule 12800(d) by prohibiting the parties from agreeing to remove an arbitrator if there is a request to expunge customer dispute information during a simplified investment-related, customer-initiated arbitration (“simplified arbitration”) under FINRA Rule 12800.³⁸

Accordingly, as required by FINRA Rule 12800(d), the arbitrator who has considered the merits of the customer dispute in the simplified arbitration would also decide the expungement request. As noted above, however, the proposed rule change would permit a party to challenge any arbitrator selected for cause pursuant to FINRA Rule 12407(a)(1) or (b).

In addition, proposed paragraph (d)(2) of FINRA Rule 13410 would align with FINRA Rule 13806, which limits parties’ ability to have input into the arbitrators who decide straight-in requests.³⁹ Specifically, FINRA Rule 13806 provides that the list selection algorithm will select randomly the three public arbitrators from a roster of experienced public arbitrators with enhanced expungement training to decide a straight-in request. The parties are not permitted to strike any arbitrators selected by the list selection algorithm or stipulate to their removal. In addition, the parties are not permitted to agree to fewer than three arbitrators or stipulate to the use of pre-selected arbitrators. The parties are permitted, however, to challenge an arbitrator

selected for cause pursuant to FINRA Rule 13410(a)(1) or (b).

FINRA believes the proposed rule change would help ensure that the expungement process operates efficiently and as intended by aligning FINRA Rules to make clear that parties may not agree to remove an arbitrator who is considering a request to expunge customer dispute information. However, a party could challenge an arbitrator selected for cause.

H. Prohibiting Disclosure of Party-Initiated Challenges To Remove Arbitrators

FINRA Rules 12407 and 13410 permit the parties to challenge arbitrators for cause. If the challenge occurs after the Director sends the lists(s) generated by the list selection algorithm to the parties, but before the first hearing session begins, the Director will grant a party’s request to remove an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has a direct or indirect interest in the outcome of the arbitration.⁴⁰ If the challenge occurs after the first hearing session begins, the Director may remove an arbitrator based only on information required to be disclosed by an arbitrator that was not previously known by the parties.⁴¹

In two separate letters—one that accompanies the lists of arbitrators and another that advises the parties of the panel composition—DRS currently advises parties during arbitrator list selection that they may not inform an arbitrator or panel of an opposing party’s request to remove an arbitrator for cause. The language in both letters reads, “Parties are advised that they may not inform the panel of an opposing party’s causal challenge.”

The proposed rule change would align FINRA Rules 12407 and 13410 with the guidance provided by DRS, by adding a new paragraph (e)(1) to each rule, to expressly provide that a party may not inform the panel or arbitrator of another party’s request to remove an arbitrator for cause.

The proposed rule change also would establish a remedy if a party discloses to the arbitrator or panel an opposing party’s request to remove an arbitrator for cause. Specifically, the proposed rule change would amend FINRA Rules 12407 and 13410 to add a new paragraph (e)(2), which would give the party that requested removal of an arbitrator the option to file a written motion with the Director for removal of

the arbitrator within five days of being made aware of the disclosure. The requesting party may be made aware of the disclosure in several different ways, including in a pleading or other document filed with the Director, or during a prehearing conference or hearing. If the requesting party does not make a motion for removal of the arbitrator within five days of being made aware of the disclosure, then the requesting party would forfeit the opportunity to request removal of the arbitrator because of the disclosure.⁴² Finally, if the party that made the request to remove the arbitrator timely files a motion for removal of the arbitrator based on the disclosure, the proposed rule change would provide that, absent extraordinary circumstances, the Director shall grant the motion.⁴³

Disclosure of a party’s request to remove an arbitrator could prejudice the arbitrator or create the appearance of bias against the requesting party. FINRA recognizes the importance to the fairness and credibility of the DRS arbitration forum of having processes that are—and that are perceived to be—operated in a fair and neutral manner. As a result, FINRA believes it is appropriate to prohibit a party from disclosing an opposing party’s request to remove an arbitrator. Although DRS currently advises the parties by letter that they may not inform the panel of an opposing party’s causal challenge, FINRA believes that aligning the Codes with DRS’s guidance would more effectively curb the disclosure of a party’s request to remove an arbitrator because parties will be incented to comply with the Codes.

Furthermore, FINRA believes that, in the event a party improperly discloses an opposing party’s causal challenge, it is appropriate to require that the requesting party either make a motion for removal of the arbitrator within five days of being made aware of the disclosure or forfeit the opportunity to request removal of the arbitrator. By requiring that any motion to remove an arbitrator be made within five days, the proposed rule change would strike the right balance between providing an opportunity for any aggrieved party to seek a remedy while, at the same time, allowing for the efficient processing of the proceeding.

³⁷ See Securities Exchange Act Release No. 95455 (August 9, 2022), 87 FR 50170 (August 15, 2022) (Notice of Filing of File No. SR-FINRA-2022-024); Securities Exchange Act Release No. 97294 (April 12, 2023), 88 FR 24282 (April 19, 2023) (Order Approving File No. SR-FINRA-2022-024); see also *Regulatory Notice* 23-12 (August 2023).

³⁸ FINRA Rule 12800(d)(1)(B)(ii) provides that, if an associated person requests expungement during a simplified arbitration, the arbitrator from the simplified arbitration must consider and decide the expungement request regardless of how the simplified arbitration closes.

³⁹ A “straight-in request” refers to arbitration proceedings in which an associated person requests expungement of customer dispute information separate from a customer arbitration. Straight-in requests must be filed against the member firm at which the person was associated at the time the customer dispute arose. See FINRA Rule 13805(a)(1). These requests are less likely to be opposed or adversarial in nature because they generally involve two parties—associated persons and member firms—whose interests may be aligned. Like the associated person, the member firm may also have an interest in removing information from the associated person’s CRD record.

⁴⁰ See FINRA Rules 12407(a)(1) and 13410(a)(1).

⁴¹ See FINRA Rules 12407(b) and 13410(b).

⁴² See proposed FINRA Rules 12407(e)(2) and 13410(e)(2).

⁴³ See proposed FINRA Rules 12407(e)(2) and 13410(e)(2).

I. Updating Cross-References to the Non-Public Arbitrator Definition in the Industry Code

FINRA Rules 13406(c) and 13411(d) cross-reference to FINRA Rule 13100(r), which provides the definition of “non-public arbitrator.” Prior to 2017, paragraphs (r)(1), (r)(2), (r)(3), and (r)(4) of FINRA Rule 13100 listed the specific criteria for inclusion on FINRA’s non-public arbitrator roster. However, in 2017, FINRA amended the non-public arbitrator definition to eliminate paragraphs (r)(1) through (r)(4).⁴⁴ As a result of this amendment, FINRA Rule 13100(r) currently defines a “non-public arbitrator” as a person who is otherwise qualified to serve as an arbitrator, and is disqualified from service as a public arbitrator under FINRA Rule 13100(x).⁴⁵ FINRA Rule 13100(x), in turn, lists the criteria for exclusion from FINRA’s public arbitrator roster for a person who is otherwise qualified to serve as an arbitrator.⁴⁶ The proposed rule change would update FINRA Rules 13406(c) and 13411(d) with the correct cross-references to FINRA Rule 13100(x)(2) through (11) to provide the necessary clarification in light of the amended definition of a “non-public arbitrator.”

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice*.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁴⁷ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA believes that the proposed rule change will protect investors and the public interest by enhancing arbitrator list selection in the DRS arbitration forum. By increasing the opportunity for public arbitrators who are not chair-qualified to be selected for Public Lists, the proposed rule change will increase the likelihood that these arbitrators, who are often new to the arbitrator roster or less experienced arbitrators, may be selected to serve as panelists. As

a result, the proposed rule change will help DRS retain new or less experienced arbitrators on its arbitrator roster and expand the number of local public arbitrators who are chair-qualified to address shortages in local hearing locations.

The proposed rule change also will protect investors and the public interest by codifying certain practices that DRS has developed to efficiently administer arbitrator list selection, establishing new timeframes for objecting to requests for additional information from arbitrators, withdrawing such requests for additional information, and filing motions to remove arbitrators after disclosures of causal challenges, and aligning provisions of the Codes related to the expungement of customer dispute information. Together, these proposed changes will increase the transparency and efficiency of the arbitration process for forum users.

B. Self-Regulatory Organization’s Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Assessment

FINRA has undertaken an economic impact assessment to analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs, benefits, and distributional and competitive effects, relative to the current baseline, and the alternatives FINRA considered in assessing how best to meet FINRA’s regulatory objectives. FINRA does not expect that the proposed rule change would affect the advantages and costs of the DRS arbitration forum relative to other arbitration fora.

i. Regulatory Need

FINRA is concerned that non-chair-qualified public arbitrators have disproportionately fewer opportunities than chair-qualified public arbitrators to be selected for arbitrator lists. The proposed rule change is anticipated to address this imbalance by increasing the number of opportunities for non-chair-qualified public arbitrators to be selected for Public Lists. Also, FINRA is concerned that some parties are not familiar with the current practices and published guidance for arbitrator list selection. The proposed rule change would increase the transparency and efficiency of the arbitrator list selection process by codifying certain practices that DRS has developed to efficiently administer arbitrator list selection,

establishing new timeframes for objecting to requests for additional information from arbitrators, withdrawing such requests for additional information, and filing motions to remove arbitrators after disclosures of causal challenges, and aligning provisions of the Codes related to the expungement of customer dispute information.

ii. Economic Baseline

In general, the economic baseline for the proposed rule change consists of the current provisions under the Codes, current practices, and published guidance that address arbitrator list selection. Relevant features of the economic baseline are described below. The proposed rule change is expected to affect the parties to cases in the DRS arbitration forum and the arbitrators on the FINRA public arbitrator roster.

As of January 2024, there were 4,072 arbitrators on the FINRA public arbitrator roster. The public arbitrator roster consists of 1,104 public arbitrators who are chair-qualified (27 percent = (1,104/4,072)) and 2,968 public arbitrators who are non-chair-qualified (73 percent = (2,968/4,072)).⁴⁸

Chair-qualified public arbitrators appeared relatively more frequently on Chairperson Lists and Public Lists combined. Between January 2018 and December 2023 (“sample period”), 17,544 arbitrations were filed and closed. Chairperson Lists and Public Lists were generated in 9,598 of the 17,544 arbitrations that involved customer disputes with three arbitrators or industry disputes involving associated persons with three arbitrators. Chair-qualified public arbitrators appeared 143,381 times (99,773 appearances on Chairperson Lists and 43,608 appearances on Public Lists) and non-chair-qualified public arbitrators appeared 92,356 times on Public Lists only. Thus, with their additional opportunity to appear on Public Lists, chair-qualified public arbitrators made 61 percent (= 143,381/(143,381 + 92,356)) of appearances but make up just 27 percent of all public arbitrators.⁴⁹

⁴⁸ Among the 1,104 public arbitrators who are chair-qualified, 187 public arbitrators are chair-qualified but currently unwilling to serve as chairpersons. Similar to public arbitrators who are not chair-qualified, chair-qualified public arbitrators who are unwilling to serve as chairperson would have only one chance to be selected for Public Lists.

⁴⁹ Due to data limitations, the number of chair-qualified public arbitrators that we identify as appearing on Public Lists would include public arbitrators who were previously qualified and willing to serve as chairpersons but subsequently

Continued

⁴⁴ See Securities Exchange Act Release No. 81572 (September 11, 2017), 82 FR 43436 (September 15, 2017) (Order Approving File No. SR-FINRA-2017-025).

⁴⁵ See FINRA Rule 13100(r).

⁴⁶ See Securities Exchange Act Release No. 74383 (February 26, 2015), 80 FR 11695 (March 4, 2015) (Order Approving File No. SR-FINRA-2014-028).

⁴⁷ 15 U.S.C. 78o-3(b)(6).

Relative to non-chair-qualified public arbitrators, a higher percentage of chair-qualified public arbitrators are selected by parties from Public Lists.⁵⁰ Chair-qualified public arbitrators were selected by parties in 16 percent of the times they made appearances on Public Lists (6,860 of 43,608 appearances) and non-chair-qualified public arbitrators were selected by parties in 10 percent of the times they made appearances on Public Lists (9,411 of 92,356 appearances). Selection by parties may encourage arbitrators to remain on the FINRA public arbitrator roster. For example, of all the non-chair-qualified public arbitrators who left the roster during the sample period, the median time in the forum for those who were never appointed was five years while the median time for those who were appointed at least once was 10 years.

Using appearances during the sample period as an estimate, the proposed rule change may increase the percentage of non-chair-qualified public arbitrators who appear on affected Public Lists from 68 percent to 81 percent.⁵¹ On a Public List with 15 arbitrators, this translates to two additional appearances by non-chair-qualified public arbitrators; and on a Public List with 10 arbitrators, this translates to one additional appearance by non-chair-qualified public arbitrators.

The economic baseline for the proposed rule change also consists of the current practices and published guidance that address arbitrator selection. Relative to other parties, parties who are less familiar with current practices or published guidance may have greater difficulty understanding their options when selecting arbitrators. As a result,

ceased being qualified or willing to serve as chairpersons when the Public Lists were generated. These arbitrators would have only one chance to be selected for Public Lists. *See supra* note 48. The 61 percent of appearances made by chair-qualified public arbitrators, therefore, overstates the actual percentage and represents an upper bound for the estimate.

⁵⁰ *See, e.g., supra* Section II. (Proposed Amendments to the Procedures for Generating Public Lists) (discussing FINRA's observations as to why parties may prefer chair-qualified public arbitrators).

⁵¹ To calculate the percentage increase in the appearances by non-chair-qualified public arbitrators, FINRA assumes that the number of appearances is proportional to the pools of public arbitrators available to appear on a Public List. FINRA calculates the 68 percent as the number of appearances by non-chair-qualified public arbitrators divided by the total number of appearances of non-chair-qualified and chair-qualified public arbitrators ($= 92,356 / (92,356 + 43,608)$). FINRA estimates the 81 percent by doubling the number of appearances by non-chair-qualified public arbitrators (from 92,356 to 184,712) and recalculating ($81 \text{ percent} = 184,712 / (184,712 + 43,608)$).

arbitrator panels may reflect the preferences of these parties less closely than would occur otherwise.

iii. Economic Impact

FINRA anticipates that, over time, the proposed rule change would increase the likelihood for non-chair-qualified public arbitrators to be selected by parties to serve as panelists. The benefits to arbitrators from selection include the experience, networking opportunities, and supplemental income. The benefits also include an increased likelihood of being selected in future arbitrations if, over time, parties become confident in the quality of arbitrators' decision-making or are better able to predict how arbitrators may react to a specific fact pattern. Future selections may incent non-chair-qualified public arbitrators to take necessary steps to remain on FINRA's roster of arbitrators. For some non-chair-qualified public arbitrators, the benefits from the additional selections may include obtaining the experience necessary to become chair-qualified.⁵²

A larger pool of chair-qualified public arbitrators also may increase the availability of chair-qualified public arbitrators in the same general geographic area as parties (and who may be familiar with local laws and practices), help facilitate scheduling, and reduce arbitrator travel expenses incurred by the DRS arbitration forum. Currently, 78 percent of the 69 hearing locations have fewer than the requisite number of local chair-qualified public arbitrators to complete Chairperson Lists. In over half of these hearing locations, the roster of local chair-qualified public arbitrators could be filled by non-chair-qualified public arbitrators if they became chair-qualified.

In general, an increase in the selection of non-chair-qualified public arbitrators would tend to reduce the average level of experience of arbitration panels. This could lessen the ability of some parties to anticipate awards. With a shorter award history, some parties may be less able to predict how an arbitrator might react to a specific fact pattern. Parties with preferences for more experienced public arbitrators may feel constrained by having fewer chair-qualified public arbitrators from which to choose. In addition, chair-qualified public arbitrators may not experience the same level of benefits over time from remaining active in the forum as the likelihood of their selection from Public Lists decreases.

⁵² *See supra* note 9 and accompanying text.

The magnitude of the economic impact, including the eventual impact on the combined forum experience of arbitrators who are selected for panels, is dependent on the preferences of parties for chair-qualified public arbitrators. For example, although fewer chair-qualified public arbitrators would appear on Public Lists, stronger preferences among parties for chair-qualified public arbitrators and their continued selection from Public Lists would result in the proposed rule change having little impact relative to the baseline. As noted above, parties with preferences for more experienced public arbitrators may feel constrained by having fewer chair-qualified public arbitrators from which to choose. Parties' selection of arbitrators, however, is dependent on multiple factors, including the lists that parties receive and their preferences for certain arbitrator characteristics. For this reason, FINRA does not believe that the proposed change to the Public List generation process would materially affect their decision to file a claim in the DRS arbitration forum (and not, for example, directly settling the dispute if the situation allows) or the number of claims filed in the forum.

The proposed rule change would establish new timeframes for objecting to requests for additional information from arbitrators, withdrawing such requests for additional information, and filing motions to remove arbitrators after disclosures of causal challenges. The new timeframes would help the efficiency of the arbitration proceedings by ensuring that issues relating to arbitrator selection do not delay or disrupt the proceedings. As discussed above, the timeframes are consistent with those relating to similar motions and should therefore not impose an undue burden.

The proposed rule change would align FINRA Rules to current guidance providing that at any stage of the arbitration proceeding, the Director may remove an arbitrator if all of the named parties agree in writing to the arbitrator's removal.⁵³ The proposed rule change would also add that parties may not agree to remove an arbitrator who is considering a request to expunge customer dispute information.⁵⁴ The proposed rule change may help further ensure that arbitrators issue awards containing expungement relief only when appropriate and that the customer dispute information in CRD reflects the

⁵³ *See* proposed FINRA Rules 12407(d)(1) and 13410(d)(1).

⁵⁴ *See* proposed FINRA Rules 12407(d)(2) and 13410(d)(2).

conduct of associated persons.⁵⁵ The inability to agree to remove an arbitrator may result in some associated persons choosing to forego requesting expungement in the DRS arbitration forum, though requesting expungement in the DRS arbitration forum may continue to be the preferred option. Associated persons who decide not to request expungement in the DRS arbitration forum may incur additional costs or delays in requesting expungement of the customer dispute information other than through the DRS arbitration forum. Associated persons who are delayed in requesting expungement may experience a loss of business and professional opportunities.

Finally, the proposed rule change would codify current practices and DRS guidance relating to arbitrator selection. The codification may increase the efficient administration of the arbitrator selection process if it results in an increase in the transparency of the process and proves to be informative for parties who are unfamiliar with current practices or unaware of the DRS guidance. These parties may be more likely to resolve the dispute by filing a claim in the DRS arbitration forum.

As best FINRA can determine, in the vast majority of sample cases, few cases would have been affected by the proposed rule change to align the Codes with current practices.⁵⁶ For example, in the vast majority of sample cases, data suggests that the forum sends lists of arbitrators to the parties within 20 days of when the last answer is due. FINRA can also identify 63 requests for additional information about a listed arbitrator in 38 cases (less than one percent of the 17,544 sample cases) and 54 requests for additional information about an appointed arbitrator in 45 cases. FINRA can also identify nine challenges to remove a listed arbitrator in nine cases, and 165 challenges to remove an appointed arbitrator in 132 cases (one percent). Information

describing the basis for challenges to remove a listed or appointed arbitrator (e.g., due to the disclosure of a causal challenge) is not available.⁵⁷

While it is not known how many parties are unfamiliar with current practices or DRS guidance, FINRA believes that the small number of instances likely reflects informed decisions by most parties, and so the proposed rule change is therefore not likely to cause a large increase in the number of these instances.

iv. Alternatives Considered

FINRA developed the proposed amendments over a multi-year process during which FINRA considered and modified proposals based on feedback from forum users, including investors, securities industry professionals, and FINRA arbitrators. In evaluating proposals, FINRA considered numerous factors including efficiency, cost, fairness and transparency, and certain tradeoffs among these factors.

The proposed amendments that relate to the generation of Public Lists strike an appropriate balance between leveling the opportunities for selection and minimizing the disruption to the selection process and its associated costs. As an alternative, FINRA considered amending the Codes to provide that, in preparing the Public List, the list selection algorithm would generate a list that includes a fixed number of non-chair-qualified public arbitrators. This would ensure that non-chair-qualified public arbitrators have a designated opportunity to appear on the Public List for selection. However, depending on list size, there is an insufficient number in approximately one-quarter to two-fifths of hearing locations of non-chair-qualified public arbitrators to fill Public Lists. Thus, for selected hearing locations with few arbitrators, the alternative may require generating Public Lists that include non-chair-qualified public arbitrators who live outside of the local hearing location to fill Public Lists. FINRA believes that the proposed rule change would increase the opportunity for non-chair-qualified public arbitrators to be selected for the Public List, and will monitor the impact of the proposed rule change if approved by the Commission and continue to consider if additional changes are warranted.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date 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 such 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-FINRA-2024-022 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-FINRA-2024-022. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

⁵⁵ The proposed rule change would primarily affect expungement requests in non-simplified customer arbitrations. See *supra* notes 38 and 39 and accompanying text (discussing existing requirements under the Codes for simplified arbitrations and straight-in requests). There were 2,195 non-simplified customer arbitrations filed and closed between January 2018 and December 2023 where parties requested expungement. Information is not available describing party agreements to remove arbitrators where parties requested expungement.

⁵⁶ Other information describing the potential impact of the proposed amendments that address arbitrator selection under the baseline is not available. This information includes requests for additional time to complete ranked lists and grants or denials of these requests, objections to requests for additional information and withdrawals of these requests, and disclosures of challenges to remove arbitrators.

⁵⁷ This estimate does not account for any potential changes in the behaviors of associated persons with respect to requesting expungement during a customer case in response to recently amended rules. See *supra* note 37 and accompanying text.

provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-FINRA-2024-022 and should be submitted on or before January 21, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁸

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-30907 Filed 12-27-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35425; File No. 812-15543]

Morgan Stanley Direct Lending Fund,
et al.

December 19, 2024.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").
ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the "Act") and rule 17d-1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d-1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain business development companies ("BDCs") and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

APPLICANTS: Morgan Stanley Direct Lending Fund, MS Capital Partners Adviser Inc., NH Credit Partners III Holdings L.P., NH Expansion Credit Fund Holdings LP, North Haven Credit Partners II L.P., North Haven Credit Partners III L.P., North Haven Senior Loan Fund (ALMA) Designated Activity

Company, North Haven Senior Loan Fund L.P., North Haven Senior Loan Fund Offshore L.P., North Haven Senior Loan Fund Unleveraged Offshore L.P., North Haven Tactical Value Fund (AIV) LP, North Haven Tactical Value Fund LP, North Haven Unleveraged Senior Loan Fund (Yen) L.P., NH Senior Loan Fund Offshore Holdings L.P., NH Senior Loan Fund Onshore Holdings LLC, DLF CA SPV LLC, DLF Equity Holdings LLC, DLF SPV LLC, DLF Financing SPV LLC, SL Investment Fund II LLC, SLIF II CA SPV LLC, SLIC CA SPV LLC, SLIC Equity Holdings LLC, SLIC Financing SPV LLC, T Series Middle Market Loan Fund LLC, T Series CA SPV LLC, T Series Equity Holdings LLC, T Series Financing SPV LLC, T Series Financing II SPV LLC, T Series Financing III SPV LLC, North Haven Private Income Fund LLC, North Haven Private Income Fund A LLC, LGAM Private Credit LLC, PIF CA SPV LLC, NHPF Equity Holdings SPV LLC, Broadway Funding Holdings LLC, PIF Financing SPV LLC, PIF Financing II SPV LLC, PIF A CA SPV LLC, Broadway Funding Holdings II LLC, PIF A Financing SPV LLC, PIF A Equity Holdings LLC, 1585 Koala Holdings LLC, LGAM CA SPV LLC, LGAM Financing SPV LLC, LGAM Equity Holdings LLC, Credit Opportunities (Series M) LP, NH-G 2022 SCSp, North Haven Senior Loan Fund (ALMA) II Designated Activity Company, North Haven Expansion Credit II L.P., North Haven Direct Lending Fund Aggregator L.P., NHDL I SPV LLC, North Haven Credit Partners IV Holdings A L.P., North Haven Credit Partners IV Holdings B L.P., North Haven Tactical Value Fund II Lux AIV-B SCSp, North Haven Tactical Value Fund II Lux AIV-C SCSp, NHTV II Onshore Aggregator LP, North Haven Structured Solutions Fund LP and Morgan Stanley Senior Funding, Inc.

FILING DATES: The application was filed on January 29, 2024 and amended on August 20, 2024.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at Secretarys-Office@sec.gov and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on January 13, 2025 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 at Secretarys-Office@sec.gov.

ADDRESSES: The Commission: Secretarys-Office@sec.gov. Applicants: Orit Mizrahi, 1585 Broadway, 23rd floor, New York, NY 10036, with a copy to: Thomas Friedmann, Dechert LLP, One International Place, 100 Oliver St., 40th Floor, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Adam Lovell, Senior Counsel, or Terri Jordan, Branch Chief, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' amended and restated application, dated August 20, 2024, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at, <https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html>. You may also call the SEC's Public Reference Room at (202) 551-8090.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-30857 Filed 12-27-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101999; File No. SR-CboeBYX-2024-049]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule Related to Physical Port Fees

December 19, 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 December

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁵⁸ 17 CFR 200.30-3(a)(12).

18, 2024, Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) 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 Equities”) proposes to amend its Fees 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/), 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 amend its fee schedule relating to physical connectivity fees.³

³ The Exchange initially filed the proposed fee changes on July 3, 2023 (SR-CboeBYX-2023-010). On September 1, 2023, the Exchange withdrew that filing and submitted SR-CboeBYX-2023-013. On September 29, 2023, the Securities and Exchange Commission issued a Suspension of and Order Instituting Proceedings to Determine whether to Approve or Disapprove a Proposed Rule Change to Amend its Fees Schedule Related to Physical Port Fees (the “OIP”) in anticipation of a possible U.S. government shutdown. On September 29, 2023, the Exchange filed the proposed fee change (SR-CboeBYX-2023-014). On October 13, 2023, the Exchange withdrew that filing and submitted SR-CboeBYX-2023-015. On December 12, 2023, Exchange filed the proposed fee change (SR-CboeBYX-2023-018). On December 12, 2023, the Exchange withdrew that filing and submitted SR-CboeBYX-2023-019. On February 9, 2024, the

By way of background, a physical port is utilized by a Member or non-Member to connect to the Exchange at the data centers where the Exchange’s servers are located. The Exchange currently assesses the following physical connectivity fees for Members and non-Members on a monthly basis: \$2,500 per physical port for a 1 gigabit (“Gb”) circuit and \$7,500 per physical port for a 10 Gb circuit. The Exchange proposes to increase the monthly fee for 10 Gb physical ports from \$7,500 to \$8,500 per port. The Exchange notes the proposed fee change better enables it to continue to maintain and improve its market technology and services and also notes that the proposed fee amount, even as amended, continues to be in line with, or even lower than, amounts assessed by other exchanges for similar connections.⁴ The Exchange also notes that a single 10 Gb physical port can be used to access the Systems of the following affiliate exchanges: the Cboe BZX Exchange, Inc. (options and equities), Cboe EDGX Exchange, Inc. (options and equities platforms), Cboe EDGA Exchange, Inc., and Cboe C2 Exchange, Inc., (“Affiliate Exchanges”).⁵ Notably, only one monthly fee currently (and will continue) to apply per 10 Gb physical port regardless of how many affiliated exchanges are accessed through that one port.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

Exchange withdrew that filing and submitted SR-CboeBYX-2024-006. On April 9, 2024, the Exchange withdrew that filing and submitted SR-Cboe-BYX-2024-012. On June 7, 2024, the Exchange withdrew that filing and submitted SR-CboeBYX-2024-021. On August 29, 2024, the Exchange withdrew that filing and submitted SR-CboeBYX-2024-032. On October 25, 2024, the Exchange withdrew that filing and submitted SR-CboeBYX-2024-039. On December 18, 2024, the Exchange withdrew that filing and submitted this filing.

⁴ See e.g., The Nasdaq Stock Market LLC (“Nasdaq”), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange’s 10Gb physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange’s 10 Gb physical port) are assessed \$22,000 per month, per port.

⁵ The Affiliate Exchanges are also submitting contemporaneous identical rule filings.

⁶ The Exchange notes that conversely, other exchange groups charge separate port fees for access to separate, but affiliated, exchanges. See e.g., Securities and Exchange Release No. 99822 (March 21, 2024), 89 FR 21337 (March 27, 2024) (SR-MIAX-2024-016).

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. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4)¹⁰ of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities. This belief is based on various factors as described below.

First, the Exchange believes its proposal is reasonable as it reflects a moderate increase in physical connectivity fees for 10 Gb physical ports and its offering, even as amended, continues to be more affordable as compared to analogous physical connectivity offerings at competitor exchanges.¹¹

The Exchange also believes the current fee does not properly reflect the quality of the service and product, as fees for 10 Gb physical ports have been static in nominal terms since 2018, and therefore falling in real terms due to inflation. As a general matter, the Producer Price Index (“PPI”) is a family of indexes that measures the average change over time in selling prices received by domestic producers of

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ *Id.*

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ See e.g., The Nasdaq Stock Market LLC (“Nasdaq”), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange’s 10Gbps physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange’s 10 Gbps physical port) are assessed \$22,000 per month, per port.

goods and services. PPI measures price change from the perspective of the seller. This contrasts with other metrics, such as the Consumer Price Index (CPI), that measure price change from the purchaser's perspective.¹² About 10,000 PPIs for individual products and groups of products are tracked and released each month.¹³ PPIs are available for the output of nearly all industries in the goods-producing sectors of the U.S. economy—mining, manufacturing, agriculture, fishing, and forestry—as well as natural gas, electricity, and construction, among others. The PPI program covers approximately 69 percent of the service sector's output, as measured by revenue reported in the 2017 Economic Census.

For purposes of this proposal, the relevant industry-specific PPI is the Data Processing, hosting and related services ("Data PPI") and more particularly the more granular service line Data Processing, Hosting and Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT) Infrastructure Provisioning Services.¹⁴

The Data PPI was introduced in January 2002 by the Bureau of Labor Statistics ("BLS") as part of an ongoing effort to expand Producer Price Index coverage of the services sector of the U.S. economy and is identified as NAICS—518210 in the North American Industry Classification System ("NAICS").¹⁵ According to the BLS "[t]he primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers' transactions and data. Price movements for the NAICS 518210 index are based on changes in

the revenue received by companies that provide data processing services and price movements for the service line NAICS 518210 index are based on changes in the revenue received by companies that provide, among other things, IT infrastructure provisioning services. Each month, companies provide net transaction prices for a specified service. The transaction is an actual contract selected by probability, where the price-determining characteristics are held constant while the service is repriced. The prices used in index calculation are the actual prices billed for the selected service contract."¹⁶

The service (product) lines for which price indexes are available under the Data PPI are: (1) business process management services (2) data management and storage information transformation and other services and (3) hosting ASP and other IT infrastructure provisioning services. The most apt of these industry and product specific categorizations for purposes of this present proposal to modify fees for the 10 Gb physical port fee measures inflation for the provision of data processing, hosting and related services as well as other information technology infrastructure provisioning services which BLS identifies as identified as NAICS—518210.¹⁷ The Exchange believes that this measure of inflation is particularly appropriate because the Exchange's connectivity services involve hosting and providing connections to its customers' telecommunications and information technology equipment, as well as preparing, assigning, and activating IT infrastructure components, such as servers, storage, and network connectivity. The Exchange also uses its "proprietary software," *i.e.*, its own proprietary matching engine software, to receive orders on the Exchange's proprietary trading platform as well as to collect, organize, store and report customers' transactions. In other words, the Exchange is in the business of data processing, hosting, ASP, and providing other IT infrastructure provisioning services.

The Exchange further believes the Data PPI is an appropriate measure for purposes of the proposed rule change on the basis that it is a stable metric with limited volatility, unlike other consumer-side inflation metrics. In fact, the Data PPI has not experienced a

greater than 2.16% increase for any one calendar year period since Data PPI was introduced into the PPI in January 2002. For example, the average calendar year change from January 2002 to December 2023 was .62%, with a cumulative increase of 15.67% over this 21-year period. The Exchange believes the Data PPI is considerably less volatile than other inflation metrics such as CPI, which has had individual calendar-year increases of more than 6.5%, and a cumulative increase of over 73% over the same period.¹⁸

As noted above, the current 10 Gb physical port fee remained unchanged for six years, particularly since June 2018.¹⁹ Since its last increase over 6 years ago however, there has been notable inflation, including under the industry- and product-specific PPI, which as described above is a tailored measure of inflation. Particularly, the Hosting, ASP and other IT Infrastructure Provisioning Services inflation measure had a starting value of 102.2 in June 2018 (the month the Exchange started assessing the current fee) and an ending value of 115.66 in November 2024, representing an 13% increase.²⁰ This indicates that companies who are also in the hosting ASP and other IT infrastructure provisioning services have generally increased prices for a specified service covered under NAICS 518210 by an average of 13% during this period.

The Exchange also believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2018. The impact of this inflationary effect is also independent of any change in the Exchange's costs in providing its goods and services. The Exchange therefore believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects. Additionally, the Exchange historically does not increase fees every year notwithstanding inflation. Other exchanges have also filed for increases in certain fees, based in part on comparisons to inflation.²¹ Accordingly, based on the above-

¹² See <https://www.bls.gov/ppi/overview.htm>.

¹³ *Id.*

¹⁴ Provisioning is the process of preparing, assigning, and activating IT infrastructure components, such as servers, storage, and network connectivity, according to user requirements. It is a critical part of IT operations, as it ensures that computing resources are available when needed and that they are set up and connected to work correctly.

¹⁵ See <https://www.bls.gov/ppi/overview.htm>. Among the industry-specific PPIs is for North American Industry Classification System ("NAICS") Code 518210: "Data Processing and Related Services." NAICS index codes categorize products and services that are common to particular industries. According to BLS, these codes "provide comparability with a wide assortment of industry-based data for other economic programs, including productivity, production, employment, wages, and earnings."

¹⁶ See <https://www.bls.gov/ppi/factsheets/producer-price-index-for-the-data-processing-and-related-services-industry-naics-518210.htm>.

¹⁷ See <https://data.bls.gov/timeseries/PCU5182105182105>.

¹⁸ See <https://www.usinflationcalculator.com/inflation/consumer-price-index-and-annual-percent-changes-from-1913-to-2008/>.

¹⁹ See Securities and Exchange Release No. 83441 (June 14, 2018), 83 FR 28684 (June 20, 2018) (SR-CboeBYX-2018-006).

²⁰ See <https://data.bls.gov/timeseries/PCU5182105182105>.

²¹ See, e.g., Securities Exchange Act Release Nos. 34-100994 (September 10, 2024), 89 FR 75612 (September 16, 2024) (SR-NYSEARCA-2024-79).

described percentage change based on an industry- and product-specific inflationary measure, and in conjunction with the rationale further described above and below, the Exchange believes the proposed fee increase is reasonable.

Next, the Exchange believes significant investments into, and enhanced performance of, the Exchange, in the years following the last 10 Gb physical port fee increase support the reasonableness of the proposed fee increase. These investments enhanced the quality of its services, as measured by, among other things, increased throughput and faster processing speeds. Customers have therefore greatly benefitted from these investments, while the Exchange's ability to recoup its investments has been hampered.

For example, the Exchange and its affiliated exchanges recently launched a multi-year initiative to improve Cboe Exchange Platform performance and capacity requirements to increase competitiveness, support growth and advance a consistent world class platform. The goal of the project, among other things, is to provide faster and more consistent order handling and matching performance for options, while ensuring quicker processing time and supporting increasing volumes and capacity needs. For example, the Exchange recently performed switch hardware upgrades. Particularly, the Exchange replaced existing customer access switches with newer models, which the Exchange believes resulted in increased determinism. The recent switch upgrades also increased the Exchange's capacity to accommodate more physical ports by nearly 50%. Network bandwidth was also increased nearly two-fold as a result of the upgrades, which among other things, can lead to reduce message queuing. The Exchange also believes these newer models result in less natural variance in the processing of messages. The Exchange notes that it incurred costs associated with purchasing and upgrading to these newer models, of which the Exchange has not otherwise passed through or offset.

As of April 1, 2024, market participants also having the option of connecting to a new data center (*i.e.*, Secaucus NY6 Data Center ("NY6")), in addition to the current data centers at NY4 and NY5. The Exchange made NY6 available in response to customer requests in connection with their need for additional space and capacity. In order to make this space available, the Exchange expended significant resources to prepare this space, and will

also incur ongoing costs with respect to maintaining this offering, including costs related to power, space, fiber, cabinets, panels, labor and maintenance of racks. The Exchange also incurred a large cost with respect to ensuring NY6 would be latency equalized, as it is for NY4 and NY5.

The Exchange also has made various other improvements since the current physical port rates were adopted in 2018. For example, the Exchange has updated its customer portal to provide more transparency with respect to firms' respective connectivity subscriptions, enabling them to better monitor, evaluate and adjust their connections based on their evolving business needs. The Exchange also performs proactive audits on a weekly basis to ensure that all customer cross connects continue to fall within allowable tolerances for Latency Equalized connections. Accordingly, the Exchange expended, and will continue to expend, resources to innovate and modernize technology so that it may benefit its Members and continue to compete among other equities markets. The ability to continue to innovate with technology and offer new products to market participants allows the Exchange to remain competitive in the equities space which currently has 16 equities markets and potential new entrants. If the Exchange were not able to assess incrementally higher fees for its connectivity, it would effectively impact how the Exchange manages its technology and hamper the Exchange's ability to continue to invest in and fund access services in a manner that allows it to meet existing and anticipated access demands of market participants. Disapproval of fee changes such as the proposal herein, could also have the adverse effect of discouraging an exchange from improving its operations and implementing innovative technology to the benefit of market participants if it believes the Commission would later prevent that exchange from recouping costs and monetizing its operational enhancements, thus adversely impacting competition as well as the interests of market participants and investors.

Finally, the proposed fee is also the same as is concurrently being proposed for its Affiliate Exchanges. Further, Members are able to utilize a single port to connect to all of its Affiliate Exchanges and will only be charged one single fee (*i.e.*, a market participant will only be assessed the proposed \$8,500 even if it uses that physical port to connect to the Exchange and another (or even all 6) of its Affiliate Exchanges. Particularly, the Exchange believes the

proposed monthly per port fee is reasonable, equitable and not unfairly discriminatory since as the Exchange has determined to not charge multiple fees for the same port. Indeed, the Exchange notes that several ports are in fact purchased and utilized across one or more of the Exchange's affiliated Exchanges (and charged only once).

The Exchange also believes that the proposed fee change is not unfairly discriminatory because it would be assessed uniformly across all market participants that purchase the physical ports. The Exchange believes increasing the fee for 10 Gb physical ports and charging a higher fee as compared to the 1 Gb physical port is equitable as the 1 Gb physical port is 1/10th the size of the 10 Gb physical port and therefore does not offer access to many of the products and services offered by the Exchange (*e.g.*, ability to receive certain market data products). Thus, the value of the 1 Gb alternative is lower than the value of the 10 Gb alternative, when measured based on the type of Exchange access it offers. Moreover, market participants that purchase 10 Gb physical ports utilize the most bandwidth and therefore consume the most resources from the network. The Exchange also anticipates that firms that utilize 10 Gb ports will benefit the most from the Exchange's investment in offering NY6 as the Exchange anticipates there will be much higher quantities of 10 Gb physical ports connecting from NY6 as compared to 1 Gb ports. Indeed, the Exchange notes that 10 Gb physical ports account for approximately 90% of physical ports across the NY4, NY5, and NY6 data centers, and to date, 80% of new port connections in NY6 are 10 Gb ports. As such, the Exchange believes the proposed fee change for 10 Gb physical ports is reasonably and appropriately allocated.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed fee change will not impact intramarket competition because it will apply to all similarly situated Members equally (*i.e.*, all market participants that choose to purchase the 10 Gb physical port). Additionally, the Exchange does not believe its proposed pricing will impose a barrier to entry to smaller participants and notes that its proposed connectivity pricing is associated with relative usage of the various market participants. For example, market participants with modest capacity needs

can continue to buy the less expensive 1 Gb physical port (which cost is not changing) or may choose to obtain access via a third-party re-seller. While pricing may be increased for the larger capacity physical ports, such options provide far more capacity and are purchased by those that consume more resources from the network. Accordingly, the proposed connectivity fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most.

The proposed fee change also does not impose a burden on competition or on other Self-Regulatory Organizations that is not necessary or appropriate. As described above, the Exchange evaluated its proposed fee change using objective and stable metric with limited volatility. Utilizing Data Processing PPI over a specified period of time is a reasonable means of recouping a portion of the Exchange's investment in maintaining and enhancing the connectivity service identified above. The Exchange believes utilizing Data Processing PPI, a tailored measure of inflation, to increase certain connectivity fees to recoup the Exchange's investment in maintaining and enhancing its services and products would not impose a burden on competition.

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 Act²² and paragraph (f) of Rule 19b-4²³ 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-2024-049 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-2024-049. 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-CboeBYX-2024-049 and should be submitted on or before January 21, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-30912 Filed 12-27-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102003; File No. SR-CboeBZX-2024-126]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to List and Trade Shares of the BondBlox Private Credit Trust Under BZX Rule 14.11(f), Trust Issued Receipts

December 19, 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 December 17, 2024, Cboe BZX 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 BZX Exchange, Inc. ("BZX" or the "Exchange") is filing with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change to list and trade shares of the BondBlox Private Credit Trust (the "Trust"), under BZX Rule 14.11(f), Trust Issued Receipts.

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

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f).

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 list and trade the Shares of the Trust under BZX Rule 14.11(f)(4), which governs the listing and trading of Trust Issued Receipts³ on the Exchange.⁴ The Trust seeks to provide attractive risk-adjusted returns primarily through distributions of current income from the Trust's portfolio, as further described below. The Trust has filed a registration statement on Form S-1 under the Securities Act of 1933.⁵

³ Rule 14.11(f)(4) applies to Trust Issued Receipts that invest in "Investment Shares" or "Financial Instruments". The term "Investment Shares," as defined in Rule 14.11(f)(4)(A)(i), means a security (a) that is issued by a trust, partnership, commodity pool or other similar entity that invests in any combination of futures contracts, options on futures contracts, forward contracts, commodities, swaps or high credit quality short-term fixed income securities or other securities; and (b) issued and redeemed daily at net asset value in amounts correlating to the number of receipts created and redeemed in a specified aggregate minimum number. The term "Financial Instruments," as defined in Rule 14.11(f)(4)(A)(iv), means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

⁴ The Commission approved BZX Rule 14.11(f)(4) in Securities Exchange Act Release No. 68619 (January 10, 2013), 78 FR 3489 (January 16, 2013) (SR-BZX-2012-044).

⁵ The Trust has filed a registration statement on Form S-1 under the Securities Act of 1933, dated December 13, 2024 (File No. 333-283852) ("Registration Statement"). The description of the Trust and the Shares contained herein are based on the Registration Statement. The Registration Statement for the Trust is not yet effective, and the Trust will not trade on the Exchange until such time that the Registration Statement is effective.

⁶ The Trust intends to operate its business so that it is falls outside of the definition of an investment company under the Investment Company Act of 1940 (the "1940 Act"). Section 3(a)(1)(C) of the 1940 Act generally defines an investment company as an entity primarily engaged in investing, reinvesting, or trading in securities and holds investment securities exceeding 40% of its total assets (exclusive of U.S. federal government securities and cash items) on a non-consolidated basis, which the Trust refers to as the 40% test. Excluded from the term "investment securities," among other things, are securities issued by majority-owned subsidiaries that are not themselves investment companies and are not relying on the exclusions from the definition of investment company set forth in Section 3(c)(1) or Section 3(c)(7) of the 1940 Act. The Trust intends to comply with this 40% test by primarily conducting its

Description of the Trust

BondBloxx Investment Management Corporation (the "Advisor") is the advisor to the Trust and is responsible for the overall management of the Trust's business activities. HCG Fund Management LP (the "Sub-Advisor") will assist in the day-to-day management of the Trust's assets. Brown Brothers Harriman & Co. serves as the administrator (the "Administrator"), custodian (the "Custodian"), and the transfer agent (the "Transfer Agent"). CSC Delaware Trust Company, a Delaware trust company, is the sole trustee of the Trust.

If the Advisor to the Trust issuing the Trust Issued Receipts is affiliated with a broker-dealer, such Advisor to the Trust shall erect and maintain a "fire wall" between the Advisor and the broker-dealer with respect to access to information concerning the composition and/or changes to the Trust's portfolio. The Advisor is not a broker-dealer or affiliated with a broker-dealer. In the event that (a) the Advisor becomes a broker-dealer or newly affiliated with a broker-dealer, or (b) any new Advisor is a broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

The Trust seeks to provide attractive risk-adjusted returns to Shareholders primarily through distributions of current income from the Trust's portfolio. The Trust intends to achieve this objective by constructing a diversified portfolio of consumer and small business private credit assets. The

business through its majority-owned subsidiaries, which are not classified as investment companies and not relying on either the Section 3(c)(1) or Section 3(c)(7) exclusions from registration under the 1940 Act.

The Trust anticipates that its subsidiaries will primarily qualify for exclusions under Section 3(c)(5)(A) of the 1940 Act, which applies to issuers primarily engaged in the business of purchasing or otherwise acquiring notes, drafts, acceptances, open accounts receivable, and other obligations representing part or all of the sales price of merchandise, insurance and services, or Section 3(c)(5)(B) of the 1940 Act, which is available to entities primarily engaged in the business of making loans to manufacturers, wholesalers, and retailers of, and to prospective purchasers of, specified merchandise, insurance and services. These exceptions require that at least 55% of the subsidiaries' portfolios consist of qualifying assets that meet the requirements of the relevant exception.

Trust intends to target primarily whole loans that the Advisor believes will offer stable and predictable cash flows. The Trust generally intends to focus on loans that have short and medium terms (e.g., less than 60 months) which, through principal amortization, tend to have low duration (e.g., less than 30 months). The Trust believes that targeting assets with a combination of short duration and high cash yields will enhance the liquidity of the Trust's portfolio and provide the Trust the opportunity to earn attractive returns while managing the risk of losses in market value that can result from increases in interest rates. The Trust expects to acquire its initial portfolio of assets using the net proceeds of this offering.

Investable Instruments and Trust Liquidity

The Trust intends to hold the following instruments: personal installment loans, small business loans, student loans, point of sale loans, and asset backed securities that are backed by such loans (collectively "Private Credit Assets"), investment grade bonds, U.S. Treasuries, shares of certain exchange traded funds that invest in U.S. Treasuries or other short-term, interest bearing assets and cash and cash equivalents,⁷ including funds of an affiliated Trust for which the Advisor acts as the investment adviser.

The Trust plans to participate in the rapidly growing market for small balance, short duration, amortizing loans enabled by Fintech lending platforms. The Advisor believes consumer and small business loans sourced through Fintech lending platforms offer investors attractive value propositions that have primarily been available to institutional investors. However, there is limited sell-side liquidity available in the market for Private Credit Assets. As such, the Advisor is proposing to utilize the following strategy to facilitate redemptions in the Trust:

1. The Trust will maintain a portion of the portfolio in cash and cash equivalents (the "Liquidity Sleeve"). Under normal circumstances, the Trust expects to hold approximately 20% of the portfolio in these liquid assets. The Advisor expects that it will generally be

⁷ Cash equivalents are short-term instruments with maturities of less than 3 months, specifically including U.S. Government securities, certificates of deposit, bankers' acceptances, repurchase and reverse repurchase agreements, bank time deposits, commercial paper, and money market funds. This definition is consistent with the definition of cash and cash equivalents in Exchange Rule 14.11(i)(4)(C)(iii).

able to fulfill redemption orders using this position. The Advisor may also strategically increase the size of the Liquidity Sleeve in order to better facilitate anticipated redemptions by retaining, rather than distributing the paydowns from Private Credit Assets as further described below.

2. The remaining 80% of the Trust's holdings will consist of Private Credit Assets. These are short duration, high yielding products that are underwritten to pay a weighted average of 8% of the total Trust AUM per month or 10% of the private credit AUM per month. The underwritten yields are currently 10% and at origination typically have an underwritten average duration limit of 3 years, with a target for the initial portfolio of less than 1 year. The monthly cash flows, which are received throughout the month, may be reinvested to the extent necessary to maintain the approximate 20/80 allocation between the Liquidity Sleeve and Private Credit Assets described above. The Trust will consider the current level of the Liquidity Sleeve, among other factors, in determining its distribution policy, and may determine to use accumulated cash received from payments of interest and principal on its Private Credit Assets as well as cash proceeds from loan repayments to replenish or increase the Liquidity Sleeve before distributing such amounts to shareholders.

3. In the event that the cash and cash equivalents required to accommodate a series of redemptions or a single large redemption approaches the size of the Trust's Liquidity Sleeve, the Trust may:

- a. Sell Private Credit Assets in the secondary market to raise cash;
- b. Arrange a line of credit or other financing facility with a bank or broker dealer, using the portfolio of Private Credit Assets as collateral.

These options will likely come at a cost to the Trust or may not be available to the Trust depending on market conditions.

4. In the event that items 1–3 above do not provide sufficient cash and cash equivalents to the Liquidity Sleeve to accommodate redemptions in the Trust, redemptions may be suspended until the Trust accumulates enough cash to facilitate additional redemptions, which the Advisor does not expect to last for longer than approximately 2.5 months. In the event that the Advisor implements a restriction on redemptions, the Shares on the secondary market may trade at deep discount. The discount could potentially serve to prompt investors to buy shares and potentially trigger primary market activity.

The Advisor believes that the liquidity strategy laid out above will be sufficient to address concerns that may arise from the relative illiquidity of the secondary market for selling Private Credit Assets. Specifically, the Advisor believes that the 20% Liquidity Sleeve (with the flexibility to increase the sleeve during times of potentially high redemptions) will provide the Trust with sufficient liquidity to manage redemptions under the vast majority of market conditions. Additionally, because the Trust will target shorter duration loans that are underwritten to generate cash payments of interest and principal amortization of approximately 8% of the Trust's AUM per month, even in the event that the Trust's Liquidity Sleeve is exhausted, it is expected to be replenished by the cash payments generated by the Private Credit Assets. In the event that the cash generated by the Private Credit Assets is insufficient to satisfy incoming redemptions the Trust would then have the ability to facilitate additional redemptions by selling certain of the Private Credit Assets and/or using the Private Credit Assets as collateral for a cash loan from a bank or broker dealer. In a worst case scenario, the Trust would temporarily suspend redemptions. However, as noted above, the Advisor does not expect such a suspension to last for longer than approximately 2.5 months because of the cash expected to be generated by the Private Credit Assets.

In addition to the specific liquidity strategy described above, the Advisor also notes that the small size of loans sourced through Fintech lending platforms will enable the Trust to hold a portfolio that is diversified by sector, source, vintage, count and geography, which will help to manage idiosyncratic risk and ensure a diverse universe of lenders. Further to this point, the small loan size means that the Trust will need to hold a significant number of Private Credit Assets, further ensuring diversity and minimizing the risk that any single Private Credit Asset would have on the portfolio. The Advisor further believes that the cash yields and short duration through regular principal amortization will, in addition to enhancing the liquidity of the Trust, help manage volatility of returns.

Purchases and Redemptions of Creation Units

The Trust will create and redeem Shares from time to time only in large blocks of a specified number of Shares or multiples thereof ("Creation Units"). A Creation Unit is a block of at least 50,000 Shares. Except when aggregated in Creation Units, the Shares are not

redeemable securities. Creation Units are only redeemable by authorized participants.

On any Business Day, an authorized participant may place an order with the Advisor to create one or more Creation Units.⁸ The total cash payment required to create each Creation Unit is the NAV of at least 50,000 Shares on the purchase order date plus the applicable transaction fee.

The procedures by which an authorized participant can redeem one or more Creation Units mirror the procedures for the purchase of Creation Units. On any Business Day, an authorized participant may place an order with the Transfer Agent to redeem one or more Creation Units. The redemption proceeds from the Trust consist of the cash redemption amount. The cash redemption amount is equal to the NAV of the number of Creation Unit(s) of the Trust requested in the authorized participant's redemption order on the business day the redemption order is received by the Transfer Agent, less transaction fees.

Availability of Information

The NAV for the Trust will be calculated by an independent third party once each Business Day and will be disseminated daily to all market participants at the same time.⁹ Pricing information will be available on the Advisor's website including: (1) the prior Business Day's reported NAV, the closing market price or the bid/ask price, daily trading volume, and a calculation of the premium and discount of the closing market price or bid/ask price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The Trust will also disclose its portfolio holdings on a daily basis on its website. The aforementioned information will be published as of the close of business and available on the Advisor's website at www.bondbloxetf.com.

Generally, the Trust values its assets using market quotations when they are readily available. Whole loans, asset backed securities and certain other

⁸ Authorized participants have a cut-off time of 2:00 p.m. ET to place creation and redemption orders and orders received after 2:00 p.m. will not be deemed to be received until the following business day.

⁹ NAV means the total assets of the Trust including, but not limited to, all cash and cash equivalents and private credit assets, less any liabilities, divided by the total number of Shares outstanding. The Trust's NAV is generally calculated at 4 p.m. ET.

types of private credit assets that Trust may hold may not have readily available market quotations and typically are fair valued based on prices provided by a third-party pricing service. Each loan and fractional loan is valued using inputs that factor in individual borrower performance data (e.g. payment history) that is updated as often as the NAV is calculated to reflect new information about the borrower or loan. Generally, fair value represents the amount that the Trust could reasonably expect to receive if its assets were sold at the time of valuation, based on information reasonably available at the time the valuation is made and that the Advisor and the Sub-Advisor believe to be reliable. Fair valuation involves subjective judgments, and it is possible that the fair value determined for an asset may differ materially from the value that could be realized upon the sale of such asset.

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (“CTA”). Pricing information regarding cash equivalents in which the Trust will invest is generally available through nationally recognized data services providers, such as Reuters and Bloomberg, through subscription agreements.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions and taxes will be included in the registration statement.

The Intraday Indicative Value (“IIV”) will be updated during Regular Trading Hours to reflect changes in the value of the Trust’s holdings during the trading day. The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange’s Regular Trading Hours (9:30 a.m. to 4:00 p.m. Eastern time). The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange’s Regular Trading Hours through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through on-line information services such as Bloomberg and Reuters.

Initial and Continued Listing

The Shares will conform to the initial and continued listing criteria under BZX Rule 14.11(f)(4). A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the Advisor of the Shares that the NAV per Share for the Trust will be calculated daily and will be made available to all market participants at the same time.

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. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments composing the daily disclosed portfolio of the Trust; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

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. The Exchange will allow trading in the Shares from 8:00 a.m. until 8:00 p.m. ET and has the appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is \$0.01, with the exception of securities that are priced less than \$1.00, for which the minimum price variation for order entry is \$0.0001.

Surveillance

Trading of the Shares through the Exchange will be subject to the Exchange’s existing surveillance for securities traded on the Exchange. 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 portfolio, reference assets, and index, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules shall constitute continued listing

requirements for listing the Shares on the Exchange. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) Interpretation and Policy .01 of BZX Rule 3.7 which imposes a duty of due diligence on its Members to learn the essential facts relating to every customer prior to trading the Shares;¹⁰ (4) how information regarding the IIV and the Trust’s holdings is disseminated; (5) the risks involved in trading the Shares during the Pre-Opening¹¹ and After Hours Trading Sessions¹² when an updated IIV will not be calculated or publicly disseminated; (6) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (7) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Trust. Members purchasing Shares from the Trust for

¹⁰ Specifically, in part, Interpretation and Policy .01 of Rule 3.7 states “[n]o Member shall recommend to a customer a transaction in any such product unless the Member has a reasonable basis for believing at the time of making the recommendation that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks of the recommended transaction and is financially able to bear the risks of the recommended position.”

¹¹ The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. ET.

¹² The After Hours Trading Session is from 4 p.m. to 8:00 p.m. ET.

resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act. In addition, the Information Circular will reference that the Trust is subject to various fees and expenses described in the Trust's registration statement. The Information Circular will also disclose the trading hours of the Shares and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares will be publicly available on the Advisor's website.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹³ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁴ 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)¹⁵ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange notes that the Commission has approved numerous series of Trust Issued Receipts¹⁶ to be listed on U.S. national securities exchanges and several other vehicles holding private credit instruments have recently launched.¹⁷

Trust Issued Receipts

Trading of the Shares through the Exchange will be subject to the Exchange's existing surveillance for

securities traded on the Exchange. 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 portfolio, reference assets, and index, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules shall constitute continued listing requirements for listing the Shares on the Exchange. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

The Sponsor has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

Investable Instruments and Trust Liquidity

The Trust intends to hold Private Credit Assets, investment grade bonds, U.S. Treasuries, shares of certain exchange traded funds that invest in U.S. Treasuries or other short-term, interest bearing assets and cash and cash equivalents, including funds of an affiliated Trust for which the Advisor acts as the investment adviser.

The Trust plans to participate in the rapidly growing market for small balance, short duration, amortizing loans enabled by Fintech lending platforms. The Advisor believes consumer and small business loans sourced through Fintech lending platforms offer investors attractive value propositions that have primarily been available to institutional investors. However, there is limited sell-side liquidity available in the market for Private Credit Assets. As such, the Advisor is proposing to utilize the following strategy to facilitate redemptions in the Trust:

1. The Trust will maintain a portion of the portfolio in its Liquidity Sleeve. Under normal circumstances, the Trust expects to hold approximately 20% of the portfolio in these liquid assets. The Advisor expects that it will generally be able to fulfill redemption orders using this position. The Advisor may also strategically increase the size of the Liquidity Sleeve in order to better facilitate anticipated redemptions by retaining, rather than distributing the paydowns from Private Credit Assets as further described below.

2. The remaining 80% of the Trust's holdings will consist of Private Credit Assets. These are short duration, high yielding products that are underwritten to pay a weighted average of 8% of the total Trust AUM per month or 10% of the private credit AUM per month. The underwritten yields are currently 10% and at origination typically have an underwritten average duration limit of 3 years, with a target for the initial portfolio of less than 1 year. The monthly cash flows, which are received throughout the month, may be reinvested to the extent necessary to maintain the approximate 20/80 allocation between the Liquidity Sleeve and Private Credit Assets described above. The Trust will consider the current level of the Liquidity Sleeve, among other factors, in determining its distribution policy, and may determine to use accumulated cash received from payments of interest and principal on its Private Credit Assets as well as cash proceeds from loan repayments to replenish or increase the Liquidity Sleeve before distributing such amounts to shareholders.

3. In the event that the cash and cash equivalents required to accommodate a series of redemptions or a single large redemption approaches the size of the Trust's Liquidity Sleeve, the Trust may:

- Sell Private Credit Assets in the secondary market to raise cash;
- Arrange a line of credit or other financing facility with a bank or broker dealer, using the portfolio of Private Credit Assets as collateral.

These options will likely come at a cost to the Trust or may not be available to the Trust depending on market conditions.

4. In the event that items 1–3 above do not provide sufficient cash and cash equivalents to the Liquidity Sleeve to accommodate redemptions in the Trust, redemptions may be suspended until the Trust accumulates enough cash to facilitate additional redemptions, which the Advisor does not expect to last for longer than approximately 2.5 months. In the event that the Advisor implements a restriction on

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ *Id.*

¹⁶ See Exchange Rule 14.11(f).

¹⁷ See "First Private-Credit ETFs Launch," December 3, 2024, <https://www.wsj.com/livecoverage/stock-market-today-dow-sp500-nasdaq-live-12-03-2024/card/first-private-credit-etfs-launch-s0032D60wa2zg12uy7pY>.

redemptions, the Shares on the secondary market may trade at deep discount. The discount could potentially serve to prompt investors to buy shares and potentially trigger primary market activity.

The Advisor believes that the liquidity strategy laid out above will be sufficient to address concerns that may arise from the relative illiquidity of the secondary market for selling Private Credit Assets. Specifically, the Advisor believes that the 20% Liquidity Sleeve (with the flexibility to increase the sleeve during times of potentially high redemptions) will provide the Trust with sufficient liquidity to manage redemptions under the vast majority of market conditions. Additionally, because the Trust will target shorter duration loans that are underwritten to generate cash payments of interest and principal amortization of approximately 8% of the Trust's AUM per month, even in the event that the Trust's Liquidity Sleeve is exhausted, it is expected to be replenished by the cash payments generated by the Private Credit Assets. In the event that the cash generated by the Private Credit Assets is insufficient to satisfy incoming redemptions the Trust would then have the ability to facilitate additional redemptions by selling certain of the Private Credit Assets and/or using the Private Credit Assets as collateral for a cash loan from a bank or broker dealer. In a worst case scenario, the Trust would temporarily suspend redemptions. However, as noted above, the Advisor does not expect such a suspension to last for longer than approximately 2.5 months because of the cash expected to be generated by the Private Credit Assets.

In addition to the specific liquidity strategy described above, the Advisor also notes that the small size of loans sourced through Fintech lending platforms will enable the Trust to hold a portfolio that is diversified by sector, source, vintage, count and geography, which will help to manage idiosyncratic risk and ensure a diverse universe of lenders. Further to this point, the small loan size means that the Trust will need to hold a significant number of Private Credit Assets, further ensuring diversity and minimizing the risk that any single Private Credit Assets would have on the portfolio. The Advisor further believes that the cash yields and short duration through regular principal amortization will, in addition to enhancing the liquidity of the Trust, help manage volatility of returns.

Availability of Information

The NAV for the Trust will be calculated by an independent third

party once each Business Day and will be disseminated daily to all market participants at the same time. Pricing information will be available on the Advisor's website including: (1) the prior Business Day's reported NAV, the closing market price or the bid/ask price, daily trading volume, and a calculation of the premium and discount of the closing market price or bid/ask price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The Trust will also disclose its portfolio holdings on a daily basis on its website. The aforementioned information will be published as of the close of business and available on the Advisor's website at www.bondbloxxtf.com.

Generally, the Trust values its assets using market quotations when they are readily available. Whole loans, asset backed securities and certain other types of private credit assets that Trust may hold may not have readily available market quotations and typically are fair valued based on prices provided by a third-party pricing service. Each loan and fractional loan is valued using inputs that factor in individual borrower performance data (e.g. payment history) that is updated as often as the NAV is calculated to reflect new information about the borrower or loan. Generally, fair value represents the amount that the Trust could reasonably expect to receive if its assets were sold at the time of valuation, based on information reasonably available at the time the valuation is made and that the Advisor and the Sub-Advisor believe to be reliable. Fair valuation involves subjective judgments, and it is possible that the fair value determined for an asset may differ materially from the value that could be realized upon the sale of such asset.

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. Pricing information regarding cash equivalents in which the Trust will invest is generally available through nationally recognized data services providers, such as Reuters and Bloomberg, through subscription agreements.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions and taxes will be included in the registration statement.

The IIV will be updated during Regular Trading Hours to reflect changes in the value of the Trust's holdings during the trading day. The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. Eastern time). The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through on-line information services such as Bloomberg and Reuters.

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 surveillance sharing agreement. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares. The Exchange may obtain information regarding trading in the Shares from other exchanges who are members or affiliates of the ISG,¹⁸ or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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, rather will facilitate the listing and trading of an additional exchange-

¹⁸ For a list of the current members and affiliate members of ISG, see www.isgportal.com.

traded product that will enhance competition among both market participants and listing venues, 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

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

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 Exchange consents, the Commission will:

A. by order approve or disapprove such 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-CboeBZX-2024-126 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-2024-126. 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-2024-126 and should be submitted on or before January 21, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-30915 Filed 12-27-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101983; File No. SR-CBOE-2024-055]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update its Fees Schedule in Connection With the Exchange's Plans To List and Trade Options That Overlie the Cboe Bitcoin U.S. ETF Index and the Cboe Mini Bitcoin U.S. ETF Index

December 19, 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 December 11, 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.

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 update its Fees Schedule in connection with the Exchange's plans to list and trade options that overlie the Cboe Bitcoin U.S. ETF Index and the Cboe Mini Bitcoin U.S. ETF Index. 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 amend its Fees Schedule in connection with its plans to list and trade options that overlie the Cboe Bitcoin U.S. ETF Index ("CBTX options") and the Cboe Mini Bitcoin U.S. ETF Index ("MBTX options").³ By way of background, the Cboe Bitcoin U.S. ETF Index is a modified market capitalization-weighted index that is designed to track the performance of a basket of spot Bitcoin ETFs listed on U.S. exchanges. CBTX options are cash-settled options based on the Cboe Bitcoin U.S. ETF Index. MBTX options are cash-settled options on the Cboe Mini Bitcoin U.S. ETF Index, which is a reduced value index based on 1/10th the value of the Cboe Bitcoin U.S. ETF Index.

The Exchange proposes to amend its Fees Schedule to accommodate the

³ The Exchange initially filed the proposed fee changes on December 2, 2024 (SR-CBOE-2024-054). On December 11, 2024, the Exchange withdrew that filing and submitted this proposal.

planned listing and trading of CBTX and MBTX options.

Standard Transaction Rates and Surcharges

First, the Exchange proposes to adopt certain standard transaction fees in connection with CBTX and MBTX options. Specifically, the proposed rule change adopts certain fees for CBTX and MBTX options in the Rate Table for All Products Excluding Underlying Symbol A,⁴ as follows:

- Adopts fee code B1, appended to all Customer (capacity “C”) orders in CBTX options and assesses a fee of \$0.50 per contract;⁵

- Adopts fee code B2, which is appended to all non-Customer (*i.e.*, Clearing Trading Permit Holders (capacity “F”), Non-Clearing Trading Permit Holder Affiliates (capacity “L”), Market-Maker (capacity “M”), Broker-Dealers (capacity “B”), Joint Back-Offices (capacity “J”), Non-Trading Permit Holder Market-Makers (capacity “N”), and Professionals (capacity “U”)) orders in CBTX options and assesses a fee of \$1.00 per contract;

- Adopts fee code M1, appended to all Customer (capacity “C”) orders in MBTX options and assesses a fee of \$0.25 per contract; and

- Adopts fee code M2, which is appended to all non-Customer (*i.e.*, Clearing Trading Permit Holders (capacity “F”), Non-Clearing Trading Permit Holder Affiliates (capacity “L”), Market-Maker (capacity “M”), Broker-Dealers (capacity “B”), Joint Back-Offices (capacity “J”), Non-Trading Permit Holder Market-Makers (capacity “N”), and Professionals (capacity “U”)) orders in MBTX options and assesses a fee of \$0.50 per contract.

In addition to the above transaction fees, the proposed rule change also adopts a surcharge to CBTX and MBTX options transactions within the Rate Table—All Products Excluding Underlying Symbol List A. Specifically, the proposed rule change adds CBTX and MBTX options to the list of options for which the FLEX Surcharge Fee of

\$0.10 (capped at \$250 per trade) applies to electronic FLEX orders executed by all capacity codes, except for Cboe Compression Services (“CCS”) and FLEX Micro transactions.⁶

The Exchange also proposes to exclude non-Customer complex orders in CBTX and MBTX from the Complex Surcharge by amending Footnote 35 (appended to the Complex Surcharge) to provide that the Complex Surcharge applies per contract per side surcharge for noncustomer complex order executions that remove liquidity from the Complex Order Book (“COB”) and auction responses in the Complex Order Auction (“COA”) and AIM in all classes except CBTX, MBTX, MRUT, NANOS, XSP, FLEX Micros, Sector Indexes and Underlying Symbol List A.

Fees Programs

The Exchange proposes to exclude CBTX and MBTX options from the Liquidity Provider Sliding Scale, which offers credits on Market-Maker orders where a Market-Maker achieves certain volume thresholds based on total national Market-Maker volume in all underlying symbols, excluding Underlying Symbol List A, MRUT, MXACW, MXUSA, MXWLD, NANOS, XSP and FLEX Micros during the calendar month. Specifically, the proposed rule change updates the Liquidity Provider Sliding Scale table to provide that volume thresholds are based on total national Market-Maker volume in all underlying symbols excluding Underlying Symbol List A, CBTX, MBTX, MRUT, MXACW, MXUSA, MXWLD, NANOS, XSP and FLEX Micros during the calendar month, and that it applies in all underlying symbols excluding Underlying Symbol List A, CBTX, MBTX, MRUT, MXACW, MXUSA, MXWLD, NANOS, XSP and FLEX Micros. The proposed rule change also updates Footnote 10 (appended to the Liquidity Provider Sliding Scale) to provide that the Liquidity Provider Sliding Scale applies to Liquidity Provider (Exchange Market-Maker, DPM and LMM) transaction fees in all products except (1) Underlying Symbol List A, CBTX, MBTX, MRUT, MXACW, MXUSA, MXWLD, NANOS, XSP and FLEX Micros, (2) volume executed in open outcry, and (3) volume executed via AIM Responses.

The proposed rule change also updates Footnote 44 (appended to the Liquidity Provider Sliding Scale Adjustment Table) to exclude CBTX and

MBTX volume from the program by providing (in relevant part) that the Make Rate under the Liquidity Provider Sliding Scale Adjustment Table be derived from a Liquidity Provider’s electronic volume the previous month in all symbols excluding Underlying Symbol List A, CBTX, MBTX, and XSP.

The proposed rule change updates the Volume Incentive Program (“VIP”) table to also exclude CBTX and MBTX volume from the VIP, which currently offers a per contract credit for certain percentage threshold levels of monthly Customer volume in all underlying symbols, excluding Underlying Symbol List A, Sector Indexes, DJX, MRUT, MXEA, MXEF, MXACW, MXUSA, MXWLD, NANOS, XSP and FLEX Micros. The proposed rule change also amends Footnote 36 (appended to the VIP table) to reflect the proposed exclusion of CBTX and MBTX from the VIP by providing (in relevant part) that: the Exchange shall credit each TPH the per contract amount resulting from each public customer (“C” capacity code) order transmitted by that TPH which is executed electronically on the Exchange in all underlying symbols excluding Underlying Symbol List A, Sector Indexes, DJX, CBTX, MBTX, MRUT, MXEA, MXEF, MXACW, MXUSA, MXWLD, NANOS, XSP, FLEX Micros, QCC trades, public customer to public customer electronic complex order executions, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 5.67, provided the Trading Permit Holder (“TPH”) meets certain percentage thresholds in a month as described in the Volume Incentive Program (VIP) table; the percentage thresholds are calculated based on the percentage of national customer volume in all underlying symbols excluding Underlying Symbol List A, Sector Indexes, CBTX, MBTX, MRUT, MXACW, MXEA, MXEF, MXUSA, MXWLD, NANOS, DJX, XSP, and FLEX Micros entered and executed over the course of the month; and in the event of a Cboe Options System outage or other interruption of electronic trading on Cboe Options, the Exchange will adjust the national customer volume in all underlying symbols excluding Underlying Symbol List A, Sector Indexes, CBTX, MBTX, MRUT, MXACW, MXEA, MXEF, MXUSA, MXWLD, NANOS, DJX, XSP, and FLEX Micros for the entire trading day.

The proposed rule change excludes CBTX and MBTX options from the list of products eligible to receive Break-Up Credits in orders executed in AIM,

⁴ Underlying Symbol List A includes OEX, XEO, RUT, RLG, RLV, RUI, UKXM, SPX (includes SPXW), SPESG and VIX. See Exchange Fees Schedule, Footnote 34.

⁵ Under the proposed changes, the Customer Large Trade Discount Program, set forth in the Exchange Fees Schedule, will apply to Customer orders in CBTX and MBTX (included in “Other Index Options” under the program). Under the program, a customer large trade discount program in the form of a cap on customer (“C” capacity code) transaction fees is in effect for the options set forth in the Customer Large Trade Discount table. For CBTX and MBTX options, regular customer transaction fees will only be charged for up to 5,000 contracts per order, similar to other index options other than VIX, SPX/SPXW, SPESG, and XSP.

⁶ The FLEX Surcharge Fee will only be charged up to the first 2,500 contracts per trade. See Exchange Fees Schedule, Footnote 17.

SAM, FLEX AIM, and FLEX SAM, by amending the Break-Up Credits table to exclude CBTX and MBTX along with the products currently excluded—Underlying Symbol List A, Sector Indexes, DJX, MRUT, MXEA, MXEF, MXACW, MXUSA, MXWLD, NANOS, XSP and FLEX Micros.

The Exchange proposes to exclude CBTX and MBTX options from the Marketing Fee Program by updating the Marketing Fee table to provide that the marketing fee will be assessed on transactions of Market-Makers (including DPMs and LMMs), resulting from customer orders at the per contract rate provided above on all classes of equity options, options on ETFs, options on ETNs and index options, except that the marketing fee shall not apply to Sector Indexes, DJX, CBTX, MBTX, MRUT, MXEA, MXEF, MXACW, MXUSA, MXWLD, XSP, NANOS, FLEX Micros or Underlying Symbol List A. The Exchange notes that, in this way, CBTX and MBTX options will be treated as most of the Exchange's other exclusively listed products that are currently excluded from the Marketing Fee Program. The Exchange does believe that it is necessary at the point of newly listing and trading for CBTX and MBTX options to be eligible for the Marketing Fee Program and may determine in the future to submit a fee filing to add CBTX and MBTX to the Marketing Fee Program if the Exchange believes it would potentially generate more customer order flow in CBTX and MBTX options.

The Exchange proposes to exclude CBTX and MBTX options from the Floor Broker Sliding Scale Rebate Program, which offers rebates for Firm Facilitated and non-Firm Facilitated orders that correspond to certain volume tiers and is designed to incentivize order flow in multiply listed options to the Exchange's trading floor. The Exchange proposes to update the Floor Broker Sliding Scale Rebate Program to provide that the Floor Broker Sliding Scale Rebate Program applies to all products except Underlying Symbol List A, Sector Indexes, DJX, CBTX, MBTX, MRUT, MXEA, MXEF, MXACW, MXUSA, MXWLD, NANOS, XSP and FLEX Micros.

The Exchange next proposes to exclude CBTX and MBTX options from eligibility for the Order Router Subsidy ("ORS") and Complex Order Router Subsidy ("CORS") Programs, in which Participating TPHs or Participating Non-Cboe TPHs may receive a payment from the Exchange for every executed contract routed to the Exchange through their system in certain classes. Specifically, the proposed rule change

updates the ORS/CORS Program tables to provide that ORS/CORS participants whose total aggregate non-customer ORS and CORS volume is greater than 0.25% of the total national volume (excluding volume in options classes included in Underlying Symbol List A, Sector Indexes, DJX, CBTX, MBTX, MRUT, MXEA, MXEF, MXACW, MXUSA, MXWLD, NANOS, XSP or FLEX Micros) will receive an additional payment for all executed contracts exceeding that threshold during a calendar month. The proposed rule change also updates Footnote 29 (appended to the ORS Program table) to provide that Cboe Options does not make payments under the program with respect to executed contracts in options classes included in Underlying Symbols List A, Sector Indexes, DJX, CBTX, MBTX, MRUT, MXEA, MXEF, MXACW, MXUSA, MXWLD, NANOS, XSP or FLEX Micros or with respect to complex orders or spread orders; and updates Footnote 30 (appended to the CORS Program table) to provide that Cboe Options does not make payments under the program with respect to executed contracts in options classes included in Underlying Symbols List A, Sector Indexes, DJX, CBTX, MBTX, MRUT, MXEA, MXEF, MXACW, MXUSA, MXWLD, NANOS, XSP or FLEX Micros.

The Exchange also proposes to amend Footnote 6, which states that in the event of an Exchange System outage or other interruption of electronic trading on the Exchange that lasts longer than 60 minutes, the Exchange will adjust the national volume in all underlying symbols excluding Underlying Symbol List A, Sector Indexes, MRUT, MXEA, MXEF, MXACW, MXUSA, MXWLD, NANOS, DJX, XSP and FLEX Micros for the entire trading day. The Exchange proposes to add CBTX and MBTX options to the list of options.

The Exchange also proposes to exclude Firm (*i.e.*, Clearing Trading Permit Holders (capacity "F") and Non-Clearing Trading Permit Holder Affiliates (capacity "L")) transactions in CBTX and MBTX from the Clearing TPH Fee Cap. Specifically, it amends footnote 22 (appended to the Clearing TPH Fee Cap table) to provide that all non-facilitation business executed in AIM or open outcry, or as a QCC or FLEX transaction, transaction fees for Clearing TPH Proprietary and/or their Non-TPH Affiliates in all products except CBTX, MBTX, MRUT, NANOS, XSP, FLEX Micros, Sector Indexes and Underlying Symbol List A, in the aggregate, are capped at \$65,000 per month per Clearing TPH. The proposed rule change additionally updates Footnote 11 (which is also appended to

the Clearing TPH Fee Cap table) to provide that the Clearing TPH Fee Cap in all products except CBTX, MBTX, MRUT, NANOS, XSP, FLEX Micros, Underlying Symbol List A and Sector Indexes (the "Fee Cap"), the Cboe Options Proprietary Products Sliding Scale for Clearing TPH Proprietary Orders, and the Clearing TPH Proprietary VIX Sliding Scale apply to (i) Clearing TPH proprietary orders ("F" capacity code), and (ii) orders of Non-TPH Affiliates of a Clearing TPH.

LMM Incentive Programs

Finally, the Exchange proposes to adopt financial programs in connection with CBTX and MBTX options for LMMs appointed to the programs (collectively, the "LMM Incentive Programs").⁷ Each LMM Incentive Program provides a rebate to TPHs with LMM appointments to the respective incentive program that meet certain quoting standards in the applicable series in a month. The Exchange notes that meeting or exceeding the quoting standards (as proposed; described in further detail below) in each of the LMM Incentive Program products to receive the applicable rebate (as proposed; described in further detail below) is optional for an LMM appointed to a program. Rather, an LMM appointed to an incentive program is eligible to receive the corresponding rebate if it satisfies the applicable quoting standards, which the Exchange believes encourages the LMM to provide liquidity in the applicable class and trading session. The Exchange may consider other exceptions to the programs' quoting standards based on demonstrated legal or regulatory requirements or other mitigating circumstances. In calculating whether an LMM appointed to an incentive program meets the applicable program's quoting standards each month, the Exchange excludes from the calculation in that month the business day in which the LMM missed meeting or exceeding the quoting standards in the highest number of the applicable series.

The Exchange notes that it currently offers several LMM Incentive Programs for other proprietary Exchange products. The proposed heightened quoting standards are similar to the detail and

⁷ See Exchange Rule 3.55(a). In advance of the LMM Incentive Program effective date, the Exchange will send a notice to solicit applications from interested TPHs for the LMM role and will, from among those applications, select the program LMMs. Factors to be considered by the Exchange in selecting LMMs include adequacy of capital, experience in trading options, presence in the trading crowd, adherence to Exchange rules and ability to meet the obligations specified in Rule 5.55.

format (corresponding premiums, quote widths, and sizes) of the quoting standards currently in place for LMM Incentive Programs for other proprietary Exchange products,⁸ and, similar to the LMM Incentive Programs with respect to other propriety [sic] Exchange products, the heightened quoting requirements offered by each of the proposed LMM Incentive Programs are designed to incentivize LMMs appointed to the LMM Incentive Programs to provide liquidity in CBTX and MBTX options during the trading

day upon their listing and trading on the Exchange and thereafter, which, in turn, would provide greater trading opportunities, added market transparency and enhanced price discovery for all market participants in CBTX and MBTX options.

The Exchange first proposes to adopt a MBTX/MBTXW LMM Incentive Program (“MBTX LMM Incentive Program”). As proposed, the MBTX LMM Incentive Program provides that if an LMM appointed to the MBTX LMM Incentive Program provides continuous electronic quotes during Regular

Trading Hours (“RTH”) that meet or exceed the proposed heightened quoting standards (below) in at least 85% of MBTX series 85% of the time in a given month, the LMM will receive (i) a payment for that month in the amount of \$10,000 (or pro-rated amount if an appointment begins after the first trading day of the month or ends prior to the last trading day of the month) for that month and (ii) a credit of \$0.25/contract applied to all MBTX contracts executed in Market-Maker capacity during RTH.

	6 days or less		7 days to 14 days		15 days to 60 days		61 to 120 days		121 to 270 days	
	Width	Size	Width	Size	Width	Size	Width	Size	Width	Size
\$0.00–\$5.00	\$0.15	20	\$0.20	15	\$0.25	10	\$0.30	5	\$0.80	5
\$5.01–\$15.00	0.50	20	0.35	15	0.40	10	0.50	5	1.00	5
\$15.01–\$20.00	1.00	5	1.50	5	0.50	10	0.50	5	2.00	3
\$20.01–\$50.00	1.20	5	3.00	5	4.00	5	1.00	5	5.00	3
\$50.01–\$100.00	5.00	1	8.00	1	8.00	1	8.00	1	8.00	3
\$100.01–\$200.00	8.00	1	10.00	1	12.00	1	12.00	1	14.00	1
Greater than \$200.00	10.00	1	12.00	1	14.00	1	14.00	1	16.00	1

The Exchange next proposes to adopt a CBTX/CBTXW LMM Incentive Program (“CBTX LMM Incentive Program”). As proposed, the CBTX LMM Incentive Program provides that if an LMM appointed to the CBTX LMM Incentive Program provides continuous

electronic quotes during RTH that meet or exceed the proposed heightened quoting standards (below) in at least 85% of CBTX series 85% of the time in a given month, the LMM will receive (i) a payment for that month in the amount of \$10,000 (or pro-rated amount if an

appointment begins after the first trading day of the month or ends prior to the last trading day of the month) and (ii) a credit of \$0.50/contract applied to all CBTX contracts executed in Market-Maker capacity during RTH.

	6 days or less		7 days to 14 days		15 days to 60 days		61 to 120 days		121 to 270 days	
	Width	Size	Width	Size	Width	Size	Width	Size	Width	Size
\$0.00–\$5.00	\$0.40	10	\$0.60	10	\$1.00	10	\$1.00	5	\$2.00	5
\$5.01–\$15.00	0.80	10	1.50	10	1.50	10	1.50	5	3.00	5
\$15.01–\$20.00	2.00	5	3.00	5	3.50	5	3.50	5	5.00	5
\$20.01–\$50.00	4.00	5	5.00	5	5.00	5	5.00	5	8.00	3
\$50.01–\$100.00	6.00	5	8.00	5	8.00	5	8.00	5	12.00	3
\$100.01–\$200.00	12.00	1	12.00	1	12.00	1	12.00	3	12.00	1
Greater than \$200.00	16.00	1	16.00	1	16.00	1	16.00	1	18.00	1

The heightened quoting requirements offered by the CBTX and MBTX LMM Incentive Programs are designed to incentivize LMMs appointed to the LMM Incentive Programs to provide significant liquidity in CBTX and MBTX options during the trading day upon their listing and trading on the Exchange, which, in turn, would provide greater trading opportunities, added market transparency and enhanced price discovery for all market

participants in CBTX and MBTX options.

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.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.

⁸ See Exchange Fees Schedule, “MRUT LMM Incentive Program”, “MSCI LMM Incentive Program”, “MXACW LMM Incentive Program”, “MXUSA LMM Incentive Program”, “MXWLD LMM Incentive Program”, “NANOS LMM Incentive

Program”, “GTH VIX/VIXW LMM Incentive Program”, “GTH1 SPX/SPXW LMM Incentive Program”, “GTH2 SPX/SPXW LMM Incentive Program”, “RTH XSP LMM Incentive Program”, “GTH1 XSP LMM Incentive Program”, “GTH2 XSP

LMM Incentive Program”, and “RTH SPESG LMM Incentive Program”.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

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. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,¹² which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities.

Standard Transaction Rates and Surcharges

The Exchange believes that the proposed amendments to the Fees Schedule in connection with standard transaction rates and surcharges for CBTX and MBTX options transactions are reasonable, equitable and not unfairly discriminatory. The Exchange believes that the proposed standard transaction rates for Customer and non-Customer orders in CBTX and MBTX options are reasonable. Specifically, the proposed fees are in line with or less than fees for transactions in similar industry products,¹³ when taking into account adjustments for notional size differences, based on the spot value of the underlying index of CBTX and MBTX options as compared to the spot value of other similar industry products and considering the difference in multipliers among the various products.

Additionally, the Exchange believes it is reasonable to charge different fee amounts to different user types in the manner proposed because the proposed fees are consistent with the price differentiation that exists today for other index products. Moreover, the Exchange believes that it is reasonable to assess lower fees for MBTX options orders (as compared to CBTX options orders), because of the relation between MBTX options and CBTX options, wherein MBTX options overlie an index with 1/10th the value of the index that underlies CBTX options.

The Exchange believes it is reasonable to apply the FLEX Surcharge Fee to CBTX and MBTX options, as the FLEX Surcharge Fee assists the Exchange in recouping the cost of developing and maintaining the FLEX system. Moreover, the Exchange believes it is reasonable to exclude CBTX and MBTX options from the Complex Surcharge because the proposed surcharge exclusions will provide consistency

between the fees assessed for orders in other proprietary products, including MRUT, NANOS, XSP, FLEX Micros, Sector Indexes and Underlying Symbol List A.

The Exchange believes the proposed standard transaction rates and exclusion from certain surcharges are equitable and not unfairly discriminatory because they will apply automatically and uniformly to all capacities as applicable (*i.e.*, Customer and non-Customer), in CBTX and MBTX options. The Exchange also believes that it is equitable and not unfairly discriminatory to assess lower fees to Customers as compared to other market participants because Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market-Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The fees offered to Customers are intended to attract more Customer trading volume to the Exchange. Moreover, the options industry has a long history of providing preferential pricing to Customers, and the Exchange's current Fees Schedule currently does so in many places, as do the fees structures of many other exchanges. Finally, all fee amounts listed as applying to Customers will be applied equally to all Customers (meaning that all Customers will be assessed the same amount).

Fees Programs

The Exchange believes that the proposed updates to the Fees Schedule in connection with the application of certain fees programs to transactions in CBTX and MBTX options are reasonable, equitable and not unfairly discriminatory. The Exchange believes it is reasonable to exclude CBTX and MBTX options from the Liquidity Provider Sliding Scale, the VIP, Break-Up Credits applicable to Customer Agency Orders in AIM and SAM, the Marketing Fee, the Floor Broker Sliding Scale Rebate Program, and the ORS/CORS program because other proprietary index products are also excepted from these programs.¹⁴ Moreover, the Exchange notes that the

proposed rule change does not alter any of the existing programs, but instead, merely proposes not to include transactions in CBTX and MBTX options in those programs.

The Exchange believes that excluding CBTX and MBTX options transactions from certain fees programs is equitable and not unfairly discriminatory because the programs will equally not apply to, or exclude in the same manner, all market participants' orders in CBTX and MBTX options. The Exchange notes that the proposed rule change does not alter any of the existing program rates or volume calculations, but instead, merely proposes to include (or not to) include transactions in CBTX and MBTX options in those programs and volume calculations in the same way that transactions in proprietary index products are (or are not) currently included.

LMM Incentive Programs

The Exchange believes the proposed LMM Incentive Programs are reasonable, equitable and not unfairly discriminatory. Particularly, the proposed CBTX and MBTX LMM Incentive Programs are reasonable financial incentive programs because the proposed heightened quoting standards and rebate amount for meeting the heightened quoting standards in each CBTX and MBTX series, as applicable, are reasonably designed to incentivize LMMs appointed to the Programs to meet the proposed heightened quoting standards during RTH for CBTX and MBTX, as applicable, thereby providing liquid and active markets, which facilitates tighter spreads, increased trading opportunities, and overall enhanced market quality to the benefit of all market participants, particularly in newly listed and traded products on the Exchange during the trading day.

The Exchange believes that the proposed heightened quoting standards are reasonable because they are similar to the detail and format (corresponding premiums, quote widths, and sizes) of the quoting standards currently in place for LMM Incentive Programs for other proprietary Exchange products.¹⁵ The Exchange believes the proposed

¹⁵ See Exchange Fees Schedule, "MRUT LMM Incentive Program", "MSCI LMM Incentive Program", "MXACW LMM Incentive Program", "MXUSA LMM Incentive Program", "MXWLD LMM Incentive Program", "NANOS LMM Incentive Program", "GTH VIX/VIXW LMM Incentive Program", "GTH1 SPX/SPXW LMM Incentive Program", "GTH2 SPX/SPXW LMM Incentive Program", "RTH XSP LMM Incentive Program", "GTH1 XSP LMM Incentive Program", "GTH2 XSP LMM Incentive Program", and "RTH SPESG LMM Incentive Program".

¹¹ *Id.*

¹² 15 U.S.C. 78f(b)(4).

¹³ See CME Fees Schedule, Bitcoin Futures & Options, Micro Bitcoin Futures & Options.

¹⁴ See Exchange Fees Schedule, Liquidity Provider Sliding Scale, Volume Incentive Program, Break-Up Credits, Marketing Fee, Floor Broker Sliding Scale Rebate Program, Order Router Subsidy Program and Complex Order Router Subsidy Program.

heightened quoting standards for the CBTX and MBTX LMM Incentive Programs reasonably reflect what the Exchange believes will be typical market characteristics in CBTX and MBTX options, given their relative spot value, notional value and general anticipated retail base.

Further, the Exchange believes the proposed percentage of the series (85% of each series) in which an LMM must meet the proposed heightened quoting requirements is reasonable given the new market ecosystem for CBTX and MBTX options. Because the CBTX/MBTX market is still new and not yet as robust as that of other products, such as SPX/SPXW, it may pose more difficulty for LMMs in CBTX and MBTX options to offset risk and hedge, thus more difficulty in achieving the heightened quoting requirement. Therefore, the Exchange believes the proposed percentage of the series is reasonably commensurate with the potentially higher risk, and challenge in achieving the heightened quoting requirements, LMMs would have to take on in the new CBTX/MBTX market. The Exchange notes that the percentage of the series in place under the LMM Programs for MXACW and MXUSA options (90% of series and 85% of series, respectively), which are comparable in terms of potentially higher risk and challenge in achieving heightened quoting requirements, are tailored in a similar manner.

The Exchange further believes that the proposed rebate amounts received for CBTX (\$10,000) and MBTX (\$10,000) options are reasonable because they are comparable to the rebates offered by other LMM Incentive Programs offered by the Exchange. For example, the LMM Programs for MXACW and MXUSA options, which are comparable in terms of potentially higher risk and challenge in achieving heightened quoting requirements, each currently offer \$10,000 per class, per month to appointed LMMs for MXACW and MXUSA options if the heightened quoting standards are met in a given month. The Exchange believes that the proposed rebate amounts are reasonably designed to continue to incentivize an LMM appointed to the respective program to meet the applicable quoting standards for CBTX and MBTX options, thereby providing liquid and active markets, which facilitates tighter spreads, increased trading opportunities, and overall enhanced market quality to the benefit of all market participants.

Similarly, the Exchange believes that the additional per contract credits for Market-Maker CBTX and MBTX options

orders executed in RTH offered by the LMM Incentive Programs are reasonable and equitable as LMM Incentive Programs for other products have, in the past, offered similar additional per contract credits.¹⁶ All appointed LMMs are eligible for the additional per contract credits, which is designed to incentivize LMMs in these newly listed products to provide liquid and active markets in these products to encourage their growth.

Finally, the Exchange believes it is equitable and not unfairly discriminatory to offer the financial incentive to LMMs appointed to the LMM Incentive Programs, because it will benefit all market participants trading in CBTX and MBTX during RTH by encouraging the appointed LMMs to satisfy the heightened quoting standards, which incentivizes continuous increased liquidity and thereby may provide more trading opportunities and tighter spreads. Indeed, the Exchange notes that these LMMs serve a crucial role in providing quotes and the opportunity for market participants to trade CBTX and MBTX, which can lead to increased volume, providing for robust markets. The Exchange ultimately proposes to offer the CBTX and MBTX LMM Incentive Programs to sufficiently incentivize the appointed LMMs to provide key liquidity and active markets in the newly listed and traded CBTX and MBTX options during the trading day to encourage liquidity, thereby protecting investors and the public interest. The Exchange also notes that an LMM appointed to the LMM Incentive Programs may undertake added costs each month to satisfy heightened quoting standards (e.g., having to purchase additional logical connectivity). The Exchange believes the proposed programs are equitable and not unfairly discriminatory because similar programs currently exist for LMMs appointed to programs in other proprietary products,¹⁷ and the proposed programs will equally apply to any TPH that is appointed as an LMM to the each of the LMM Incentive Programs, as applicable. Additionally, if an appointed LMM does not satisfy the heightened quoting standards in CBTX and MBTX (as applicable) for any given

month, then it simply will not receive the offered payment for that month.

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 does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed CBTX and MBTX transaction fees for the separate types of market participants will be assessed automatically and uniformly to all such market participants, *i.e.*, all qualifying Customer orders in CBTX and MBTX options will be assessed the same amount and all qualifying non-Customer orders in CBTX and MBTX will be assessed the same amount. As discussed above, while different fees are assessed to different market participants in some circumstances, these different market participants have different obligations and different circumstances as discussed above. For example, preferential pricing to Customers is a long-standing options industry practice which serves to enhance Customer order flow, thereby attracting Market-Makers to facilitate tighter spreads and trading opportunities to the benefit of all market participants. Additionally, the proposed surcharge will be assessed uniformly to all market participants to whom the FLEX Surcharge applies.

Further, the proposed rule change will uniformly exclude all transactions in CBTX and MBTX options from certain programs and surcharge (*i.e.*, Liquidity Provider Sliding Scale, the VIP, Break-Up Credits applicable to Customer Agency Orders in AIM and SAM, the Marketing Fee, the Floor Broker Sliding Scale Rebate Program, the ORS/CORS program, and the Complex Surcharge), as it currently does for many of the Exchange's other proprietary products. Overall, the proposed rule change is designed to increase incentive for customer order flow providers to submit customer order flow in a newly listed and traded product, which, as indicated above, contributes to a more robust market ecosystem to the benefit of all market participants.

The Exchange also does not believe that the proposed LMM Incentive Programs for CBTX and MBTX options would impose any burden on intramarket competition because it applies to all LMMs appointed to each of the LMM Incentive Programs in a

¹⁶ See, for example, Securities Exchange Act Release No. 96510 (December 15, 2022), 87 FR 78150 (December 21, 2022) (SR-CBOE-2022-061), wherein the Exchange adopted an additional per contract credit for Market-Maker XSP orders executed in RTH, as part of its GTH1 XSP LMM Incentive Program.

¹⁷ *Id.*

uniform manner, in the same way similar programs apply to appointed LMMs in other proprietary products today. To the extent appointed LMMs receive a benefit that other market participants do not, these LMMs in their role as Market-Makers on the Exchange have different obligations and are held to different standards. For example, Market-Makers play a crucial role in providing active and liquid markets in their appointed products, especially in the newly developing CBTX and MBTX market, thereby providing a robust market which benefits all market participants. Such Market-Makers also have obligations and regulatory requirements that other participants do not have. The Exchange also notes that an LMM appointed to an incentive program may undertake added costs each month to satisfy heightened quoting standards (e.g., having to purchase additional logical connectivity). The Exchange also notes that the LMM Incentive Programs, like the other LMM Incentive Programs, is designed to attract additional order flow to the Exchange, wherein greater liquidity benefits all market participants by providing more trading opportunities, tighter spreads, and added market transparency and price discovery, and signals to other market participants to direct their order flow to those markets, thereby contributing to robust levels of liquidity.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule changes apply only to products exclusively listed on the Exchange.

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 Act¹⁸ and paragraph (f) of Rule 19b-4¹⁹ 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-2024-055 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-2024-055. 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-2024-055 and should be submitted on or before January 21, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-30902 Filed 12-27-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102018; File No. SR-OCC-2024-018]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update The Options Clearing Corporation's By-Laws

December 20, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 19, 2024, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)³ of the Act and Rule 19b-4(f)(6)⁴ thereunder. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend the definition of "Fund Share" in Article I of OCC's By-Laws (including the Interpretation and Policy), consistent with the staff advisory ("Advisory") recently issued by the Commodity Futures Trading Commission ("CFTC") regarding the clearing of options on spot commodity exchange traded funds ("ETFs")⁵ (hereinafter "Proposed Rule Change").

The proposed changes to OCC's By-Laws are included [sic] in Exhibit 5 of

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See CFTC Staff Advisory Relating to the Clearing of Options on Spot Commodity Exchange Traded Funds (ETFs), Letter No. 24-16 (Nov. 15, 2024), available at <https://www.cftc.gov/csl/24-16/download>.

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f).

File No. SR-OCC-2024-018. Material proposed to be added to OCC's By-Laws as currently in effect is underlined and material proposed to be deleted is marked in strikethrough text. All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.⁶

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC clears and settles options on ETFs. Such ETFs are classified under the definition of "Fund Share" in OCC's By-Laws. An Interpretation and Policy to the fund share definition lists by name certain precious metals commodity-based ETFs for which OCC can provide clearance and settlement services on related options and security futures contracts. This practice began in 2008 because of the uncertain jurisdictional status of options or security futures on precious metals commodity-based ETFs.⁷ As exchanges have launched more of these products since 2008, OCC has, for each product, (i) sought CFTC exemptive relief pursuant to Section 4(c) of the Commodity Exchange Act ("CEA")⁸ from regulations that would be inconsistent with the trading and

clearing of these products if the underlying were considered a commodity that is not a security⁹ and then (ii) filed a proposed rule change with the Commission to incorporate the name of the product for which relief was granted into the Interpretation and Policy of the fund share definition.¹⁰

On November 15, 2024, the CFTC issued the Advisory relating to the clearing of options on spot commodity ETFs. The Advisory provided that it is "substantially likely" that these spot commodity ETF shares would be held to be securities.¹¹ The Advisory further concluded that "these shares listed on SEC registered national securities exchanges do not implicate the [CFTC's] jurisdiction, and therefore, the clearing of these options by OCC would be undertaken in its capacity as a registered clearing agency subject to SEC oversight."¹² OCC believes the Advisory largely forecloses any potential liability under the CEA, as amended, including the argument that OCC's clearance and settlement of options on spot commodity ETFs constitutes a violation of the CEA.

In light of the Advisory, OCC will no longer seek product-by-product exemptive relief from the CFTC to clear spot commodity-based ETF products. OCC will, therefore, no longer need to specifically identify commodity-based products in the fund share definition. OCC proposes to make clarifications to the fund share definition based on the contents of the Advisory and delete the Interpretation and Policy to the fund share definition, which is no longer relevant or necessary, as further described below.

1. Purpose

The purpose of the Proposed Rule Change is to amend the definition of "Fund Share" in Article I of OCC's By-Laws (including the Interpretation and Policy), consistent with the Advisory recently issued by the CFTC regarding the clearing of options on spot commodity ETFs.¹³ Currently, Article I, Section 1, of OCC's By-Laws defines "Fund Share" as a publicly traded

security (as defined in Section 3(a)(10) of the Act, as amended) that represents an interest in a trust, investment company, commodity pool, or similar entity holding and/or trading in one or more investments. Where the investments are commodities, the amended definition would clarify that such term is subject to any applicable advisory, exemption or other relief or guidance issued by the CFTC. This proposed change is intended to facilitate the clearance of these products in a manner that is consistent with the Advisory and applicable regulations.

Additionally, the Interpretation and Policy to the fund share definition currently identifies on a product-by-product basis specific precious metals commodity-based ETFs that OCC includes within the definition of fund share. The Commission previously approved proposed rule changes by OCC in which OCC added these precious metals commodity-based ETFs to the Interpretation and Policy.¹⁴ As discussed above, the purpose of adding specific ETF names to the Interpretation and Policy was to clarify the jurisdictional status of options or security futures on these products, and was done in conjunction with the CFTC's issuance of a 4(c) order exempting the trading and clearing of the specific ETF names from CFTC regulations with which trading and clearing would be inconsistent if the products were commodities that were not securities.¹⁵ Because the Advisory finds it "substantially likely" likely that spot commodity ETF shares would be held to be securities, OCC believes that it no longer needs to seek product-by-product exemptive relief from the CFTC to clear spot commodity-based ETF products, including precious metals commodity-based ETFs. OCC will no longer need to specifically identify commodity-based products in the fund share definition. OCC thus proposes a clean-up change to delete in its entirety the Interpretation and Policy to the fund share definition, which is no longer

⁶ OCC's By-Laws and Rules can be found on OCC's public website: <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

⁷ In seeking comment to an OCC request to clear and settle options on streetTRACKS® Gold Trust Shares, the CFTC indicated that, "novel derivative products that implicate areas of overlapping regulatory concern should be permitted to trade in either or both a CFTC- or SEC- regulated environment [. . .]" The CFTC further noted that in considering the exemption, "the CFTC need not—and does not—find that [these options] are (or are not) subject to the CEA" and that the options were "novel instruments" and the "determination as to [their] jurisdiction is not straightforward." Given their potential usefulness to the market, however, the [CFTC] believes that this may be an appropriate case for issuing an exemption without making a finding as to the nature of these particular instruments." See Proposal to Exempt the Trading and Clearing of Certain Products Related to streetTRACKS® Gold Trust Shares, 73 FR 21917, at 21918 (Apr. 23, 2008).

⁸ 7 U.S.C. 7a-1.

⁹ See *infra* note 15.

¹⁰ See e.g., Securities Exchange Act Release Nos. 57466 (Mar. 11, 2008), 73 FR 14297 (Mar. 17, 2008) and 57695 (Apr. 21, 2008), 73 FR 22452 (Apr. 25, 2008) (SR-OCC-2008-07) (SPDR Gold Trust f/k/a streetTRACKS® Gold Shares); 59054 (Dec. 4, 2008), 73 FR 75159 (Dec. 10, 2008) (SR-OCC-2008-13 and SR-OCC-2008-14) (iShares COMEX Gold Trust Shares and iShares Silver Trust Shares); 61254 (Dec. 29, 2009), 75 FR 1093 (Jan. 8, 2010) (SR-OCC-2009-20) (ETFS Physical Swiss Gold Shares and ETFS Physical Silver Shares).

¹¹ See *supra* note 5.

¹² *Id.*

¹³ *Id.*

¹⁴ See e.g., Securities Exchange Act Release Nos. 57895 (May 30, 2008), 73 FR 32066 (June 5, 2008) (SR-OCC-2008-07) (SPDR Gold Trust f/k/a streetTRACKS® Gold Trust Shares); and 61591 (Feb. 25, 2010), 75 FR 9981 (Mar. 4, 2010) (SR-OCC-2009-20) (ETFS Physical Swiss Gold Shares and ETFS Physical Silver Shares).

¹⁵ See e.g., 73 FR 31979 (Jun. 5, 2008) (SPDR® Gold Futures Contracts (f/k/a streetTRACKS® Gold Trust Shares security futures)); 73 FR 31981 (Jun. 5, 2008) (SPDR® Gold Trust Shares (f/k/a streetTRACKS® Gold Trust Shares options)); 73 FR 79830 (Dec. 30, 2008) (iShares® COMEX Gold Trust Shares and iShares® Silver Trust Shares); and 75 FR 37406 (Jun. 29, 2010) (ETFS Physical Swiss Gold Shares and ETFS Physical Silver Shares).

relevant or necessary, to avoid potential confusion.

In general, OCC believes that the proposed changes would provide additional certainty to market participants regarding OCC's treatment of fund shares, including commodity-based ETF products, in accordance with applicable regulatory requirements and guidance. OCC believes that this proposed rule change does not make any substantive modifications to the fund share definition. Instead, the proposed changes update the definition with current details and remove those details that have become irrelevant due to the Advisory. Such changes would further ensure that OCC's By-Laws remain up-to-date, clear, and transparent.

2. Statutory Basis

OCC believes the Proposed Rule Change is consistent with Section 17A of the Exchange Act¹⁶ and the rules and regulations thereunder applicable to OCC. In particular, OCC believes that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act¹⁷ and Rule 17Ad-22(e)(21)¹⁸ thereunder, for the reasons described below.

Section 17A(b)(3)(F)¹⁹ of the Act requires, among other things, that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. OCC believes the proposed changes would facilitate the clearance of spot commodity-based ETF products in a manner that is consistent with regulatory requirements and guidance. OCC believes the proposed changes would provide additional certainty to market participants regarding OCC's treatment of such products, which would reduce the likelihood that OCC Clearing Members would have jurisdictional concerns over trading these products. Reducing jurisdictional concerns that could impede the trading of new products would remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions by providing certainty regarding the treatment of fund shares.

Commission Rule 17Ad-22(e)(21) requires OCC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to "be efficient and effective in meeting

the requirements of its [clearing members] and the markets it serves" ²⁰ OCC believes the Proposed Rule Change is consistent with this provision because, as described above, by providing clarity in its By-Laws, it will (i) reduce the likelihood that OCC Clearing Members would have jurisdictional concerns over trading these products and (ii) ensure that OCC's By-Laws remain up-to-date and transparent. The proposed changes to the fund share definition are intended to facilitate the clearance of commodity-based ETF products in a manner that is consistent with the Advisory and applicable regulations and to provide additional certainty regarding OCC's treatment of such products. The proposed deletion of the Interpretation and Policy to the fund share definition would prevent potential confusion, as this provision is no longer relevant or necessary. Moreover, the Proposed Rule Change is not inconsistent with the By-Laws and Rules of OCC.

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act²¹ 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. OCC does not believe that the proposed amendments to the fund share definition, including the Interpretation and Policy, would impose any burden on competition because they would merely establish clear treatment of fund shares in a manner that is consistent with regulatory requirements and guidance. OCC believes that this Proposed Rule Change does not make any substantive modifications to the fund share definition but, instead, updates the definition with current details and removes those details that have become irrelevant due to the Advisory. The proposed changes would not inhibit access to OCC's services in any way, would apply to all Clearing Members uniformly and would not disadvantage or favor any particular user in relationship to another user. Accordingly, OCC does not believe that the Proposed Rule Change would have any impact or impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the Proposed Rule Change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

- (i) significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and
- (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²² and Rule 19b-4(f)(6)²³ thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.²⁴

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-OCC-2024-018 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-OCC-2024-018. This file

¹⁶ 15 U.S.C. 78q-1.

¹⁷ 15 U.S.C. 78q-1(b)(3)(F).

¹⁸ 17 CFR 240.17ad-22(e)(21).

¹⁹ 15 U.S.C. 78q-1(b)(3)(F).

²⁰ 17 CFR 240.17ad-22(e)(21).

²¹ 15 U.S.C. 78q-1(b)(3)(I).

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f)(6).

²⁴ Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Regulation 40.6.

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 such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-OCC-2024-018 and should be submitted on or before January 21, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-31094 Filed 12-27-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102017; File No. SR-CboeEDGX-2024-086]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend its Fees Schedule Related to Physical Port Fees

December 20, 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 December 18, 2024, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) 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 EDGX Exchange, Inc. (the “Exchange” or “EDGX Options”) proposes to amend its Fees 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 amend its fee schedule relating to physical connectivity fees.³

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange initially filed the proposed fee changes on July 3, 2023 (SR-CboeEDGX-2023-045). On September 1, 2023, the Exchange withdrew that filing and submitted SR-CboeEDGX-2023-058. On September 29, 2023, the Securities and Exchange Commission issued a Suspension of and Order Instituting Proceedings to Determine whether to Approve or Disapprove a Proposed Rule Change to Amend its Fees Schedule Related to Physical Port Fees (the “OIP”) in anticipation of a possible U.S. government shutdown. On September 29, 2023, the Exchange filed the proposed fee change (SR-CboeEDGX-2023-063). On October 13, 2023, the

By way of background, a physical port is utilized by a Member or non-Member to connect to the Exchange at the data centers where the Exchange's servers are located. The Exchange currently assesses the following physical connectivity fees for Members and non-Members on a monthly basis: \$2,500 per physical port for a 1 gigabit (“Gb”) circuit and \$7,500 per physical port for a 10 Gb circuit. The Exchange proposes to increase the monthly fee for 10 Gb physical ports from \$7,500 to \$8,500 per port. The Exchange notes the proposed fee change better enables it to continue to maintain and improve its market technology and services and also notes that the proposed fee amount, even as amended, continues to be in line with, or even lower than, amounts assessed by other exchanges for similar connections.⁴ The Exchange also notes that a single 10 Gb physical port can be used to access the Systems of the following affiliate exchanges: the Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc. (options and equities platforms), Cboe EDGA Exchange, Inc., and Cboe C2 Exchange, Inc., (“Affiliate Exchanges”).⁵ Notably, only one monthly fee currently (and will continue) to apply per 10 Gb physical port regardless of how many affiliated exchanges are accessed through that one port.⁶

Exchange withdrew that filing and submitted SR-CboeEDGX-2023-064. On December 12, 2023, the Exchange withdrew that filing and submitted SR-CboeEDGX-2023-080. On February 12, 2024, the Exchange withdrew that filing and submitted SR-CboeEDGX-2024-014. On April 9, 2024, the Exchange withdrew that filing and submitted SR-CboeEDGX-2024-021. On June 7, 2024, the Exchange withdrew that filing and submitted SR-CboeEDGX-2024-036. On August 29, 2024, the Exchange withdrew that filing and submitted SR-CboeEDGX-2024-057. On October 25, 2024, the Exchange withdrew that filing and submitted SR-CboeEDGX-2024-072. On December 18, 2024, the Exchange withdrew that filing and submitted this filing.

⁴ See e.g., The Nasdaq Stock Market LLC (“Nasdaq”), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gb physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange's 10 Gb physical port) are assessed \$22,000 per month, per port.

⁵ The Affiliate Exchanges are also submitting contemporaneous identical rule filings.

⁶ The Exchange notes that conversely, other exchange groups charge separate port fees for access to separate, but affiliated, exchanges. See e.g., Securities and Exchange Release No. 99822 (March 21, 2024), 89 FR 21337 (March 27, 2024) (SR-MIAX-2024-016).

²⁵ 17 CFR 200.30-3(a)(12).

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. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4)¹⁰ of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities. This belief is based on various factors as described below.

First, the Exchange believes its proposal is reasonable as it reflects a moderate increase in physical connectivity fees for 10 Gb physical ports and its offering, even as amended, continues to be more affordable as compared to analogous physical connectivity offerings at competitor exchanges.¹¹

The Exchange also believes the current fee does not properly reflect the quality of the service and product, as fees for 10 Gb physical ports have been static in nominal terms since 2018, and

therefore falling in real terms due to inflation. As a general matter, the Producer Price Index (“PPI”) is a family of indexes that measures the average change over time in selling prices received by domestic producers of goods and services. PPI measures price change from the perspective of the seller. This contrasts with other metrics, such as the Consumer Price Index (CPI), that measure price change from the purchaser’s perspective.¹² About 10,000 PPIs for individual products and groups of products are tracked and released each month.¹³ PPIs are available for the output of nearly all industries in the goods-producing sectors of the U.S. economy—mining, manufacturing, agriculture, fishing, and forestry—as well as natural gas, electricity, and construction, among others. The PPI program covers approximately 69 percent of the service sector’s output, as measured by revenue reported in the 2017 Economic Census.

For purposes of this proposal, the relevant industry-specific PPI is the Data Processing, hosting and related services (“Data PPI”) and more particularly the more granular service line Data Processing, Hosting and Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT) Infrastructure Provisioning Services.¹⁴

The Data PPI was introduced in January 2002 by the Bureau of Labor Statistics (“BLS”) as part of an ongoing effort to expand Producer Price Index coverage of the services sector of the U.S. economy and is identified as NAICS—518210 in the North American Industry Classification System (“NAICS”).¹⁵ According to the BLS “[t]he primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services

market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers’ transactions and data. Price movements for the NAICS 518210 index are based on changes in the revenue received by companies that provide data processing services and price movements for the service line NAICS 518210 index are based on changes in the revenue received by companies that provide, among other things, IT infrastructure provisioning services. Each month, companies provide net transaction prices for a specified service. The transaction is an actual contract selected by probability, where the price-determining characteristics are held constant while the service is repriced. The prices used in index calculation are the actual prices billed for the selected service contract.”¹⁶

The service (product) lines for which price indexes are available under the Data PPI are: (1) business process management services (2) data management and storage information transformation and other services and (3) hosting ASP and other IT infrastructure provisioning services. The most apt of these industry and product specific categorizations for purposes of this present proposal to modify fees for the 10 Gb physical port fee measures inflation for the provision of data processing, hosting and related services as well as other information technology infrastructure provisioning services which BLS identifies as identified as NAICS—5182105.¹⁷ The Exchange believes that this measure of inflation is particularly appropriate because the Exchange’s connectivity services involve hosting and providing connections to its customers’ telecommunications and information technology equipment, as well as preparing, assigning, and activating IT infrastructure components, such as servers, storage, and network connectivity. The Exchange also uses its “proprietary software,” *i.e.*, its own proprietary matching engine software, to receive orders on the Exchange’s proprietary trading platform as well as to collect, organize, store and report customers’ transactions. In other words, the Exchange is in the business of data processing, hosting, ASP, and providing other IT infrastructure provisioning services.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ *Id.*

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ See *e.g.*, The Nasdaq Stock Market LLC (“Nasdaq”), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange’s 10Gbps physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange’s 10 Gbps physical port) are assessed \$22,000 per month, per port.

¹² See <https://www.bls.gov/ppi/overview.htm>.

¹³ *Id.*

¹⁴ Provisioning is the process of preparing, assigning, and activating IT infrastructure components, such as servers, storage, and network connectivity, according to user requirements. It is a critical part of IT operations, as it ensures that computing resources are available when needed and that they are set up and connected to work correctly.

¹⁵ See <https://www.bls.gov/ppi/overview.htm>. Among the industry-specific PPIs is for North American Industry Classification System (“NAICS”) Code 518210: “Data Processing and Related Services.” NAICS index codes categorize products and services that are common to particular industries. According to BLS, these codes “provide comparability with a wide assortment of industry-based data for other economic programs, including productivity, production, employment, wages, and earnings.”

¹⁶ See <https://www.bls.gov/ppi/factsheets/producer-price-index-for-the-data-processing-and-related-services-industry-naics-518210.htm>.

¹⁷ See <https://data.bls.gov/timeseries/PCU5182105182105>.

The Exchange further believes the Data PPI is an appropriate measure for purposes of the proposed rule change on the basis that it is a stable metric with limited volatility, unlike other consumer-side inflation metrics. In fact, the Data PPI has not experienced a greater than 2.16% increase for any one calendar year period since Data PPI was introduced into the PPI in January 2002. For example, the average calendar year change from January 2002 to December 2023 was .62%, with a cumulative increase of 15.67% over this 21-year period. The Exchange believes the Data PPI is considerably less volatile than other inflation metrics such as CPI, which has had individual calendar-year increases of more than 6.5%, and a cumulative increase of over 73% over the same period.¹⁸

As noted above, the current 10 Gb physical port fee remained unchanged for six years, particularly since June 2018.¹⁹ Since its last increase over 6 years ago however, there has been notable inflation, including under the industry- and product-specific PPI, which as described above is a tailored measure of inflation. Particularly, the Hosting, ASP and other IT Infrastructure Provisioning Services inflation measure had a starting value of 102.2 in June 2018 (the month the Exchange started assessing the current fee) and an ending value of 115.66 in November 2024, representing an 13% increase.²⁰ This indicates that companies who are also in the hosting ASP and other IT infrastructure provisioning services have generally increased prices for a specified service covered under NAICS 5182105 by an average of 13% during this period.

The Exchange also believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2018. The impact of this inflationary effect is also independent of any change in the Exchange's costs in providing its goods and services. The Exchange therefore believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects. Additionally, the Exchange historically does not increase fees every year notwithstanding

inflation. Other exchanges have also filed for increases in certain fees, based in part on comparisons to inflation.²¹ Accordingly, based on the above-described percentage change based on an industry- and product-specific inflationary measure, and in conjunction with the rationale further described above and below, the Exchange believes the proposed fee increase is reasonable.

Next, the Exchange believes significant investments into, and enhanced performance of, the Exchange, in the years following the last 10 Gb physical port fee increase support the reasonableness of the proposed fee increase. These investments enhanced the quality of its services, as measured by, among other things, increased throughput and faster processing speeds. Customers have therefore greatly benefitted from these investments, while the Exchange's ability to recoup its investments has been hampered.

For example, the Exchange and its affiliated exchanges recently launched a multi-year initiative to improve Cboe Exchange Platform performance and capacity requirements to increase competitiveness, support growth and advance a consistent world class platform. The goal of the project, among other things, is to provide faster and more consistent order handling and matching performance for options, while ensuring quicker processing time and supporting increasing volumes and capacity needs. For example, the Exchange recently performed switch hardware upgrades. Particularly, the Exchange replaced existing customer access switches with newer models, which the Exchange believes resulted in increased determinism. The recent switch upgrades also increased the Exchange's capacity to accommodate more physical ports by nearly 50%. Network bandwidth was also increased nearly two-fold as a result of the upgrades, which among other things, can lead to reduce message queuing. The Exchange also believes these newer models result in less natural variance in the processing of messages. The Exchange notes that it incurred costs associated with purchasing and upgrading to these newer models, of which the Exchange has not otherwise passed through or offset.

As of April 1, 2024, market participants also having the option of connecting to a new data center (*i.e.*, Secaucus NY6 Data Center ("NY6")), in

addition to the current data centers at NY4 and NY5. The Exchange made NY6 available in response to customer requests in connection with their need for additional space and capacity. In order to make this space available, the Exchange expended significant resources to prepare this space, and will also incur ongoing costs with respect to maintaining this offering, including costs related to power, space, fiber, cabinets, panels, labor and maintenance of racks. The Exchange also incurred a large cost with respect to ensuring NY6 would be latency equalized, as it is for NY4 and NY5.

The Exchange also has made various other improvements since the current physical port rates were adopted in 2018. For example, the Exchange has updated its customer portal to provide more transparency with respect to firms' respective connectivity subscriptions, enabling them to better monitor, evaluate and adjust their connections based on their evolving business needs. The Exchange also performs proactive audits on a weekly basis to ensure that all customer cross connects continue to fall within allowable tolerances for Latency Equalized connections. Accordingly, the Exchange expended, and will continue to expend, resources to innovate and modernize technology so that it may benefit its Members and continue to compete among other options markets. The ability to continue to innovate with technology and offer new products to market participants allows the Exchange to remain competitive in the options space which currently has 18 registered options markets and potential new entrants. If the Exchange were not able to assess incrementally higher fees for its connectivity, it would effectively impact how the Exchange manages its technology and hamper the Exchange's ability to continue to invest in and fund access services in a manner that allows it to meet existing and anticipated access demands of market participants. Disapproval of fee changes such as the proposal herein, could also have the adverse effect of discouraging an exchange from improving its operations and implementing innovative technology to the benefit of market participants if it believes the Commission would later prevent that exchange from recouping costs and monetizing its operational enhancements, thus adversely impacting competition as well as the interests of market participants and investors.

Finally, the proposed fee is also the same as is concurrently being proposed for its Affiliate Exchanges. Further,

¹⁸ See <https://www.usinflationcalculator.com/inflation/consumer-price-index-and-annual-percent-changes-from-1913-to-2008/>.

¹⁹ See Securities and Exchange Release No. 83430 (June 14, 2018), 83 FR 28697 (June 20, 2018) (SR-CboeEDGX-2018-017).

²⁰ See <https://data.bls.gov/timeseries/PCU5182105182105>.

²¹ See, *e.g.*, Securities Exchange Act Release Nos. 34-100994 (September 10, 2024), 89 FR 75612 (September 16, 2024) (SR-NYSEARCA-2024-79).

Members are able to utilize a single port to connect to all of its Affiliate Exchanges and will only be charged one single fee (*i.e.*, a market participant will only be assessed the proposed \$8,500 even if it uses that physical port to connect to the Exchange and another (or even all 6) of its Affiliate Exchanges. Particularly, the Exchange believes the proposed monthly per port fee is reasonable, equitable and not unfairly discriminatory since as the Exchange has determined to not charge multiple fees for the same port. Indeed, the Exchange notes that several ports are in fact purchased and utilized across one or more of the Exchange's affiliated Exchanges (and charged only once).

The Exchange also believes that the proposed fee change is not unfairly discriminatory because it would be assessed uniformly across all market participants that purchase the physical ports. The Exchange believes increasing the fee for 10 Gb physical ports and charging a higher fee as compared to the 1 Gb physical port is equitable as the 1 Gb physical port is 1/10th the size of the 10 Gb physical port and therefore does not offer access to many of the products and services offered by the Exchange (*e.g.*, ability to receive certain market data products). Thus, the value of the 1 Gb alternative is lower than the value of the 10 Gb alternative, when measured based on the type of Exchange access it offers. Moreover, market participants that purchase 10 Gb physical ports utilize the most bandwidth and therefore consume the most resources from the network. The Exchange also anticipates that firms that utilize 10 Gb ports will benefit the most from the Exchange's investment in offering NY6 as the Exchange anticipates there will be much higher quantities of 10 Gb physical ports connecting from NY6 as compared to 1 Gb ports. Indeed, the Exchange notes that 10 Gb physical ports account for approximately 90% of physical ports across the NY4, NY5, and NY6 data centers, and to date, 80% of new port connections in NY6 are 10 Gb ports. As such, the Exchange believes the proposed fee change for 10 Gb physical ports is reasonable and appropriately allocated.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed fee change will not impact intramarket competition because it will apply to all similarly situated Members equally (*i.e.*, all market participants that

choose to purchase the 10 Gb physical port). Additionally, the Exchange does not believe its proposed pricing will impose a barrier to entry to smaller participants and notes that its proposed connectivity pricing is associated with relative usage of the various market participants. For example, market participants with modest capacity needs can continue to buy the less expensive 1 Gb physical port (which cost is not changing) or may choose to obtain access via a third-party re-seller. While pricing may be increased for the larger capacity physical ports, such options provide far more capacity and are purchased by those that consume more resources from the network.

Accordingly, the proposed connectivity fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pay the most.

The proposed fee change also does not impose a burden on competition or on other Self-Regulatory Organizations that is not necessary or appropriate. As described above, the Exchange evaluated its proposed fee change using objective and stable metric with limited volatility. Utilizing Data Processing PPI over a specified period of time is a reasonable means of recouping a portion of the Exchange's investment in maintaining and enhancing the connectivity service identified above. The Exchange believes utilizing Data Processing PPI, a tailored measure of inflation, to increase certain connectivity fees to recoup the Exchange's investment in maintaining and enhancing its services and products would not impose a burden on competition.

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 Act²² and paragraph (f) of Rule 19b-4²³ 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-2024-086 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-2024-086. 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

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f).

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-2024-086 and should be submitted on or before January 21, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024-31093 Filed 12-27-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101992; File No. SR-CboeBYX-2024-048]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update its Fee Schedule Regarding Uncontrolled External Distributors

December 19, 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 December 16, 2024, Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) 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 update 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/), 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 amend the Market Data section of its Fee Schedule to adopt a new fee waiver for Uncontrolled External Distributors.³ Particularly, the Exchange proposes to: (i) adopt a waiver of External Distribution fees for Uncontrolled External Distributors of the Summary Depth Feed and Top Feed, and (ii) adopt fee waiver of External Distribution fees and Data Consolidation fees for Uncontrolled External Distributors of the Cboe One Summary Feed and Cboe One Premium Feed.⁴

BYX Top and Summary Depth Data

By way of background, the Exchange offers the BYX Top Data Feed, which is a data feed that offers top-of-book quotations and last sale information based on orders entered into the Exchange’s System. The BYX Top Data Feed benefits investors by facilitating their prompt access to real-time top-of-book information contained in BYX Top Data. The Exchange’s affiliated equities exchanges (*i.e.*, Cboe EDGA, Inc. (“EDGA”), Cboe BZX Exchange, Inc. (“BZX”), and Cboe EDGX Exchange, Inc. (“EDGX”) (collectively, “Affiliates” and together with the Exchange, “Cboe Equities Exchanges”) also offer similar top-of-book data feeds. Particularly, each of the Exchange’s Affiliates offer top-of-book quotation and last sale information based on their own quotation and trading activity that is substantially similar to the information

provided by the Exchange through the BYX Top Data Feed.

In addition to BYX Top Data Feed, the Exchange offers BYX Summary Depth Data Feed, which is a data feed that offers aggregated two-sided quotations for all displayed orders entered into the System for up to five (5) price levels. The BYX Summary Depth Data Feed also contains the individual last sale information, Market Status, Trading Status, and Trade Break messages.⁵ The BYX Summary Depth Data Feed benefits investors by facilitating their prompt access to real-time market depth information contained in BYX Summary Depth Data. The Exchange’s Affiliates also offer similar depth-of-book data feeds. Particularly, each of the Exchange’s Affiliates offer depth-of-book quotations up to five (5) price levels based on their own quotation and trading activity that is substantially similar to the information provided by the Exchange through the BYX Summary Depth.

The Exchange proposes to make the following fee changes relating to both BYX Top and BYX Summary Depth.

BYX Top Data Feed and BYX Summary Depth Data Feed New Uncontrolled External Distributor External Distribution Fee Waiver

Currently, the Exchange assesses all External Distributors of BYX Top Data Feed an External Distribution fee of \$250 per month and External Distributors of BYX Summary Depth Data Feed an External Distribution fee of \$2,500 per month.⁶ The Exchange proposes to adopt a fee waiver which will provide that new Uncontrolled External Distributors of the BYX Top and/or Summary Depth feeds will not be charged the External Distributor fees until such time they enlist one or more Users⁷ to receive the BYX Top Feed or Summary Depth Feed (the “New Uncontrolled External Distributor BYX Top and Depth Fee Waiver”).⁸

⁵ See Exchange Rule 11.22(k).

⁶ External Distribution Fees for both BYX Top and Summary Depth are subject to the New External Distributor Credit and eligible for a free trial. See BYX Equities Exchange Fees Schedule, Market Data Fees.

⁷ The Exchange defines a “User” of an Exchange Market Data Product as a natural person, a proprietorship, corporation, partnership or entity, or device (computer or other automated service), that is entitled to receive Exchange data. See BYX Equities Exchange Fees Schedule, Market Data Fees.

⁸ The proposed waivers of the External Distribution fees for each of BYX Top and BYX Summary Depth will be applied separately. For example, when an Uncontrolled External Distributor that is receiving a fee waiver for both BYX Top and BYX Summary Depth enlists a first User for BYX Top, the Uncontrolled External

Continued

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange initially adopted this fee waiver on December 2, 2024 (SR-CboeBYX-2024-046). On December 16, 2024, the Exchange withdrew that filing and submitted this filing.

⁴ For clarity, the Exchange also proposes to modify the applicable sections of its Fee Schedule for these data feeds to use numbered footnotes in lieu of asterisks.

“Uncontrolled External Distributors” distribute data externally to a User that is not an affiliate of the Uncontrolled Distributor and is unable to control the entitlements of and display of information to such User (*i.e.*, a data feed subscriber).⁹ To be eligible for the New Uncontrolled External Distributor BYX Top and Depth Fee Waiver, a new Uncontrolled External Distributor must not have received the data feed(s) for which it seeks a waiver (BYX Top and/or Depth) within the last 18 months.¹⁰ As discussed further below, the Exchange seeks to adopt the proposed New Uncontrolled External Distributor BYX Top and Depth Fee Waiver to incentivize vendors to adopt the BYX Top and Summary Depth feeds proactively without having to wait for customer demand to start development and integration of data feeds. The Exchange notes that both the Exchange and its Affiliates currently offer similar credits to External Distributors (which both Uncontrolled and Controlled External Distributors are eligible for) for the purposes of allowing them time to enlist new users to receive certain data feeds. For example, the Exchange and its Affiliates currently offer a one (1) month New External Distributor Credit applicable to External Distributors of top-of-book data feeds.¹¹ They also offer a three (3) month new External Credit applicable to External Distributors of summary depth-of-book feeds.¹²

Distributor will no longer eligible to receive the waiver for BYX Top, but will still receive the waiver for BYX Summary Depth until and unless it enlists a new subscriber for BYX Summary Depth. Additionally Uncontrolled External Distributors will receive at least the one month New External Distributor Credit for BYX Top and the New External Distributor credit of at least three months for BYX Summary Depth. For example, if an Uncontrolled Distributor enlists a new subscriber of BYX Summary Depth during its second month taking BYX Summary Depth, the Uncontrolled External Distributor will still receive a credit for the remainder of the second month, as well as the third month under the existing New External Distributor Credit program.

⁹ See Cboe Global Markets North American Data Policies. The Exchange proposes to codify the definition of an “Uncontrolled External Distributor” in the Definitions section of the Market Data Fees schedule in the Exchange’s Fees Schedule for transparency and clarity.

¹⁰ The Exchange notes that its affiliate exchange, EDGA, has a similar 18 month requirement for participants to be considered eligible for the New Member Program. See EDGA Equities Exchange Fees Schedule, New Member Program.

¹¹ With the exception that EDGA does not offer this credit as the monthly cost is \$0. See *e.g.*, EDGA Equities Exchange Fees Schedule, Market Data Fees and EDGX Equities Exchange Fees Schedule, Market Data Fees.

¹² See *e.g.*, EDGX Equities Exchange Fees Schedule, Market Data Fees.

Cboe One Summary and Premium

By way of background, Cboe One Premium is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer (“BBO”) of all displayed orders for securities traded on BYX and its Affiliates and contains optional functionality which enables recipients to receive aggregated two-sided quotations from BYX and its Affiliates for up to five (5) price levels.¹³ The Cboe One Premium Data Feed is created using the data from the Exchange and its Affiliates’ Summary Depth data feeds. In contract, Cboe One Summary is a data feed that disseminates, on a real-time basis, the aggregate BBO of all displayed orders for securities traded on BYX and its affiliated equities exchanges and also contains individual last sale information for the BYX and its affiliated equities exchanges.¹⁴ The Cboe One Summary Data Feed is created using the data from the Exchange and its Affiliates’ Top data feeds. Currently, the Exchange offers the New External Distributor Credit which provide that new External Distributors of the Cboe One Premium Feed and Cboe One Summary Feed will not be charged an External Distributor Fee for their first three (3) months and one (1) month, respectively, in order to allow them to enlist new Users to receive the respective feed.¹⁵ The Exchange proposes to make the following fee change relating to both the Cboe One Summary Data Feed and the Cboe One Premium Data Feed.

Cboe One Summary and Premium New Uncontrolled External Distributor External Distribution and Data Consolidation Fee Waivers

Currently, the Exchange assesses all External Distributors of Cboe One Summary an External Distribution fee of \$5,000 per month and External Distributors of Cboe One Premium an

¹³ The Cboe Aggregated Market (“Cboe One”) Feed is a data feed that contains the aggregate best bid and offer of all displayed orders for securities traded on the Exchange and its affiliated exchanges (*i.e.*, EDGX, EDGA, and BZX). See Exchange Rule 11.22(i). The Cboe One Feed contains optional functionality which enables recipients to receive aggregated two-sided quotations from the Cboe Equities Exchanges for up to five (5) price levels (“Cboe One Premium Feed”). The Cboe One Premium external distribution fee is equal to the aggregate BYX Summary Depth, BYX Summary Depth, EDGA Summary Depth, and BZX Summary Depth external distribution fees.

¹⁴ The Exchange notes that when it first adopted the New External Distributor Credit for Cboe One Summary, it similarly applied for a new External Distributor’s first three (3) months. See Securities Exchange Act Release No. 74284 (February 18, 2015), 80 FR 9792 (February 24, 2015) (SR-BYX–2015–09).

¹⁵ See BYX Fee Schedule.

External Distribution fee of \$12,500 per month.¹⁶ The Exchange proposes to adopt fee waivers which will provide that new Uncontrolled External Distributors of the Cboe One Summary and Cboe One Premium feeds will not be charged either the (i) External Distribution fees nor (ii) Data Consolidation fee until such time they enlist one or more Users to receive the Cboe One Summary or Cboe One Premium Feeds (the “New Uncontrolled External Distributor Cboe One Summary and Cboe One Premium Fee Waiver”).¹⁷ To be eligible for either fee waiver for the applicable feed(s) (Cboe One Summary and/or Cboe One Premium), the new Uncontrolled Data Distributor must not have received the applicable data feed(s) for which it seeks a waiver in the last 18 months.¹⁸ For clarity, similar to the New Uncontrolled External Distributor BYX Top and Depth Fee Waiver, while the Uncontrolled External Distributor receives the New Uncontrolled External Distributor Cboe One Summary and Cboe One Premium Fee Waiver, the Uncontrolled External Distributor will not have any customers receiving this data. As described herein, once the New Uncontrolled External Distributor enlists its first User, it is no longer eligible to receive the New Uncontrolled External Distributor Cboe One Summary and Cboe One Premium Fee Waiver.

To start, the Exchange’s proposal to waive the External Distributor fee for New Uncontrolled External Distributors until a User is enlisted, will prevent the combined cost of subscribing to BYX, EDGA, EDGX, and BZX Summary Depth feeds for new Uncontrolled External Distributors to be greater than those

¹⁶ External Distribution Fees for both Cboe One Summary and Cboe One Premium are subject to the New External Distribution Credit and eligible for a free trial. See BYX Equities Exchange Fees Schedule.

¹⁷ The proposed waivers of the External Distribution fees for each of Cboe One Summary and Cboe One Premium will be applied separately. For example, when an Uncontrolled External Distributor that is receiving a fee waiver for both Cboe One Summary and Cboe One Premium enlists a first User for Cboe One Summary, the Uncontrolled External Distributor will no longer eligible to receive the waiver for Cboe One Summary, but will still receive the waiver for Cboe One Premium until and unless it enlists a new subscriber for Cboe One Premium. Additionally Uncontrolled External Distributors will receive at least the one month New External Distributor Credit for Cboe One Summary and the New External Distributor credit of at least three months for Cboe One Premium. For example, if an Uncontrolled Distributor enlists a new subscriber of Cboe One Premium during its second month taking Cboe One Premium, the Uncontrolled External Distributor will still receive a credit for the remainder of the second month, as well as the third month under the existing New External Distributor Credit program.

¹⁸ See *supra* note 10.

currently charged to subscribe to the Cboe One Premium feed. Similarly, the proposed External Distributor fee waiver for Cboe One Summary will prevent the combined cost of subscribing to BYX, EDGA, EDGX, and BZX Top feeds for new Uncontrolled External Distributors to be greater than those currently charged to subscribe to the Cboe One Summary feed.

Next, the Exchange proposes to waive the Data Consolidation fee for New Uncontrolled External Distributors until its first User enlists for the Cboe One feeds. The Exchange currently charges Distributors of the Cboe One Feeds a separate Data Consolidation Fee of \$1,000 per month, which reflects the value of the aggregation and consolidation function the Exchange performs in creating the Cboe One Options Feed.¹⁹ As stated above, the Exchange creates the Cboe One feeds from data derived from the Cboe Equities Exchanges. Distributors (including vendors) could similarly create a competing product to the Cboe One feeds based on these individual data feeds offered by the Exchanges and could charge its clients a fee that it believes reflects the value of the aggregation and consolidation function.

The Exchange proposes to adopt this fee waiver to similarly prevent new Uncontrolled External Distributors of the Cboe One Summary or Cboe One Premium feeds from being charged a Data Consolidation Fee until such time they enlist one or more Users to receive the Cboe One Premium or Cboe One Summary feeds.

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.²⁰ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²¹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to,

and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes this proposal is consistent with Section 6(b)(8) of the Act, which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.²² In addition, the Exchange believes that the proposed rule change is consistent with Section 11(A) of the Act as it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.²³

First, the Exchange notes that the BYX Top Feed, BYX Summary Depth Feed, Cboe One Summary Data Feed and Cboe One Premium Data Feed (together, the “Applicable Feeds”) are distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make these data products available. Distributors (including vendors) and Users can therefore discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Further, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

The Exchange proposes that the proposed waivers applicable to BYX Top & Depth and Cboe One Feeds (together, the “New Uncontrolled External Distributor Fee Waivers”) only apply to Uncontrolled External Distributors for two reasons. The first is to account for Uncontrolled External Distributors needing to develop to the data feed itself. By way of background, the other category of External Data Distributors are Controlled Distributors.²⁴ Controlled Distributors

both (i) provides data to a User and (ii) controls the entitlements of and display of information to such User.²⁵ Therefore, the key distinction between Uncontrolled Distributors and Controlled Distributors is that Uncontrolled Distributors distribute a data feed and Controlled Distributors enable visible data for one of its Users. The proposed fee waivers will allow Uncontrolled External Distributors the necessary time to develop to the data feed itself and program all of the different messages, fields and flags and not subject them to any fees until such time they are able to recoup their costs from end-users. Additionally, once the data feed is setup on the Uncontrolled External Distributors end, there are typically long lead times for Uncontrolled External Distributors to onboard new downstream data feed customers. The lead times, or sales cycles, are vastly different for Uncontrolled versus Controlled Distributors, as Uncontrolled Distributors are attempting to locate Users who need to receive a real-time market data feed for downstream ingestion on their side (whether this be for trading, analysis, or application development). In contrast, Controlled Distributors are only entitling individual Users to view the data on a pre-existing Display application. For an Uncontrolled Distributor to both set up and find its first User as a data feed subscriber, it can easily take several months. As there is more uncertainty with the viability of both developing a data feed and finding Users for this data feed after the Uncontrolled External Distributor develops it, the Exchange believes it is therefore reasonable, equitable and not unfairly discriminatory for this discount to only apply to Uncontrolled External Distributors to encourage development of their data offerings.

The Exchange has also taken into consideration its affiliated relationship with its Affiliates in its design of the proposed waivers²⁶ to ensure that vendors would be able to offer similar products to its Cboe One Summary and Cboe One Premium Feeds on the same terms as the Exchange from a cost perspective. While the Cboe Equities Exchanges are the exclusive distributors of the individual data feeds from which

control the entitlement of and display of info to such User.

²⁵ *Id.*

²⁶ The Exchange notes that its Affiliates will also be proposing to adopt these same credits with the exception of the EDGA Top Data Feed as the External Distribution monthly cost is \$0 for that particular data feed. See EDGA Equities Fees Schedule, Market Data Fees.

¹⁹ See Cboe BYX Fee Schedule. If a vendor distributes the Cboe One Options Feed to another firm, who then re-distributes the Cboe One Options Feed, both entities would be subject to the Data Consolidation Fee. A vendor will only be assessed a single Data Consolidated Fee, even if it distributes Cboe One Options Feed to more than one entity.

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

²² 15 U.S.C. 78f(b)(8).

²³ 15 U.S.C. 78k-1.

²⁴ Controlled Distributors may be Internal or External Distributors. See *supra* note 9. “Controlled External Distributors” provide data to an unaffiliated User (*i.e.*, externally distribute) and unlike Uncontrolled External Distributors, they

certain data elements may be taken to create the Cboe One feeds, they are not the exclusive distributors of the aggregated and consolidated information that comprises the Cboe One feeds. Any entity that receives, or elects to receive, the individual data feeds would be able to, if it so chooses, to create a data feed with the same information included in either of the Cboe One feeds and sell and distribute it to its clients so that it could be received by those clients as quickly as the Cboe One feeds would be received by those same clients. Such entities would also not be assessed any greater fees by the Exchange than the Exchange assess for the Cboe One feeds (*i.e.*, those who elect to distribute and consolidate the individual data fees and those who elect to distribute the Cboe One feeds will all be eligible for the proposed fee waivers offered by the Exchange).

New External Distributor Credit

The Exchange believes it is reasonable to not charge Uncontrolled External Distributors of an Applicable Feed(s) until such time they enlist one or more Users to receive the applicable feed as such Distributors will not be subject to the External Distribution Fees for the applicable product(s) during this period.²⁷ Additionally, the Exchange and its Affiliates offer a similar credit now that all External Distributors, including Controlled External Distributors, may receive.²⁸ The proposed credit is intended to incentivize new Uncontrolled External Distributors to enlist Users to subscribe to the Applicable Feeds in an effort to broaden the products' distribution to data feed Users. While this incentive is not available to Internal Distributors of these products, the Exchange believes it is appropriate as Internal Distributors have no Users outside of their own firm. Furthermore, External Distributors are subject to higher risks of launch as the data is provided outside their own firm. In contrast, Internal Distributors who only subscribe to a specific Exchange offered market data product when there is a need as they themselves are using the information, External Distributors do not use the data themselves, but as noted, take the risk of onboarding the data to sell as a service to downstream customers.²⁹ For these reasons, the

Exchange believes it is appropriate, equitable and not unfairly discriminatory to provide additional incentives to External Distributors so they have sufficient time to test the data within their own systems prior to going live externally. As discussed above, the Exchange also believes it is appropriate to limit this specific credit to Uncontrolled External Distributors given the longer development times associated with both the integration of the data feed and onboarding Users.

Data Consolidation Fee

The Exchange believes it is reasonable to not charge Uncontrolled External Distributors of Cboe One Summary and Cboe One Premium a Data Consolidation Fee until such time they enlist one or more Users to receive the applicable feed as such Distributors will not be subject to the Data Consolidation Fee for the applicable product(s) during this period. For the avoidance of doubt, once an Uncontrolled External Distributor enlists its first User, this waiver will no longer be applicable—at no time will an Uncontrolled External Distributor receive this waiver while it has customers receiving the applicable data feed. As previously discussed, the Exchange believes the proposed Data Consolidation Fee Waiver for Uncontrolled External Distributors is not designed to permit unfair discrimination against Controlled External Distributors because of the longer lead times in the development Uncontrolled External Distributors experience. Further, as previously discussed, the Exchange believes only applying this to a subset of External Distributors and not any Internal Distributors is equitable and not unfairly discriminatory given the additional risk External Distributors assume when building out a product for which they have no existing use cases. Therefore, the Exchange believes the proposed application of the Data Consolidation Fee Waiver is reasonable and would not permit unfair discrimination.

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.

it and its affiliates, other exchanges have offered similar waivers for external redistribution. See BYX Equities Exchange Fees Schedule, Market Data Fees and Securities Exchange Act Release No. 90407 (November 12, 2020), 85 FR 73570 (November 18, 2020) (SR-NYSE-2020-91).

The proposed rule changes are grounded in the Exchange's efforts to compete more effectively and to assist in mitigating business costs (*i.e.*, the costs associated with the development of data feeds and seeking Users to onboard for such data feeds) for Uncontrolled External Distributors. Further, as previously discussed, the Exchange believes the proposed Data Consolidation Fee Waiver for Uncontrolled External Distributors is not designed to permit unfair discrimination against Controlled External Distributors because of the longer lead times in the development Uncontrolled External Distributors experience. 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 all Uncontrolled External Distributors.

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 Act³⁰ and paragraph (f) of Rule 19b-4³¹ 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:

³⁰ 15 U.S.C. 78s(b)(3)(A).

³¹ 17 CFR 240.19b-4(f).

²⁷ As noted above, Distributors may still receive this credit for any of the applicable feeds of which there are no Users (*i.e.*, the Uncontrolled Distributor may still receive this credit for Cboe One Summary if there is a User subscribed for BYX Top).

²⁸ See *e.g.*, EDGX Equities Exchange Fees Schedule, Market Data Fees.

²⁹ The Exchange notes that in addition to the existing New External Distributor Credit offered by

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-2024-048 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-CboeBYX-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-CboeBYX-2024-048 and should be submitted on or before January 21, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-30906 Filed 12-27-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101994; File No. SR-CboeEDGA-2024-051]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend its Fees Schedule Related to Physical Port Fees

December 19, 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 December 18, 2024, Cboe EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the "Exchange" or "EDGA Equities") proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/edga/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule relating to physical connectivity fees.³

By way of background, a physical port is utilized by a Member or non-Member to connect to the Exchange at the data centers where the Exchange's servers are located. The Exchange currently assesses the following physical connectivity fees for Members and non-Members on a monthly basis: \$2,500 per physical port for a 1 gigabit ("Gb") circuit and \$7,500 per physical port for a 10 Gb circuit. The Exchange proposes to increase the monthly fee for 10 Gb physical ports from \$7,500 to \$8,500 per port. The Exchange notes the proposed fee change better enables it to continue to maintain and improve its market technology and services and also notes that the proposed fee amount, even as amended, continues to be in line with, or even lower than, amounts assessed by other exchanges for similar connections.⁴ The Exchange also notes that a single 10 Gb physical port can be used to access the Systems of the following affiliate exchanges: the Cboe

³ The Exchange initially filed the proposed fee changes on July 3, 2023 (SR-CboeEDGA-2023-011). On September 1, 2023, the Exchange withdrew that filing and submitted SR-CboeEDGA-2023-015. On September 29, 2023, the Securities and Exchange Commission issued a Suspension of and Order Instituting Proceedings to Determine whether to Approve or Disapprove a Proposed Rule Change to Amend its Fees Schedule Related to Physical Port Fees (the "OIP") in anticipation of a possible U.S. government shutdown. On September 29, 2023, the Exchange filed the proposed fee change (SR-CboeEDGA-2023-016). On October 13, 2023, the Exchange withdrew that filing and submitted SR-CboeEDGA-2023-017. On December 12, 2023, the Exchange withdrew that filing and submitted SR-CboeEDGA-2023-022. On February 9, 2024, the Exchange withdrew that filing and submitted SR-CboeEDGA-2024-006. On April 9, 2024, the Exchange withdrew that filing and submitted SR-CboeEDGA-2024-013. On June 7, 2024, the Exchange withdrew that filing and submitted SR-CboeEDGA-2024-022. On August 29, 2024, the Exchange withdrew that filing and submitted SR-CboeEDGA-2024-036. On October 25, 2024, the Exchange withdrew that filing and submitted SR-CboeEDGA-2024-043. On December 18, 2024, the Exchange withdrew that filing and submitted this filing.

⁴ See e.g., The Nasdaq Stock Market LLC ("Nasdaq"), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gb physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange's 10 Gb physical port) are assessed \$22,000 per month, per port.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³² 17 CFR 200.30-3(a)(12).

BYX Exchange, Inc., Cboe BZX Exchange, Inc. (options and equities platforms), Cboe EDGX Exchange, Inc. (options and equities platforms), and Cboe C2 Exchange, Inc., (“Affiliate Exchanges”).⁵ Notably, only one monthly fee currently (and will continue) to apply per 10 Gb physical port regardless of how many affiliated exchanges are accessed through that one port.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. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4)¹⁰ of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities. This belief is based on various factors as described below.

First, the Exchange believes its proposal is reasonable as it reflects a moderate increase in physical connectivity fees for 10 Gb physical ports and its offering, even as amended, continues to be more affordable as compared to analogous physical

connectivity offerings at competitor exchanges.¹¹

The Exchange also believes the current fee does not properly reflect the quality of the service and product, as fees for 10 Gb physical ports have been static in nominal terms since 2018, and therefore falling in real terms due to inflation. As a general matter, the Producer Price Index (“PPI”) is a family of indexes that measures the average change over time in selling prices received by domestic producers of goods and services. PPI measures price change from the perspective of the seller. This contrasts with other metrics, such as the Consumer Price Index (CPI), that measure price change from the purchaser’s perspective.¹² About 10,000 PPIs for individual products and groups of products are tracked and released each month.¹³ PPIs are available for the output of nearly all industries in the goods-producing sectors of the U.S. economy—mining, manufacturing, agriculture, fishing, and forestry—as well as natural gas, electricity, and construction, among others. The PPI program covers approximately 69 percent of the service sector’s output, as measured by revenue reported in the 2017 Economic Census.

For purposes of this proposal, the relevant industry-specific PPI is the Data Processing, hosting and related services (“Data PPI”) and more particularly the more granular service line Data Processing, Hosting and Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT) Infrastructure Provisioning Services.¹⁴

The Data PPI was introduced in January 2002 by the Bureau of Labor Statistics (“BLS”) as part of an ongoing effort to expand Producer Price Index coverage of the services sector of the U.S. economy and is identified as NAICS—518210 in the North American

Industry Classification System (“NAICS”).¹⁵ According to the BLS “[t]he primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers’ transactions and data. Price movements for the NAICS 518210 index are based on changes in the revenue received by companies that provide data processing services and price movements for the service line NAICS 518210 index are based on changes in the revenue received by companies that provide, among other things, IT infrastructure provisioning services. Each month, companies provide net transaction prices for a specified service. The transaction is an actual contract selected by probability, where the price-determining characteristics are held constant while the service is repriced. The prices used in index calculation are the actual prices billed for the selected service contract.”¹⁶

The service (product) lines for which price indexes are available under the Data PPI are: (1) business process management services (2) data management and storage information transformation and other services and (3) hosting ASP and other IT infrastructure provisioning services. The most apt of these industry and product specific categorizations for purposes of this present proposal to modify fees for the 10 Gb physical port fee measures inflation for the provision of data processing, hosting and related services as well as other information technology infrastructure provisioning services which BLS identifies as identified as NAICS—5182105.¹⁷ The Exchange believes that this measure of inflation is particularly appropriate because the Exchange’s connectivity services involve hosting and providing connections to its customers’ telecommunications and information

⁵ The Affiliate Exchanges are also submitting contemporaneous identical rule filings.

⁶ The Exchange notes that conversely, other exchange groups charge separate port fees for access to separate, but affiliated, exchanges. See e.g., Securities and Exchange Release No. 99822 (March 21, 2024), 89 FR 21337 (March 27, 2024) (SR-MIAX-2024-016).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ *Id.*

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ See e.g., The Nasdaq Stock Market LLC (“Nasdaq”), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange’s 10Gbps physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange’s 10 Gbps physical port) are assessed \$22,000 per month, per port.

¹² See <https://www.bls.gov/ppi/overview.htm>.

¹³ *Id.*

¹⁴ Provisioning is the process of preparing, assigning, and activating IT infrastructure components, such as servers, storage, and network connectivity, according to user requirements. It is a critical part of IT operations, as it ensures that computing resources are available when needed and that they are set up and connected to work correctly.

¹⁵ See <https://www.bls.gov/ppi/overview.htm>. Among the industry-specific PPIs is for North American Industry Classification System (“NAICS”) Code 518210: “Data Processing and Related Services.” NAICS index codes categorize products and services that are common to particular industries. According to BLS, these codes “provide comparability with a wide assortment of industry-based data for other economic programs, including productivity, production, employment, wages, and earnings.”

¹⁶ See <https://www.bls.gov/ppi/factsheets/producer-price-index-for-the-data-processing-and-related-services-industry-naics-518210.htm>.

¹⁷ See <https://data.bls.gov/timeseries/PCU5182105182105>.

technology equipment, as well as preparing, assigning, and activating IT infrastructure components, such as servers, storage, and network connectivity. The Exchange also uses its “proprietary software,” *i.e.*, its own proprietary matching engine software, to receive orders on the Exchange’s proprietary trading platform as well as to collect, organize, and report customers’ transactions. In other words, the Exchange is in the business of data processing, hosting, ASP, and providing other IT infrastructure provisioning services.

The Exchange further believes the Data PPI is an appropriate measure for purposes of the proposed rule change on the basis that it is a stable metric with limited volatility, unlike other consumer-side inflation metrics. In fact, the Data PPI has not experienced a greater than 2.16% increase for any one calendar year period since Data PPI was introduced into the PPI in January 2002. For example, the average calendar year change from January 2002 to December 2023 was .62%, with a cumulative increase of 15.67% over this 21-year period. The Exchange believes the Data PPI is considerably less volatile than other inflation metrics such as CPI, which has had individual calendar-year increases of more than 6.5%, and a cumulative increase of over 73% over the same period.¹⁸

As noted above, the current 10 Gb physical port fee remained unchanged for six years, particularly since June 2018.¹⁹ Since its last increase over 6 years ago however, there has been notable inflation, including under the industry- and product-specific PPI, which as described above is a tailored measure of inflation. Particularly, the Hosting, ASP and other IT Infrastructure Provisioning Services inflation measure had a starting value of 102.2 in June 2018 (the month the Exchange started assessing the current fee) and an ending value of 115.66 in November 2024, representing an 13% increase.²⁰ This indicates that companies who are also in the hosting ASP and other IT infrastructure provisioning services have generally increased prices for a specified service covered under NAICS 5182105 by an average of 13% during this period.

The Exchange also believes that it is reasonable to increase its fees to

compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2018. The impact of this inflationary effect is also independent of any change in the Exchange’s costs in providing its goods and services. The Exchange therefore believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects. Additionally, the Exchange historically does not increase fees every year notwithstanding inflation. Other exchanges have also filed for increases in certain fees, based in part on comparisons to inflation.²¹ Accordingly, based on the above-described percentage change based on an industry- and product-specific inflationary measure, and in conjunction with the rationale further described above and below, the Exchange believes the proposed fee increase is reasonable.

Next, the Exchange believes significant investments into, and enhanced performance of, the Exchange, in the years following the last 10 Gb physical port fee increase support the reasonableness of the proposed fee increase. These investments enhanced the quality of its services, as measured by, among other things, increased throughput and faster processing speeds. Customers have therefore greatly benefitted from these investments, while the Exchange’s ability to recoup its investments has been hampered.

For example, the Exchange and its affiliated exchanges recently launched a multi-year initiative to improve Cboe Exchange Platform performance and capacity requirements to increase competitiveness, support growth and advance a consistent world class platform. The goal of the project, among other things, is to provide faster and more consistent order handling and matching performance for options, while ensuring quicker processing time and supporting increasing volumes and capacity needs. For example, the Exchange recently performed switch hardware upgrades. Particularly, the Exchange replaced existing customer access switches with newer models, which the Exchange believes resulted in increased determinism. The recent switch upgrades also increased the Exchange’s capacity to accommodate more physical ports by nearly 50%. Network bandwidth was also increased

nearly two-fold as a result of the upgrades, which among other things, can lead to reduce message queuing. The Exchange also believes these newer models result in less natural variance in the processing of messages. The Exchange notes that it incurred costs associated with purchasing and upgrading to these newer models, of which the Exchange has not otherwise passed through or offset.

As of April 1, 2024, market participants also having the option of connecting to a new data center (*i.e.*, Secaucus NY6 Data Center (“NY6”)), in addition to the current data centers at NY4 and NY5. The Exchange made NY6 available in response to customer requests in connection with their need for additional space and capacity. In order to make this space available, the Exchange expended significant resources to prepare this space, and will also incur ongoing costs with respect to maintaining this offering, including costs related to power, space, fiber, cabinets, panels, labor and maintenance of racks. The Exchange also incurred a large cost with respect to ensuring NY6 would be latency equalized, as it is for NY4 and NY5.

The Exchange also has made various other improvements since the current physical port rates were adopted in 2018. For example, the Exchange has updated its customer portal to provide more transparency with respect to firms’ respective connectivity subscriptions, enabling them to better monitor, evaluate and adjust their connections based on their evolving business needs. The Exchange also performs proactive audits on a weekly basis to ensure that all customer cross connects continue to fall within allowable tolerances for Latency Equalized connections. Accordingly, the Exchange expended, and will continue to expend, resources to innovate and modernize technology so that it may benefit its Members and continue to compete among other equities markets. The ability to continue to innovate with technology and offer new products to market participants allows the Exchange to remain competitive in the equities space which currently has 16 equities markets and potential new entrants. If the Exchange were not able to assess incrementally higher fees for its connectivity, it would effectively impact how the Exchange manages its technology and hamper the Exchange’s ability to continue to invest in and fund access services in a manner that allows it to meet existing and anticipated access demands of market participants. Disapproval of fee changes such as the proposal herein, could also have the adverse effect of discouraging

¹⁸ See <https://www.usinflationcalculator.com/inflation/consumer-price-index-and-annual-percent-changes-from-1913-to-2008/>.

¹⁹ See Securities and Exchange Release No. 83449 (June 15, 2018), 83 FR 28890 (June 21, 2018) (SR–CboeEDGA–2018–010).

²⁰ See <https://data.bls.gov/timeseries/PCU5182105182105>.

²¹ See, *e.g.*, Securities Exchange Act Release Nos. 34–100994 (September 10, 2024), 89 FR 75612 (September 16, 2024) (SR–NYSEARCA–2024–79).

an exchange from improving its operations and implementing innovative technology to the benefit of market participants if it believes the Commission would later prevent that exchange from recouping costs and monetizing its operational enhancements, thus adversely impacting competition as well as the interests of market participants and investors.

Finally, the proposed fee is also the same as is concurrently being proposed for its Affiliate Exchanges. Further, Members are able to utilize a single port to connect to all of its Affiliate Exchanges and will only be charged one single fee (*i.e.*, a market participant will only be assessed the proposed \$8,500 even if it uses that physical port to connect to the Exchange and another (or even all 6) of its Affiliate Exchanges. Particularly, the Exchange believes the proposed monthly per port fee is reasonable, equitable and not unfairly discriminatory since as the Exchange has determined to not charge multiple fees for the same port. Indeed, the Exchange notes that several ports are in fact purchased and utilized across one or more of the Exchange's affiliated Exchanges (and charged only once).

The Exchange also believes that the proposed fee change is not unfairly discriminatory because it would be assessed uniformly across all market participants that purchase the physical ports. The Exchange believes increasing the fee for 10 Gb physical ports and charging a higher fee as compared to the 1 Gb physical port is equitable as the 1 Gb physical port is 1/10th the size of the 10 Gb physical port and therefore does not offer access to many of the products and services offered by the Exchange (*e.g.*, ability to receive certain market data products). Thus, the value of the 1 Gb alternative is lower than the value of the 10 Gb alternative, when measured based on the type of Exchange access it offers. Moreover, market participants that purchase 10 Gb physical ports utilize the most bandwidth and therefore consume the most resources from the network. The Exchange also anticipates that firms that utilize 10 Gb ports will benefit the most from the Exchange's investment in offering NY6 as the Exchange anticipates there will be much higher quantities of 10 Gb physical ports connecting from NY6 as compared to 1 Gb ports. Indeed, the Exchange notes that 10 Gb physical ports account for approximately 90% of physical ports across the NY4, NY5, and NY6 data centers, and to date, 80% of new port connections in NY6 are 10 Gb ports. As such, the Exchange believes the proposed fee change for 10 Gb

physical ports is reasonably and appropriately allocated.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed fee change will not impact intramarket competition because it will apply to all similarly situated Members equally (*i.e.*, all market participants that choose to purchase the 10 Gb physical port). Additionally, the Exchange does not believe its proposed pricing will impose a barrier to entry to smaller participants and notes that its proposed connectivity pricing is associated with relative usage of the various market participants. For example, market participants with modest capacity needs can continue to buy the less expensive 1 Gb physical port (which cost is not changing) or may choose to obtain access via a third-party re-seller. While pricing may be increased for the larger capacity physical ports, such options provide far more capacity and are purchased by those that consume more resources from the network. Accordingly, the proposed connectivity fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pay the most.

The proposed fee change also does not impose a burden on competition or on other Self-Regulatory Organizations that is not necessary or appropriate. As described above, the Exchange evaluated its proposed fee change using objective and stable metric with limited volatility. Utilizing Data Processing PPI over a specified period of time is a reasonable means of recouping a portion of the Exchange's investment in maintaining and enhancing the connectivity service identified above. The Exchange believes utilizing Data Processing PPI, a tailored measure of inflation, to increase certain connectivity fees to recoup the Exchange's investment in maintaining and enhancing its services and products would not impose a burden on competition.

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 Act²² and paragraph (f) of Rule 19b-4²³ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeEDGA-2024-051 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-CboeEDGA-2024-051. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f).

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeEDGA-2024-051 and should be submitted on or before January 21, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-30908 Filed 12-27-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102024; File No. SR-CboeBZX-2024-131]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Fees for New Logical Ports in Connection With a New Connectivity Offering on Its Equity Options Platform

December 20, 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 December 20, 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") proposes to adopt fees for new logical ports in connection with a new connectivity offering on its equity options platform. 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 amend its fee schedule to adopt fees for Unitized Logical Ports, a new connectivity offering for its equity options platform ("BZX Options") and adopt new Average Daily Quote and Average Daily Order fees.³

Unitized Port Fees

By way of background, Exchange Members may interface with the Exchange's Trading System by utilizing either the Financial Information Exchange ("FIX") protocol or the Binary Order Entry ("BOE") protocol. The Exchange further offers a variety of logical ports,⁴ which provide users of

these ports with the ability within the Exchange's System to accomplish a specific function through a connection, such as order entry, data receipt or access to information. For example, such ports include Logical Ports,⁵ Purge Ports,⁶ and Ports with Bulk Quoting Capabilities⁷ ("Bulk Ports"). By way of further background, each of these ports corresponds to a single running order handler. Each order handler processes the messages it receives from these ports from the connected Members. This processing includes determining whether the message contains the required information to enter the System, whether the message parameters satisfy port-level (*i.e.*, pre-trade) risk controls, and where to send that message within the System (*i.e.*, to which matching engine).⁸ Once an order handler completes the processing of a message, it sends that message to the appropriate matching engine.

Historically, all order handlers connect to all matching engines. That is, under the BOEv2 and FIX protocols, Members were able to access all symbols from a single logical port since each port corresponds to a single order handler that conveniently connects to all matching engines ("convenience layer"). Although the Exchange configures the software and hardware for its order handlers in the same manner, there can be a natural variance in the amount of time it takes individual order handlers to process messages of

(which grants users the ability to receive and/or send drop copies) and ports that are used for receipt of certain market data feeds.

⁵ The term "Logical Ports" used herein shall refer to FIX and BOE ports (used for order entry). See Cboe BZX Options Fee Schedule, Options Logical Port Fees, "Logical Ports" (which exclude Purge Port, Multicast PITCH Spin Server Port or GRP Port).

⁶ Purge Ports provide users the ability to cancel a subset (or all) of open orders across Executing Firm ID(s) ("EFID(s)"). Underlying symbol(s), or CustomGroupID(s), across multiple logical ports/sessions. See Securities Exchange Act Release 79956 (February 3, 2017), 82 FR 10102 (February 9, 2017) (SR-BatsBZX-2017-05). See also https://cdn.cboe.com/resources/membership/US_Options_BOE_Specification.pdf and https://cdn.cboe.com/resources/membership/US_Options_FIX_Specification.pdf.

⁷ See Exchange Rule 21.1 (l)(3), definition of "bulk port." Bulk Ports provide users with the ability to submit and update multiple quote bids and offers in one message through logical ports enabled for bulk-quoting.

⁸ A matching engine is a part of the Exchange's System that processes options quotes and trades on a symbol-by-symbol basis. Some matching engines will process option classes with multiple root symbols, and other matching engines will be dedicated to one single option root symbol (for example, options on SPY will be processed by one single matching engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated matching engine. A particular root symbol may not be assigned to multiple matching engines.

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange initially submitted the proposed rule change on August 30, 2024 and was effective September 3, 2024 (SR-CboeBZX-2024-082). On September 13, 2024, the Exchange withdrew that filing and submitted SR-CboeBZX-2024-088. On November 12, 2024, the Exchange withdrew that filing and submitted SR-CboeBZX-2024-113. On December 20, 2024, the Exchange withdrew that filing and submitted this filing.

⁴ See Exchange Rule 21.1 (l)(2), definition of "logical port." Logical ports include FIX and BOE ports (used for order entry), drop logical port

the same type under this architecture. Factors that contribute to this differentiation in processing times include the availability of shared resources (such as memory), which is impacted by (among other things) then-current message rates, the number of active symbols (*i.e.*, classes), and recent messages for a symbol. This natural differentiation in processing times inherently may cause some messages to be sent from an order handler to a matching engine ahead of other messages that the Exchange's System may have received earlier on a different order handler.

The Exchange recently implemented a new architecture and protocol which includes, among other things, a single gateway per matching engine ("unitized layer"), which renders the above-described natural variance of order handler processing irrelevant for Members that connect to the unitized

order handler.⁹ More specifically, effective August 19, 2024, the Exchange implemented this new unitized access architecture and a new version of its Binary Order Entry (BOE) protocol¹⁰ ("BOEv3"), which also resulted in the adoption of new logical port types ("Unitized Logical Ports"), for which the Exchange is now seeking to establish fees.¹¹ Under the new unitized BOEv3 architecture, a single BOEv3 order handler corresponds to a single matching engine and all message traffic (including FIX and current BOEv2¹² port traffic) pass through this unitized BOEv3 order handler before reaching that order handler's corresponding matching engine. If a Member desires to access this optional unitized layer of the BOEv3 architecture (which it is not required to do), the Member would need to obtain a Unitized Logical Port for each unitized BOEv3 order handler and

corresponding matching engine(s) that process the symbol(s) that Member desires to trade.¹³ The three new port types that have been adopted are: (1) BOE Unitized Logical Ports,¹⁴ (2) Bulk Unitized Logical Ports,¹⁵ and (3) Purge Unitized Logical Ports.¹⁶ As noted above, use of Unitized Logical Ports is completely voluntary, and no Member is required, or under any regulatory obligation, to utilize them.

The Exchange proposes to establish fees for the new Unitized Logical Ports, which can be purchased on an individual basis (*i.e.*, capable of accessing a specified matching engine ("Matching Unit")) and/or as a set ("Unitized Logical Port Set") (*i.e.*, will include the total number of ports needed to connect to each available Matching Unit). The proposed fees for Unitized Logical Ports purchased individually and as sets are as follows:

BOE Unitized Logical Port	\$350/port/month.
Bulk Unitized Logical Port	\$550/port/month.
Purge Unitized Logical Port	\$400/port/month.
BOE Unitized Logical Port (Set)	\$2,500/month for 1st and 2nd port set. \$3,000/month for 3rd–14th port set. \$3,500/month for 15th–20th port set.
Bulk Unitized Logical Port (Set)	\$5,500/month for 1st and 2nd port set. \$6,000/month for 3rd–14th port set. \$6,500/month for 15th–20th port set.
Purge Unitized Logical Port (Set)	\$2,500/month for 1st and 2nd port set. \$3,000/month for 3rd–14th port set. \$3,500/month for 15th–20th port set.

The proposed fees for Unitized Logical Port Sets are progressive. For example, if a User were to purchase 11 BOE Unitized Logical Port Sets, it will be charged a total of \$32,000 per month ($\$2,500 \times 2 + \$3,000 \times 9$). As is the case today for existing logical ports, the monthly fees are assessed and applied in their entirety and are not prorated. The Exchange notes the current standard fees assessed for existing logical ports will remain applicable and unchanged.¹⁷ The proposed fees for Unitized Logical Port Sets will be assessed per set, per Port Type. As an example, if a Member requests three

BOE Unitized Logical Port Sets, one Bulk Unitized Logical Port Set, and one Purge Unitized Logical Port Set, the firm would be charged \$8,000 ($\$2,500 + \$2,500 + \$3,000$) for the three BOE Unitized Logical Port Sets, \$5,500 for the one Bulk Unitized Logical Port Set, and \$2,500 for the one Purge Unitized Logical Port Set.¹⁸

Since the Exchange has a finite amount of capacity, it also proposes to prescribe a maximum limit on the number of Unitized Logical Ports that may be purchased and used on a per firm, per Matching Unit basis. The purpose of establishing these limits is to

manage the allotment of Unitized Logical Ports in a fair and reasonable manner while preventing the Exchange from being required to expend large amounts of resources in order to provide an unlimited capacity to its matching engines. Particularly, the Exchange proposes to provide that the two structures (*i.e.*, individual unitized ports or unitized port sets) can be combined for up to a maximum of 20 Unitized Logical Ports per Member, per Matching Unit, per port type. As an example, a Member may request 2 BOE Unitized Logical Port Sets and 18 individual BOE Unitized Logical Ports for Matching

⁹ See Securities Exchange Act Release 100582 (July 23, 2024), 89 FR 60958 (July 29, 2024) (SR–CboeBZX–2024–071).

¹⁰ The BOE protocol is a proprietary order entry protocol used by Members to connect to the Exchange. The current version is BOEv2.

¹¹ See Securities Exchange Act Release No. 100582 (July 23, 2024) 89 FR 60958 (July 29, 2024) (SR–CboeBZX–2024–071).

¹² The Exchange anticipates decommissioning BOEv2 in February 2025.

¹³ Members will be able to purchase Unitized Logical Ports individually or may purchase a "set," which will provide the total number of ports

needed to connect to each available matching engine.

¹⁴ Similar to the Exchange's preexisting Logical Ports, the new Unitized Logical Ports allow Members to submit orders and quotes.

¹⁵ Similar to the Exchange's preexisting Bulk Ports, the new Bulk Unitized Logical Ports allow Members to submit and update multiple quote bids and offers in one message and are particularly useful for Members that provide quotations in many different options.

¹⁶ Similar to the Exchange's preexisting Purge Ports, the new Purge Unitized Logical Ports are dedicated logical ports that provide the ability to cancel/purge all open orders, or a subset thereof, across multiple logical ports through a single

cancel/purge message. They also solely process purge messages and are designed to assist Members, including Market Makers, in the management of, and risk control over, their orders and quotes, particularly if the Member is dealing with a large number of options.

¹⁷ For example, the Exchange currently assesses a monthly per port fee of \$750 for Logical Ports and Purge Ports. It also assesses \$1,500 per port month for the 1st and 2nd Bulk Ports and \$2,500 for the 3rd or more Bulk Ports. See Cboe BZX Options Fee Schedule, Options Logical Port Fees.

¹⁸ The Exchange proposes to include this example in the Fee Schedule to provide further clarity as to the application of the proposed fees.

Unit 1, providing a total max of 20 BOE Unitized Logical Ports on Matching Unit 1 specifically. This would result in having 20 BOE Unitized Logical Ports on Matching Unit 1 and 2 BOE Unitized Ports on all additional Matching Units as part of the 2 BOE Unitized Logical Port Sets requested. Additionally, a firm may request 20 Bulk Unitized Logical Port Sets and 20 Purge Unitized Logical Port Sets as those would constitute different port types.¹⁹ The Exchange believes the proposed cap will be sufficient for the vast majority of Members.²⁰ The Exchange notes that it will monitor interest in Unitized Logical Ports and system capacity availability with the goal of increasing these limits to meet Members needs if and when the demand is there, and the Exchange is able to accommodate it. Additionally, Members will still be able to utilize the existing logical port connectivity

offerings with no maximum limit in addition to their Unitized Logical Port allocation.

Average Daily Quotes and Average Daily Order Fees

The Exchange also proposes to adopt Average Daily Order (“ADO”) and Average Daily Quote (“ADQ”) fees. “ADO” represents the total number of orders for the month, divided by the number of trading days. “ADQ” represents the total number of quotes for the month, divided by the number of trading days. When measuring a Member’s ADO and ADQ, orders, quotes, cancel/replace modify orders, and quote updates which submit a bid or offer and do not include cancels, are included. Further ADO and ADQ will include orders and quotes submitted by a Member from all logical port types (*i.e.*, non-unitized logical ports and

Unitized Logical Ports). Each Member may submit up to 2,000,000 average daily orders or up to 250,000,000 average daily quotes per calendar month without incurring any ADO or ADQ fees. In the event that the average number of quotes per trading day during a calendar month submitted exceeds 250,000,000, each incremental usage of up to 20,000 average daily quotes will incur an additional fee as set forth in the table below. Similarly, in the event that the average number of orders per trading day during a calendar month submitted exceeds 2,000,000, each incremental usage of up to 1,000 average daily orders will incur an additional ADO fee as set forth in the table below.²¹ A Member’s ADO and ADQ will be aggregated together with any affiliated Member sharing at least 75% common ownership.

ADQ Fee rate per 20,000 ADQ	Fee				
	Tier 1 <= 250,000,000	Tier 2 >250,000,000	Tier 3 >500,000,000	Tier 4 >1,000,000,000	Tier 5 >3,500,000,000
	\$0.00	\$0.05	\$0.075	\$0.10	\$0.20
ADO Fee Rate per 1,000 ADO	Tier 1 <= 2,000,000 \$0.00	Tier 2 >2,000,000 \$1.00	Tier 3 >2,500,000 \$1.50	Tier 4 >3,000,000 \$2.00	Tier 5 >3,500,000 \$2.50

As an example, a Member that has 510,000,000 ADQ would subsequently have 25,500 “ADQ increments” (510,000,000 ADQ/20,000 ADQ increments). While 12,500 of the 25,500 ADQ increments are free within Tier 1, 12,500 of the ADQ increments would be fee liable at \$0.050 within Tier 2, while the remaining 500 ADQ increments would be fee liable at \$0.075 within Tier 3, resulting in a total ADQ fee of \$662.50 for that month.²²

The Exchange notes that market participants with incrementally higher ADO or ADQ have the potential residual effect of exhausting system resources, bandwidth, and capacity. Higher ADO or ADQ may therefore, in turn, create latency and impact other Members’ ability to receive timely executions. The proposed fee structure has multiple thresholds, and the proposed fees are incrementally greater at higher ADO and ADQ rates because the potential impact

on exchange systems, bandwidth and capacity becomes greater with increased ADO and ADQ rates. As noted above, the proposal contemplates that a Member would have to exceed the high ADO rate of 2,000,000 and a Market Maker would have to exceed the high ADQ rate of 250,000,000 before that market participant would be charged a fee under the proposed respective tiers. The Exchange believes that it is in the interests of all Members and market participants who access the Exchange to not allow other market participants to exhaust System resources, but to encourage efficient usage of network capacity. The Exchange also believes this proposal (and in particular the proposed fee amounts associated with higher ADO and ADQ) will reduce the incentive for market participants to engage in excessive order/quote and trade activity that may require the Exchange to otherwise increase its

storage capacity and will encourage such activity to be submitted in good faith for legitimate purposes.

The Exchange also represents that the proposed fees are not intended to raise revenue; rather, as noted above, it is intended to encourage efficient behavior so that market participants do not exhaust System resources. Moreover, the Exchange intends to provide Members with daily reports, free of charge, which will detail their order and trade activity in order for those firms to be fully aware of all order and trade activity they (and their affiliates) are sending to the Exchange. This will allow Members to monitor their behavior and determine whether it is approaching any of the ADO or ADQ thresholds that trigger the proposed fees.

The Exchange lastly notes that other exchanges have adopted various fee programs that assess incrementally

¹⁹ The Exchange proposes to include this example in its Fee Schedule to provide clarity as to how Unitized Logical Port fees will be assessed.

²⁰ The Exchange notes that one Member has indicated that it *may* desire more than the current maximum in the future.

²¹ The term “quote” refers to bids and offers submitted in bulk messages. A bulk message means a single electronic message a user submits with an M (Market-Maker) capacity to the Exchange in which the User may enter, modify, or cancel up to an Exchange-specified number of bids and offers. A

User may submit a bulk message through a bulk port as set forth in Exchange Rule 21.1(j)(3). See Rule 16.1 (definition of bulk message).

²² The Exchange proposes to include this example in the Fees Schedule to provide further clarity as to the application of the proposed fees.

²³ See, *e.g.*, Securities Exchange Act Release No. 60102 (June 11, 2009), 74 FR 29251 (June 19, 2009) (SR-NYSEArca-2009-50) (adopting fees applicable to Members based on the number of orders entered compared to the number of executions received in a calendar month). It appears that Nasdaq similarly

assesses a penalty charge to its members that exceed certain “weighted order-to-trade ratios”. See *Price List—Trading Connectivity*, NASDAQ, available at <https://www.nasdaqtrader.com/trader.aspx?id=pricelisttrading2>. See also Securities Exchange Act Release No. 91406 (March 25, 2021), 86 FR 16795 (March 31, 2023) (SR-EMERALD-2021-10) (adopting an “Excessive Quoting Fee” to ensure that Market Makers do not over utilize the exchange’s System by sending messages to the MIAX Emerald, to the detriment of all other Members of the exchange).

higher fees to Members that have incrementally higher order and/or quoting trading activity for similar reasons.²³

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.²⁴ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁵ 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)²⁶ 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)²⁷ of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

The Exchange believes the proposed fees are reasonable because Unitized Logical Ports provide an optional, valuable service in that the ports are intended to create a more consistent, deterministic experience for messages once received within the Exchange’s System under the recently adopted unitized BOEv3 architecture. As discussed above, the new architecture (and thereby the new Unitized Logical Ports) was designed to create a more consistent, deterministic experience for messages once received within the Exchange’s System, which the Exchange believes improves the overall access experience on the Exchange and will enable future system enhancements. As noted, the BOEv3 protocol and architecture, along with the three new corresponding Unitized Logical Ports,

are intended to reduce the natural variance of order handler processing times for messages, and as a result reduce the potential resulting “reordering” of messages when they are sent from order handlers to matching engines. The adoption of the unitized BOEv3 structure (including the corresponding new Unitized Ports) was a technical solution that is intended to reduce the potential of this reordering and increase determinism.²⁸ The Exchange believes the proposed fees are also reasonable to offset costs incurred in order to build out an entirely new unitized architecture.

The Exchange also emphasizes that the use of the Unitized Logical Ports is not necessary for trading on the Exchange and, as noted above, is entirely optional. Users can also continue to access the Exchange through existing logical port offerings at existing rates. It is a Member’s specific business needs that will drive its decision whether to use Unitized Logical Ports in lieu of, or in addition to, existing logical ports (or, as emphasized, not use them at all). If a User finds little benefit in having these ports based on its business model and trading strategies, or determines the Unitized Logical ports are not cost-efficient for its needs, or does not provide sufficient value to the firm, such User may continue connecting to the Exchange in the manner it does today, unchanged. Indeed, the Exchange notes that since the adoption of Unitized Logical Ports on August 19, only approximately 27% of logical ports, bulk ports and purge ports being used are Unitized Logical Ports and approximately 73% are the preexisting Logical Ports, Bulk Ports and Purge Ports. Moreover, the Exchange believes that providing Members the option of purchasing Unitized Logical Ports individually or in sets provides Members further flexibility and an opportunity for cost savings for those Members that wish to only trade a subset of classes.

The Exchange also believes that the proposed Unitized Logical Port fees are equitable and not unfairly discriminatory because they continue to be assessed uniformly to similarly situated users in that all Users who choose to purchase Unitized Logical Ports will be subject to the same proposed tiered fee schedule. Moreover, Members purchasing Unitized Logical Ports will only do so if they find a benefit and sufficient value in such ports as, all Members can otherwise

continue to use the preexisting logical connectivity options. As such, Members can choose whether or not to purchase Unitized Logical Ports based on their respective business needs.

The proposed ascending tier structure for Unitized Logical Port Sets is reasonable, equitable and not unfairly discriminatory as it’s designed to encourage market participants to be efficient with their respective Unitized Logical Port usage. It also is designed so that Members that use a higher allotment of the Exchange’s system resources pay higher rates, rather than placing that burden on market participants that have more modest needs. The Exchange believes the proposed ascending fee structure is therefore another appropriate means, in conjunction with an established Unitized Logical Port limit, to manage this finite resource (system capacity) and ensure its apportioned fairly. Furthermore, the Exchange already assesses higher fees to those that consume more Exchange resources for the existing non-Unitized Bulk Ports.²⁹ The proposed limit on Unitized Logical Ports is also reasonable, equitable and not unfairly discriminatory as the Exchange believes that it is in the interests of all Members and market participants who access the Exchange to not allow Members to exhaust System resources, but to encourage efficient usage of network capacity. The Exchange also notes that the new BOEv3 unitized architecture is subject to software limitations on the number of sessions that can be created on any one unitized process. Consideration was given to this limitation as well as to the amount of ports firms had indicated they would need prior to the implementation of Unitized Logical Ports.

The Exchange believes the proposed ADO and ADQ fees are reasonable as Members that do not exceed the high thresholds of 2,000,000 ADO and 250,000,000 ADQ will not be charged any fee under the proposed tiers. The Exchange notes that in establishing the proposed thresholds, it evaluated average ADO and ADQ rates over several months and the thresholds were designed to protect the Exchange’s Matching Engines from being adversely impacted from sustained and excessive orders/quotes throughout the course of a given month. The ADQ thresholds are also designed to ensure Market Makers quoting activity, which acts as important source of liquidity, is not

²⁴ 15 U.S.C. 78f(b).

²⁵ 15 U.S.C. 78f(b)(5).

²⁶ *Id.*

²⁷ 15 U.S.C. 78f(b)(4).

²⁸ See Securities Exchange Act Release 100582 (July 23, 2024), 89 FR 60958 (July 29, 2024) (SR–CboeBZX–2024–071).

²⁹ See Cboe U.S. Options Fees Schedule, BZX Options, Options Logical Port Fees, Ports with Bulk Quoting Capabilities.

impeded by the proposal.³⁰ The Exchange believes it's reasonable, equitable and not unfairly discriminatory to assess higher fees when a Member has higher ADO and ADQ rates because the potential impact on exchange systems, bandwidth and capacity becomes greater with increased ADO and ADQ rates. The Exchange believes the proposed fee amounts are reasonable as the Exchange believes them to be commensurate with the proposed thresholds. Particularly, the proposed fee amounts that correspond to higher ADO and ADQ rates are designed to incentivize Members to reduce excessive order and quoting trade activity that the Exchange believes can be detrimental to all market participants at those levels and encourage such activity to be made in good faith and for legitimate purposes. As noted above, the Exchange believes that it is in the interests of all Members and market participants who access the Exchange to not allow Members to exhaust System resources, but to encourage efficient usage of network capacity. The Exchange therefore also believes that the proposed fees appropriately reflect the benefits to different firms of being able to send orders and quotes into the Exchange's System and also believes the proposed fees are one method of facilitating the Commission's goal of ensuring that critical market infrastructure has "levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets."³¹

The Exchange believes adopting the proposed ADO and ADQ fees are reasonable as unfettered usage of System capacity and network resource consumption can have a detrimental effect on all market participants who access and use the Exchange. As discussed above, high ADO and ADQ rates may adversely impact system resources, bandwidth, and capacity which may, in turn, create latency and impact other Members' ability to receive timely executions. The Exchange believes the proposed fees are therefore reasonable as they are designed to focus on activity that is truly disproportionate while fairly allocating costs.

Further, the Exchange believes that the proposed ADO and ADQ fees are equitable and not unfairly discriminatory because they will be assessed uniformly to similarly situated users in that all Members that exceed the thresholds in connection with ADO and ADQ will be assessed the proposed ADO and ADQ rates. Regarding ADO and ADQ, no market participant is assessed any fees unless it exceeds the proposed thresholds. As noted above, the Exchange believes the proposed ADO and ADQ thresholds (i.e., 2,000,000 ADO and 250,000,000 ADQ) are appropriately high rates respectively, such that the Exchange expects the vast majority of Members to not exceed them. While the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, based on trading activity from the prior months the Exchange would expect that, absent any changes to Member behavior, all Members would fall within proposed ADO Tier 1 (and thus not be subject to any new fees) and approximately 74% of Members would fall within proposed ADQ Tier 1 (and thus also not be subject to any new fees). With respect to the remaining Members (approximately 26%) that would exceed the ADQ Tier 1 threshold based on current activity, the Exchange would anticipate, absent any change in behavior, approximately 3 Members to fall within Tier 2, approximately 6 Members to fall within Tier 3, approximately 3 Members to fall within Tier 4 and no Members to fall within Tier 5. Notwithstanding this impact, the Exchange believes that Market Makers are able to continue providing important liquidity to the Exchange and meet their quoting obligations [sic].

The Exchange believes it's equitable and not unfairly discriminatory to assess incrementally higher fees to Members that have higher ADO and ADQ rates because the potential impact on exchange systems, bandwidth and capacity becomes greater with increased ADO and ADQ. The Exchange also believes it's equitable and not unfairly discriminatory to aggregate Members trading activity with any affiliated Member sharing at least 75% common ownership in order to prevent members from shifting their order flow or quoting activity to other affiliates in order to circumvent the proposed fees.

The Exchange lastly believes that its proposal is reasonable, equitably allocated and not unfairly discriminatory because it is not intended to raise revenue for the Exchange; rather, it is intended to encourage efficient behavior so that Members do not exhaust System

resources. Moreover, as noted above, competing options exchanges similarly assess fees to deter Members from over utilizing the exchange's System by having excessive order and/or quoting trading activity.³²

The Exchange finally notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange is only one of 18 options exchanges which market participants may direct their order flow and/or participate on, and it represents a small percentage of the overall market.³³

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change to adopt fees for Unitized Logical Ports will impose any burden on intramarket competition that is not necessary in furtherance of the purposes of the Act because the proposed fees for will apply equally to all similarly situated Members. As discussed above, Unitized Logical Ports are optional and Members may choose to utilize Unitized Logical Ports, or not, based on their views of the additional benefits and added value provided by these ports. The Exchange believes the proposed fees will be assessed proportionately to the potential value or benefit received by Members with a greater number of Unitized Logical Ports and notes that Members may determine to cease using Unitized Logical Ports. As discussed, Members can also continue to access the Exchange through existing Logical Ports, which fees are not changing.

Similarly, the Exchange does not believe that the proposed rule change to adopt ADO and ADQ fees will impose any burden on intramarket competition that is not necessary in furtherance of the purposes of the Act because such fees will apply equally to all similarly situated Members. Particularly, the proposed fees apply uniformly to all Members, in that any Member who exceeds the ADO and/or ADQ Tier 1 thresholds will be subject to a fee under the proposed corresponding tiers. The Exchange believes that the proposed change neither favors nor penalizes one or more categories of market participants in a manner that would

³⁰ Since the implementation of the proposal on September 3, 2024, the Exchange notes that it has not received any feedback from Market Maker participants that the proposal has impeded their ability to meet their quoting obligations.

³¹ See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72251 (December 5, 2014) (File No. S7-01-13) (Regulation SCI Adopting Release).

³² See *supra* note 20.

³³ See Cboe Global Markets, U.S. Options Market Volume Summary, Month-to-Date (August 27, 2024), available at https://www.cboe.com/us/options/market_statistics/ which reflects the Exchange representing only 3.3% of total market share.

impose an undue burden on competition. Rather, the proposal seeks to benefit all market participants by encouraging the efficient utilization of the Exchange's network while taking into account the important liquidity provided by its Members. As discussed above potential impact on exchange systems, bandwidth and capacity becomes greater with increased ADO and ADQ rates. The Exchange also anticipates that the vast majority of Members on the Exchange will not be subject to any fees under the proposed tiers. Accordingly, the Exchange believes that the proposed ADO and ADQ fees do not favor certain categories of market participants in a manner that would impose a burden on competition.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market, including competition for exchange memberships. Market Participants have numerous alternative venues that they may participate on, including 17 other options exchanges (including 3 other non-Cboe options exchanges), as well as off-exchange venues, where competitive products are available for trading. Indeed, participants can readily choose to submit their order flow to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."³⁴ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its

market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'"³⁵ Accordingly, the Exchange does not believe its proposed change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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 Act³⁶ and paragraph (f) of Rule 19b-4³⁷ 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-2024-131 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.

³⁵ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

³⁶ 15 U.S.C. 78s(b)(3)(A).

³⁷ 17 CFR 240.19b-4(f).

All submissions should refer to file number SR-CboeBZX-2024-131. 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-2024-131 and should be submitted on or before January 21, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁸

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-31191 Filed 12-27-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35426; 812-15590]

Kurv ETF Trust and Kurv Investment Management LLC

December 19, 2024.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").
ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act, as well as from certain disclosure requirements in rule

³⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

³⁸ 17 CFR 200.30-3(a)(12).

20a–1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and Sections 6–07(2)(a), (b), and (c) of Regulation S–X (“Disclosure Requirements”).

SUMMARY OF APPLICATION: The requested exemption would permit Applicants to enter into and materially amend subadvisory agreements with certain subadvisors without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the subadvisors.

APPLICANTS: Kurv ETF Trust and Kurv Investment Management LLC.

FILING DATES: The application was filed on June 20, 2024, and amended on September 17, 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 January 13, 2025, 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: David J. Baum, Esq., Alston & Bird, LLP, *David.Baum@alston.com*, and Howard Chan, Kurv ETF Trust, c/o Kurv Investment Management LLC, 1 Letterman Drive, Building C, Suite 3–500, San Francisco, CA 94129.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, 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 September 17, 2024, which may be obtained via the Commission’s website by searching for the file number at the

top of this document, or for an Applicant using the Company name search field on the SEC’s EDGAR system. The SEC’s EDGAR system may be searched at <https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html>. You may also call the SEC’s Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–30856 Filed 12–27–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102015; File No. SR–C2–2024–023]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend its Fees Schedule Related to Physical Port Fees

December 20, 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 December 18, 2024, Cboe C2 Exchange, Inc. (the “Exchange” or “C2”) 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 C2 Exchange, Inc. (the “Exchange” or “C2 Options”) proposes to amend its Fees 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule relating to physical connectivity fees.³

By way of background, a physical port is utilized by a Member or non-Member to connect to the Exchange at the data centers where the Exchange’s servers are located. The Exchange currently assesses the following physical connectivity fees for Trading Permit Holders (“TPHs”) and non-TPHs on a monthly basis: \$2,500 per physical port for a 1 gigabit (“Gb”) circuit and \$7,500 per physical port for a 10 Gb circuit. The Exchange proposes to increase the monthly fee for 10 Gb physical ports from \$7,500 to \$8,500 per port. The Exchange notes the proposed fee change better enables it to continue to maintain and improve its market technology and services and also notes that the proposed fee amount, even as amended,

³ The Exchange initially filed the proposed fee changes on July 3, 2023 (SR–C2–2023–014). On September 1, 2023, the Exchange withdrew that filing and submitted SR–C2–2023–020. On September 29, 2023, the Securities and Exchange Commission issued a Suspension of and Order Instituting Proceedings to Determine whether to Approve or Disapprove a Proposed Rule Change to Amend its Fees Schedule Related to Physical Port Fees (the “OIP”) in anticipation of a possible U.S. government shutdown. On September 29, 2023, the Exchange filed the proposed fee change (SR–C2–2023–021). On October 13, 2023, the Exchange withdrew that filing and submitted SR–C2–2023–022. On December 12, 2023, the Exchange withdrew that filing and submitted SR–C2–2023–025. On February 9, 2024, the Exchange withdrew that filing and submitted SR–C2–2024–004. On April 9, 2024, the Exchange withdrew that filing and submitted SR–C2–2024–005. On June 7, 2024 the Exchange withdrew that filing and submitted SR–C2–2024–010. On August 29, 2024, the Exchange withdrew that filing and submitted SR–C2–2024–015. On October 25, 2024, the Exchange withdrew that filing and submitted SR–C2–2024–019. On October 28, 2024, the Exchange withdrew that filing and submitted SR–C2–2024–020. On December 18, 2024 the Exchange withdrew that filing and submitted this filing.

continues to be in line with, or even lower than, amounts assessed by other exchanges for similar connections.⁴ The Exchange also notes that a single 10 Gb physical port can be used to access the Systems of the following affiliate exchanges: the Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc. (options and equities platforms), Cboe EDGX Exchange, Inc. (options and equities platforms), and Cboe EDGA Exchange, Inc., (“Affiliate Exchanges”).⁵ Notably, only one monthly fee currently (and will continue) to apply per 10 Gb physical port regardless of how many affiliated exchanges are accessed through that one port.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.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(4)¹⁰ of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities. This belief is based on various factors as described below.

First, the Exchange believes its proposal is reasonable as it reflects a moderate increase in physical connectivity fees for 10 Gb physical ports and its offering, even as amended, continues to be more affordable as compared to analogous physical connectivity offerings at competitor exchanges.¹¹

The Exchange also believes the current fee does not properly reflect the quality of the service and product, as fees for 10 Gb physical ports have been static in nominal terms since 2018, and therefore falling in real terms due to inflation. As a general matter, the Producer Price Index (“PPI”) is a family of indexes that measures the average change over time in selling prices received by domestic producers of goods and services. PPI measures price change from the perspective of the seller. This contrasts with other metrics, such as the Consumer Price Index (CPI), that measure price change from the purchaser’s perspective.¹² About 10,000 PPIs for individual products and groups of products are tracked and released each month.¹³ PPIs are available for the output of nearly all industries in the goods-producing sectors of the U.S. economy—mining, manufacturing, agriculture, fishing, and forestry—as well as natural gas, electricity, and construction, among others. The PPI program covers approximately 69 percent of the service sector’s output, as measured by revenue reported in the 2017 Economic Census.

For purposes of this proposal, the relevant industry-specific PPI is the Data Processing, hosting and related services (“Data PPI”) and more particularly the more granular service line Data Processing, Hosting and

Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT) Infrastructure Provisioning Services.¹⁴

The Data PPI was introduced in January 2002 by the Bureau of Labor Statistics (“BLS”) as part of an ongoing effort to expand Producer Price Index coverage of the services sector of the U.S. economy and is identified as NAICS—518210 in the North American Industry Classification System (“NAICS”).¹⁵ According to the BLS “[t]he primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers’ transactions and data. Price movements for the NAICS 518210 index are based on changes in the revenue received by companies that provide data processing services and price movements for the service line NAICS 518210 index are based on changes in the revenue received by companies that provide, among other things, IT infrastructure provisioning services. Each month, companies provide net transaction prices for a specified service. The transaction is an actual contract selected by probability, where the price-determining characteristics are held constant while the service is repriced. The prices used in index calculation are the actual prices billed for the selected service contract.”¹⁶

The service (product) lines for which price indexes are available under the Data PPI are: (1) business process management services (2) data management and storage information transformation and other services and (3) hosting ASP and other IT infrastructure provisioning services. The

⁴ See e.g., The Nasdaq Stock Market LLC (“Nasdaq”), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange’s 10Gb physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange’s 10 Gb physical port) are assessed \$22,000 per month, per port.

⁵ The Affiliate Exchanges are also submitting contemporaneous identical rule filings.

⁶ The Exchange notes that conversely, other exchange groups charge separate port fees for access to separate, but affiliated, exchanges. See e.g., Securities and Exchange Release No. 99822 (March 21, 2024), 89 FR 21337 (March 27, 2024) (SR–MIAX–2024–016).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ *Id.*

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ See e.g., The Nasdaq Stock Market LLC (“Nasdaq”), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange’s 10Gbps physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange’s 10 Gbps physical port) are assessed \$22,000 per month, per port.

¹² See <https://www.bls.gov/ppi/overview.htm>.

¹³ *Id.*

¹⁴ Provisioning is the process of preparing, assigning, and activating IT infrastructure components, such as servers, storage, and network connectivity, according to user requirements. It is a critical part of IT operations, as it ensures that computing resources are available when needed and that they are set up and connected to work correctly.

¹⁵ See <https://www.bls.gov/ppi/overview.htm>. Among the industry-specific PPIs is for North American Industry Classification System (“NAICS”) Code 518210: “Data Processing and Related Services.” NAICS index codes categorize products and services that are common to particular industries. According to BLS, these codes “provide comparability with a wide assortment of industry-based data for other economic programs, including productivity, production, employment, wages, and earnings.”

¹⁶ See <https://www.bls.gov/ppi/factsheets/producer-price-index-for-the-data-processing-and-related-services-industry-naics-518210.htm>.

most apt of these industry and product specific categorizations for purposes of this present proposal to modify fees for the 10 Gb physical port fee measures inflation for the provision of data processing, hosting and related services as well as other information technology infrastructure provisioning services which BLS identifies as identified as NAICS—5182105.¹⁷ The Exchange believes that this measure of inflation is particularly appropriate because the Exchange's connectivity services involve hosting and providing connections to its customers' telecommunications and information technology equipment, as well as preparing, assigning, and activating IT infrastructure components, such as servers, storage, and network connectivity. The Exchange also uses its "proprietary software," *i.e.*, its own proprietary matching engine software, to receive orders on the Exchange's proprietary trading platform as well as to collect, organize, store and report customers' transactions. In other words, the Exchange is in the business of data processing, hosting, ASP, and providing other IT infrastructure provisioning services.

The Exchange further believes the Data PPI is an appropriate measure for purposes of the proposed rule change on the basis that it is a stable metric with limited volatility, unlike other consumer-side inflation metrics. In fact, the Data PPI has not experienced a greater than 2.16% increase for any one calendar year period since Data PPI was introduced into the PPI in January 2002. For example, the average calendar year change from January 2002 to December 2023 was .62%, with a cumulative increase of 15.67% over this 21-year period. The Exchange believes the Data PPI is considerably less volatile than other inflation metrics such as CPI, which has had individual calendar-year increases of more than 6.5%, and a cumulative increase of over 73% over the same period.¹⁸

As noted above, the current 10 Gb physical port fee remained unchanged for six years, particularly since June 2018.¹⁹ Since its last increase over 6 years ago however, there has been notable inflation, including under the industry- and product-specific PPI, which as described above is a tailored measure of inflation. Particularly, the

Hosting, ASP and other IT Infrastructure Provisioning Services inflation measure had a starting value of 102.2 in June 2018 (the month the Exchange started assessing the current fee) and an ending value of 115.66 in November 2024, representing an 13% increase.²⁰ This indicates that companies who are also in the hosting ASP and other IT infrastructure provisioning services have generally increased prices for a specified service covered under NAICS 5182105 by an average of 13% during this period.

The Exchange also believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2018. The impact of this inflationary effect is also independent of any change in the Exchange's costs in providing its goods and services. The Exchange therefore believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects. Additionally, the Exchange historically does not increase fees every year notwithstanding inflation. Other exchanges have also filed for increases in certain fees, based in part on comparisons to inflation.²¹ Accordingly, based on the above-described percentage change based on an industry- and product-specific inflationary measure, and in conjunction with the rationale further described above and below, the Exchange believes the proposed fee increase is reasonable.

Next, the Exchange believes significant investments into, and enhanced performance of, the Exchange, in the years following the last 10 Gb physical port fee increase support the reasonableness of the proposed fee increase. These investments enhanced the quality of its services, as measured by, among other things, increased throughput and faster processing speeds. Customers have therefore greatly benefitted from these investments, while the Exchange's ability to recoup its investments has been hampered.

For example, the Exchange and its affiliated exchanges recently launched a multi-year initiative to improve Cboe Exchange Platform performance and capacity requirements to increase competitiveness, support growth and

advance a consistent world class platform. The goal of the project, among other things, is to provide faster and more consistent order handling and matching performance for options, while ensuring quicker processing time and supporting increasing volumes and capacity needs. For example, the Exchange recently performed switch hardware upgrades. Particularly, the Exchange replaced existing customer access switches with newer models, which the Exchange believes resulted in increased determinism. The recent switch upgrades also increased the Exchange's capacity to accommodate more physical ports by nearly 50%. Network bandwidth was also increased nearly two-fold as a result of the upgrades, which among other things, can lead to reduce message queuing. The Exchange also believes these newer models result in less natural variance in the processing of messages. The Exchange notes that it incurred costs associated with purchasing and upgrading to these newer models, of which the Exchange has not otherwise passed through or offset.

As of April 1, 2024, market participants also having the option of connecting to a new data center (*i.e.*, Secaucus NY6 Data Center ("NY6")), in addition to the current data centers at NY4 and NY5. The Exchange made NY6 available in response to customer requests in connection with their need for additional space and capacity. In order to make this space available, the Exchange expended significant resources to prepare this space, and will also incur ongoing costs with respect to maintaining this offering, including costs related to power, space, fiber, cabinets, panels, labor and maintenance of racks. The Exchange also incurred a large cost with respect to ensuring NY6 would be latency equalized, as it is for NY4 and NY5.

The Exchange also has made various other improvements since the current physical port rates were adopted in 2018. For example, the Exchange has updated its customer portal to provide more transparency with respect to firms' respective connectivity subscriptions, enabling them to better monitor, evaluate and adjust their connections based on their evolving business needs. The Exchange also performs proactive audits on a weekly basis to ensure that all customer cross connects continue to fall within allowable tolerances for Latency Equalized connections. Accordingly, the Exchange expended, and will continue to expend, resources to innovate and modernize technology so that it may benefit its TPHs and continue to compete among other

¹⁷ See <https://data.bls.gov/timeseries/PCU5182105182105>.

¹⁸ See <https://www.usinflationcalculator.com/inflation/consumer-price-index-and-annual-percent-changes-from-1913-to-2008/>.

¹⁹ See Securities and Exchange Release No. 83455 (June 15, 2018), 83 FR 28892 (June 21, 2018) (SR-C2-2018-014).

²⁰ See <https://data.bls.gov/timeseries/PCU5182105182105>.

²¹ See, *e.g.*, Securities Exchange Act Release Nos. 34-100994 (September 10, 2024), 89 FR 75612 (September 16, 2024) (SR-NYSEARCA-2024-79).

options markets. The ability to continue to innovate with technology and offer new products to market participants allows the Exchange to remain competitive in the options space which currently has 18 registered options markets and potential new entrants. If the Exchange were not able to assess incrementally higher fees for its connectivity, it would effectively impact how the Exchange manages its technology and hamper the Exchange's ability to continue to invest in and fund access services in a manner that allows it to meet existing and anticipated access demands of market participants. Disapproval of fee changes such as the proposal herein, could also have the adverse effect of discouraging an exchange from improving its operations and implementing innovative technology to the benefit of market participants if it believes the Commission would later prevent that exchange from recouping costs and monetizing its operational enhancements, thus adversely impacting competition as well as the interests of market participants and investors.

Finally, the proposed fee is also the same as is concurrently being proposed for its Affiliate Exchanges. Further, TPHs are able to utilize a single port to connect to all of its Affiliate Exchanges and will only be charged one single fee (*i.e.*, a market participant will only be assessed the proposed \$8,500 even if it uses that physical port to connect to the Exchange and another (or even all 6) of its Affiliate Exchanges. Particularly, the Exchange believes the proposed monthly per port fee is reasonable, equitable and not unfairly discriminatory since as the Exchange has determined to not charge multiple fees for the same port. Indeed, the Exchange notes that several ports are in fact purchased and utilized across one or more of the Exchange's affiliated Exchanges (and charged only once).

The Exchange also believes that the proposed fee change is not unfairly discriminatory because it would be assessed uniformly across all market participants that purchase the physical ports. The Exchange believes increasing the fee for 10 Gb physical ports and charging a higher fee as compared to the 1 Gb physical port is equitable as the 1 Gb physical port is $\frac{1}{10}$ th the size of the 10 Gb physical port and therefore does not offer access to many of the products and services offered by the Exchange (*e.g.*, ability to receive certain market data products). Thus, the value of the 1 Gb alternative is lower than the value of the 10 Gb alternative, when measured based on the type of Exchange access it

offers. Moreover, market participants that purchase 10 Gb physical ports utilize the most bandwidth and therefore consume the most resources from the network. The Exchange also anticipates that firms that utilize 10 Gb ports will benefit the most from the Exchange's investment in offering NY6 as the Exchange anticipates there will be much higher quantities of 10 Gb physical ports connecting from NY6 as compared to 1 Gb ports. Indeed, the Exchange notes that 10 Gb physical ports account for approximately 90% of physical ports across the NY4, NY5, and NY6 data centers, and to date, 80% of new port connections in NY6 are 10 Gb ports. As such, the Exchange believes the proposed fee change for 10 Gb physical ports is reasonably and appropriately allocated.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed fee change will not impact intramarket competition because it will apply to all similarly situated TPHs equally (*i.e.*, all market participants that choose to purchase the 10 Gb physical port). Additionally, the Exchange does not believe its proposed pricing will impose a barrier to entry to smaller participants and notes that its proposed connectivity pricing is associated with relative usage of the various market participants. For example, market participants with modest capacity needs can continue to buy the less expensive 1 Gb physical port (which cost is not changing) or may choose to obtain access via a third-party re-seller. While pricing may be increased for the larger capacity physical ports, such options provide far more capacity and are purchased by those that consume more resources from the network.

Accordingly, the proposed connectivity fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most.

The proposed fee change also does not impose a burden on competition or on other Self-Regulatory Organizations that is not necessary or appropriate. As described above, the Exchange evaluated its proposed fee change using objective and stable metric with limited volatility. Utilizing Data Processing PPI

over a specified period of time is a reasonable means of recouping a portion of the Exchange's investment in maintaining and enhancing the connectivity service identified above. The Exchange believes utilizing Data Processing PPI, a tailored measure of inflation, to increase certain connectivity fees to recoup the Exchange's investment in maintaining and enhancing its services and products would not impose a burden on competition.

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 Act²² and paragraph (f) of Rule 19b-4²³ 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-C2-2024-023 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.

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f).

All submissions should refer to file number SR-C2-2024-023. 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-C2-2024-023 and should be submitted on or before January 21, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2024-31091 Filed 12-27-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102007; File No. SR-NYSE-2024-80]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Fees for the NYSE Integrated Data Feed

December 19, 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 December 16, 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 and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain fees for the NYSE Integrated data feed. 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 the NYSE Proprietary Market Data Fees Schedule (“Fee Schedule”) to amend certain fees for the NYSE Integrated data feed (“NYSE Integrated Feed”) that would be operative February 3, 2025. Specifically, the Exchange proposes a one-time adjustment to certain of its fees for subscribing to the NYSE Integrated Feed,⁴ with certain exceptions. The Fee Schedule includes the Exchange's fees for subscribing to the NYSE Integrated

Feed, including an Access Fee, Redistribution Fee, Per User fees for Professional and Non-Professional Users, various categories of Non-Display Fees, a Non-Display Declaration Late Fee and a Multiple Data Feed Fee.⁵ With the exception of the Non-Professional User Fee, the Non-Display Declaration Late Fee and the Multiple Data Feed Fee, the Exchange proposes to increase the remaining fees by up to 12.31% on a one-time basis.⁶

The Exchange currently charges the following fees to subscribe to the NYSE Integrated Feed on a monthly basis: an Access Fee of \$7,500; a Redistribution Fee of \$4,000; a Professional User Fee and Non-Professional User Fee, on a per user basis, of \$70 and \$16, respectively; a Non-Display Fee of \$20,000, whether the use is for category 1, category 2 or category 3, with a category 3 cap of \$60,000;⁷ a Non-Display Declaration Late Fee of \$1,000; and a Multiple Data Feed Fee of \$200. The Exchange proposes to increase the aforementioned fees on a one-time basis as follows: the Access Fee, from \$7,500/month to \$8,400/month; the Redistribution Fee from \$4,000/month to \$4,400/month; the Professional User Fee (Per User) from \$70/month to \$78/month; and the Non-Display Fee from \$20,000/month to \$22,400/month, whether the use is for category 1, category 2 or category 3, with a category 3 cap of \$67,200/month. The Exchange's proposal to adjust fees excludes the Non-Professional User fee, the Non-Display Declaration Late fee and the Multiple Data Feed fee.

The NYSE Integrated Feed was established almost a decade ago. The

⁵ See Securities Exchange Act Release Nos. 76485 (November 20, 2015), 80 FR 74158 (November 27, 2015) (SR-NYSE-2015-57) (establishing access fee, user fees, non-display use fees, non-display declaration late fee and redistribution fee for NYSE Integrated Feed); and 76973 (January 26, 2016), 81 FR 5158 (February 1, 2016) (SR-NYSE-2016-09) (amending fees for NYSE Integrated Feed by adopting a multiple data feed fee).

⁶ The Exchange proposes to exclude the Non-Display Declaration Late Fee and the Multiple Data Feed Fee from the proposed fee increase because unlike the other fees for subscribing to the NYSE Integrated Feed, the Non-Display Declaration Late Fee and the Multiple Data Feed Fee are administrative fees and are uniform across all of the Exchange's market data products. The Exchange also proposes to exclude the Non-Professional User fees from the proposed fee increase because these fees are applicable to retail investors.

⁷ Category 1 Fees apply when a data recipient's Non-Display Use of real-time market data is on its own behalf as opposed to use on behalf of its clients. Category 2 Fees apply when a data recipient's Non-Display Use of real-time market data is on behalf of its clients as opposed to use on its own behalf. Category 3 Fees apply when a data recipient's Non-Display Use of real-time market data is for the purpose of internally matching buy and sell orders within an organization, including matching customer orders on a data recipient's own behalf and/or on behalf of its clients.

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The proposed rule change establishing the NYSE Integrated Feed was immediately effective on January 21, 2015. See Securities Exchange Act Release No. 74128 (January 23, 2015), 80 FR 4951 (January 29, 2015) (SR-NYSE-2015-03) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing the NYSE Integrated Feed Data Feed).

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

Exchange has not amended fees for the NYSE Integrated Feed since the fees were initially adopted in 2016. Between the implementation of fees for the NYSE Integrated Feed in January 2016 and October 2024, there was a remarkable increase in the number of messages processed by the Exchange. The following message rate metrics illustrate this increase in throughput:⁸

- Peak Rate by Millisecond: up approximately 116%
- Average Rate per Millisecond: up approximately 27%
- Peak Rate per Second: up approximately 34%⁹
- Average Rate per Second: up approximately 92%
- Peak Total Messages: up approximately 39%
- Average Total Messages: up approximately 92%
- Average Daily Volume: up approximately 32%

With this increase in message traffic the Exchange expended significant resources to improve its market data products to meet customer expectations, including continued investment in all aspects of the technology ecosystem (e.g., software, hardware, and network). During the period between 2016 (when the Exchange first adopted fees for the NYSE Integrated Feed) and 2024, advancements in system performance as measured by latency not only accommodated the high message traffic volumes, but stayed well ahead of it. The following latency metrics¹⁰ illustrate the increase in message processing speed, despite the significant message traffic growth:

- Median: down approximately 77%
- Average: down approximately 67%
- Max: down approximately 64%

The Exchange continues to invest heavily in enhancing its technology for the benefit and often at the behest of its customers, and these investments have increased the performance of the NYSE Integrated Feed. Yet the Exchange has not adjusted any of the fees included in this proposal since 2016, to even partially offset the costs of maintaining and enhancing its market data offerings.

As discussed below, the Exchange proposes to adjust its fees by an industry- and product-specific

inflationary measure. It is reasonable and consistent with the Act for the Exchange to recoup its investments, at least in part, by adjusting its fees. Continuing to operate at fees frozen at 2016 levels impacts the Exchange's ability to enhance its offerings and the interests of market participants and investors.

The fee increases the Exchange proposes are based on an industry-specific Producer Price Index (PPI), which is a tailored measure of inflation.¹¹ As a general matter, the Producer Price Index is a family of indexes that measures the average change over time in selling prices received by domestic producers of goods and services. PPI measures price change from the perspective of the seller. This contrasts with other metrics, such as the Consumer Price Index (CPI), that measure price change from the purchaser's perspective.¹² About 10,000 PPIs for individual products and groups of products are tracked and released each month.¹³ PPIs are available for the output of nearly all industries in the goods-producing sectors of the U.S. economy—mining, manufacturing, agriculture, fishing, and forestry—as well as natural gas, electricity, and construction, among others. The PPI program covers approximately 69 percent of the service sector's output, as measured by revenue reported in the 2017 Economic Census.

For purposes of this proposal, the relevant industry-specific PPI is the Data Processing and Related Services PPI ("Data PPI"), which is an industry net-output PPI that measures the average change in selling prices received by companies that provide data processing services.

The Data PPI was introduced in January 2002 by the Bureau of Labor Statistics (BLS) as part of an ongoing effort to expand Producer Price Index coverage of the services sector of the U.S. economy and is identified as NAICS—518210 in the North American Industry Classification System.¹⁴ According to the BLS "[t]he primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary

software—to process customers' transactions and data. Companies that offer processing services collect, organize, and store a customer's transactions and other data for record-keeping purposes. Price movements for the NAICS 518210 index are based on changes in the revenue received by companies that provide data processing services. Each month, companies provide net transaction prices for a specified service. The transaction is an actual contract selected by probability, where the price-determining characteristics are held constant while the service is repriced. The prices used in index calculation are the actual prices billed for the selected service contract."¹⁵

The Exchange believes the Data PPI is an appropriate measure to be considered in the context of the proposed rule change to modify the fee for its proprietary market data products because the Exchange uses its "own computer systems" and "proprietary software," i.e., its own data center and proprietary matching engine software, respectively, to collect, organize, store and report customers' transactions in U.S. equity securities on Pillar, the Exchange's proprietary trading platform. In other words, the Exchange is in the business of data processing and related services.

For purposes of this proposed rule change, the Exchange examined the Data PPI value for the period from January 2016 to October 2024. The Data PPI had a starting value of 103.2 in January 2016 and an ending value of 115.902 in October 2024, a 12.31% increase. This indicates that companies who are also in the data storage and processing business have generally increased prices for a specified service covered under NAICS 518210 by an average of 12.31% during this period. Based on that percentage change, the Exchange proposes to make a one-time fee increase by up to 12.31% for the NYSE Integrated Feed, which reflects an increase covering the entire period since the fees for NYSE Integrated Feed were initially adopted.

The Exchange further believes the Data PPI is an appropriate measure for purposes of the proposed rule change on the basis that it is a stable metric with limited volatility, unlike other consumer-side inflation metrics. In fact, the Data PPI has not experienced a greater than 2.16% increase for any one calendar year period since Data PPI was introduced into the PPI in January 2002.

⁸ The message rate metrics are for the period from January 2017 through October 2024.

⁹ Due to a technology upgrade, the Peak Rate per Second metric is for the period from December 2019 through October 2024.

¹⁰ These measurements compare the time difference between events on the NYSE matching engine and the time these events are published on the NYSE Integrated Feed. The latency metrics are for the period from January 2017 through October 2024.

¹¹ See <https://fred.stlouisfed.org/series/PCU51825182#0>.

¹² See <https://www.bls.gov/ppi/overview.htm>.

¹³ *Id.*

¹⁴ NAICS appears in table 5 of the PPI Detailed Report and is available at <https://data.bls.gov/timeseries/PCU518210518210>.

¹⁵ See <https://www.bls.gov/ppi/factsheets/producer-price-index-for-the-data-processing-and-related-services-industry-naics-518210.htm>.

The average calendar year change from January 2002 to December 2023 was .62%,¹⁶ with a cumulative increase of 15.67% over this 21-year period. The Exchange believes the Data PPI is considerably less volatile than other inflation metrics such as CPI, which has had individual calendar-year increases of more than 6.5%, and a cumulative increase of over 73% over the same period.¹⁷

The Exchange believes the Data PPI, and significant investments into, and enhanced performance of, the Exchange support the reasonableness of the proposed fee increases.¹⁸

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁹ in general, and Sections 6(b)(4) and 6(b)(5) of the Act,²⁰ in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

This belief is based on two factors. First, the current fees do not properly reflect the quality of the services and products, as fees for the services and products in question have been static in nominal terms, and therefore falling in real terms due to inflation. Second, the Exchange believes that investments made in enhancing the capacity and speed of Exchange systems increase the performance of the services and products.

The Proposed Rule Change Is Reasonable

As noted above, the Exchange has not increased any of the fees included in the proposal since 2016. However, in the years since the adoption of the initial fees the Exchange has made significant investments in upgrades to Exchange systems, enhancing the quality of its services, as measured by, among other things, increased throughput and faster processing speeds. In other words, Exchange customers have greatly

benefitted, while the Exchange's ability to recoup its investments has been hampered.

Between 2016 and 2024, the inflation rate is 3.48% per year, on average, producing a cumulative inflation rate of 31.52%.²¹ Using the more targeted inflation number of Data PPI, the cumulative inflation rate was 12.31%. The exchange believes the Data PPI is a reasonable metric to base this fee increase on because it is targeted to producer-side increases in the data processing industry, which based on the definition adopted by BLS would include the Exchange's market data products.

Notwithstanding inflation, as noted above, the Exchange has not increased its fees at all for over nine years for the subject services. The proposed fee changes represent a modest increase from the current fees.

The Exchange believes the proposed fee increase is reasonable in light of the Exchange's continued expenditure in maintaining a robust technology ecosystem. Furthermore, the Exchange continues to invest in maintaining and enhancing its market data products—for the benefit and often at the behest of its customers and global investors. Such enhancements include refreshing all aspects of the technology ecosystem including software, hardware, and network while introducing new and innovative products.²² The goal of the enhancements discussed above, among other things, is to provide faster and more consistent market data products, while ensuring quicker processing time. Accordingly, the Exchange continues to expend resources to innovate and modernize technology so that it may benefit its members in offering its market data products.

The Proposed Fees Are Equitably Allocated and Not Unfairly Discriminatory

The Exchange believes that the proposed fee increases are equitably allocated and not unfairly discriminatory because they would apply to all data recipients that choose to subscribe to the NYSE Integrated Feed. Any subscriber that chooses to subscribe to the NYSE Integrated Feed would be subject to the same Fee Schedule, regardless of what type of business they operate or the use they

plan to make of the data feed. Additionally, the fee increase would be applied uniformly to subscribers without regard to Exchange membership status or the extent of any other business with the Exchange or affiliated entities.

The Exchange also believes that the proposal represents an equitable allocation of reasonable dues, fees and other charges because Exchange fees have fallen in real terms during the relevant period.

Finally, the Exchange believes that the proposed fee changes are not unfairly discriminatory because the fees would be assessed uniformly across all market participants, in the same manner they are today, that voluntarily subscribe to the NYSE Integrated Feed, which would remain available for purchase by all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed fees will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition. The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As noted above, the fee schedule would continue to apply to all subscribers of the NYSE Integrated Feed in the same manner as it does today albeit at inflation-adjusted rates for certain fees, and customers may choose whether to subscribe to the feed at all. The Exchange also believes that the level of the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue burden on competition.

Intermarket Competition. The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate. In determining the proposed fees, the Exchange utilized an objective and stable metric with limited volatility. Utilizing Data PPI over a specified period of time is a reasonable means of recouping the Exchange's investment in maintaining and enhancing the NYSE Integrated Feed. The Exchange believes utilizing Data PPI, a tailored measure of inflation, to increase certain fees for NYSE Integrated Feed to recoup the Exchange's investment in maintaining and enhancing its market data products would not impose a burden on competition.

¹⁶ The Data PPI through the calendar year 2024 does not become available until January 2025.

¹⁷ See <https://www.usinflationcalculator.com/inflation/consumer-price-index-and-annual-percent-changes-from-1913-to-2008/>.

¹⁸ See *supra* discussion of system performance advancements. Additionally, the Exchange's affiliate, NYSE Arca, Inc. recently increased certain fees for subscribing to the NYSE Arca Integrated Feed, based on comparisons to inflation. See Securities Exchange Act Release Nos. 34–100994 (September 10, 2024), 89 FR 75612 (September 16, 2024) (SR–NYSEARCA–2024–79).

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(4), (5).

²¹ See <https://www.officialdata.org/us/inflation/2016?amount=1>.

²² See, e.g., Securities Exchange Act Release No. 99689 (March 7, 2024), 89 FR 18466 (March 13, 2024) (SR–NYSE–2024–12) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the NYSE Aggregated Lite Market Data Feed).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) ²³ of the Act and subparagraph (f)(2) of Rule 19b-4 ²⁴ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) ²⁵ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2024-80 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-2024-80. 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-NYSE-2024-80 and should be submitted on or before January 21, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Vanessa A. Countryman,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102000; File No. SR-NYSE-2024-82]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Timeline To Implement the Proposed Rule Change To Enhance How NYSE Would Make Certain Information the Exchange Receives From Its Listed Companies Publicly Available

December 19, 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 December 18, 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 and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to implement the change to make certain information the Exchange receives from its listed companies publicly available, in the first quarter of 2025. 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

On October 28, 2024, the Exchange filed a proposed rule change to describe an enhancement to how NYSE would publicly disseminate information received by the Exchange in its role as a listing venue.⁴ In SR-NYSE-2024-68, the Exchange indicated that because of the technology changes associated with the proposed rule change, the Exchange would announce the implementation date by Trader Update, which, subject to the effectiveness of the proposed rule change, would be no later than in the fourth quarter of 2024. The Exchange now proposes to announce the implementation of the enhancement described in SR-NYSE-2024-68 in the first quarter of 2025.

This proposed rule change will allow the Exchange to conduct additional testing of its software delivery prior to

²³ 15 U.S.C. 78s(b)(3)(A).

²⁴ 17 CFR 240.19b-4(f)(2).

²⁵ 15 U.S.C. 78s(b)(2)(B).

²⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 101516 (November 5, 2024), 89 FR 89061 (November 12, 2024) (SR-NYSE-2024-68).

implementation. The Exchange will issue a Trader Update notifying market participants prior to implementing the enhancement described in SR–NYSE–2024–68.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with section 6(b) of the Act⁵ in general, and furthers the objectives of section 6(b)(5) of the Act⁶ in particular, in that 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 mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest by allowing the Exchange additional time to plan and implement the proposed enhancement.

The Exchange notes that the substance of the enhancement described in SR–NYSE–2024–68 is not changing, only the implementation timeline is changing with this proposal.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal to implement the enhancement described in SR–NYSE–2024–68 in the first quarter of 2025 does not impose an undue burden on intermarket or on intramarket competition. The proposed rule change will simply allow the Exchange additional time to properly plan and put into place the enhancement described in SR–NYSE–2024–68.

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

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant

burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b–4(f)(6) thereunder.⁸

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/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR–NYSE–2024–82 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–2024–82. 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–NYSE–2024–82 and should be submitted on or before January 21, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024–30913 Filed 12–27–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–102029; File No. SR–NASDAQ–2024–083]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Assume Operational Responsibility for Litigating Contested Disciplinary Proceedings Arising Out of Nasdaq-Led Investigations and Enforcement Activities and Amend Rules 9131 and 9810 (of General 5, the Nasdaq Discipline Rules) To Grant Nasdaq Regulation the Same Authority as FINRA In Contested Disciplinary Proceedings To Serve Complaints and Memoranda of Authority

December 23, 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 December 11, 2024, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

⁹ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to assume operational responsibility for certain enforcement functions currently performed by the Financial Industry Regulatory Authority ("FINRA") under the Exchange's authority and supervision. Specifically, the Exchange proposes to (1) assume operational responsibility for litigating contested disciplinary proceedings arising out of Nasdaq-led investigations and enforcement activities, and (2) amend Rules 9131 and 9180[sic] (of General 5, the Nasdaq Discipline Rules) to grant Nasdaq Regulation the same authority as FINRA in contested disciplinary proceedings to serve complaints and memoranda of authority.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

Section 6 of the Act requires that national securities exchanges enforce their members' compliance with federal securities laws and rules as well as the exchanges' own rules.³ As a self-regulatory organization ("SRO"), Nasdaq must have a comprehensive regulatory program that includes the investigation and prosecution of rule violations. Since it became a national securities exchange, Nasdaq has contracted with FINRA through various regulatory services agreements ("RSAs") to perform certain of these regulatory functions on its behalf. However, as the Commission has made clear, "the

Nasdaq Exchange bears the responsibility for self-regulatory conduct and primary liability for self-regulatory failures, not the SRO retained to perform regulatory functions on the Exchange's behalf."⁴

a. Background

In April 2019, Nasdaq received Commission approval to reallocate operational responsibility from FINRA to Nasdaq Regulation Department⁵ for certain investigation and enforcement activity,⁶ namely:

- investigation and enforcement responsibilities for conduct occurring on The Nasdaq Options Market,⁷ and
- investigation and enforcement responsibilities for conduct occurring on Nasdaq's equity market only, *i.e.*, conduct not also on non-Nasdaq-affiliated equities markets.⁸

In March 2020, Nasdaq received Commission approval to reallocate operational responsibility from FINRA to Nasdaq Regulation for additional enforcement activity, namely the handling of certain contested disciplinary proceedings.⁹ Specifically, Nasdaq requested and received authority to handle contested disciplinary proceedings arising out of Nasdaq-led investigation and enforcement activities that "FINRA is unable or unwilling to handle due to strained resources or other similar limitations."¹⁰ For those contested disciplinary proceedings over which Nasdaq did not request approval to assume operational responsibility, FINRA continues to litigate those matters under the Exchange's supervision.

⁴ Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550, 3556 (January 23, 2006).

⁵ Under Nasdaq Rule 9120(t), Nasdaq Regulation includes the Nasdaq Enforcement Department.

⁶ Securities Exchange Act Release No. 85505 (April 3, 2019), 84 FR 14170, 14171 (April 9, 2019).

⁷ As appropriate, Nasdaq Regulation coordinates with other SROs to avoid regulatory duplication in cross-market investigations, primarily through the Cross Market Regulation Working Group.

⁸ With respect to the operational responsibilities described, Nasdaq Regulation already performed these functions for the Nasdaq PHLX LLC ("Phlx"), Nasdaq ISE, LLC ("ISE"), Nasdaq GEMX, LLC ("GEMX"), and Nasdaq MRX, LLC ("MRX") because there is no comparable rule to Rule General 2, Section 7 on those markets. Nasdaq BX, Inc. ("BX"), which does have a comparable rule to Rule General 2, Section 7, received Commission approval to perform these functions in June 2019. See Securities Exchange Act Release No. 86051 (June 6, 2019), 84 FR 27387 (June 22, 2019).

⁹ See Securities Exchange Act Release No. 88209 (February 13, 2020), 85 FR 9870 (February 20, 2020), as modified by Amendment No. 1.; Securities Exchange Act Release No. 88516 (March 30, 2020), 85 FR 19042 (April 3, 2020).

¹⁰ *Id.*

b. Proposed Rule Change

Now the Exchange requests approval to (1) assume operational responsibility for litigating contested disciplinary proceedings arising out of Nasdaq-led investigations and enforcement activities, and (2) amend Rules 9131 and 9180[sic] (of General 5, the Nasdaq Discipline Rules) to grant Nasdaq Regulation the same authority as FINRA in contested disciplinary proceedings to serve complaints and memoranda of authority.

Reallocation of Operational Responsibility

The March 2020 Commission approval vested Nasdaq with the authority to litigate a subset of contested disciplinary proceedings pertinent to the Exchange (*i.e.*, those contested disciplinary matters arising out of Nasdaq-led investigations and enforcement activities that "FINRA is unable or unwilling to handle due to strained resources or other similar limitations").¹¹ This proposal expands Nasdaq's enforcement authority by enabling Nasdaq Regulation to litigate contested disciplinary proceedings arising out of Nasdaq-led investigations and enforcement activities in the first instance, regardless of FINRA's ability or willingness to handle the matter.

Nasdaq's assumption of broader operational responsibility for litigating contested disciplinary proceedings arising out of Nasdaq-led investigations and enforcement activities allows for the more immediate and efficient enforcement of federal securities laws and rules and Nasdaq's own rules. Nasdaq enjoys deep expertise in its own market structure and in surveillance on the Exchange. When a Nasdaq investigation identifies impermissible activity on its Exchange and Nasdaq cannot settle the matter with the responsible Nasdaq member, Nasdaq Regulation's assumption of the ability to litigate the contested disciplinary proceeding avoids the need for FINRA's Enforcement Department to familiarize itself with the Nasdaq-led investigation and consequently helps expedites the enforcement of Nasdaq's rules and the securities laws and rules with which Nasdaq members must comply.

The Exchange notes that this proposal would not change the disciplinary process or the procedural protections already afforded to Nasdaq members in contested disciplinary proceedings. For example, the rules applicable to the disciplinary process remain the same, and FINRA's Office of Hearing Officers

³ 15 U.S.C. 78(f).

¹¹ See *supra* n. 9.

will continue to administer the hearing process for all contested disciplinary proceedings. Therefore, regardless of whether FINRA or the Exchange is responsible for litigating the matter, FINRA's Office of Hearing Officers will administer the hearing process.¹²

Nasdaq Rule General 2, Section 7 requires that Nasdaq obtain Commission approval if regulatory functions subject to RSAs in effect at the time that Nasdaq began to operate as a national securities exchange are no longer performed by FINRA or an affiliate thereof, or by another independent self-regulatory organization. Nasdaq believes that assuming operational responsibility for contested disciplinary proceedings arising out of Nasdaq-led investigations will further its regulatory program and benefit investors and the markets. Commission approval of the proposal would allow Nasdaq to deliver increased efficiencies in the regulation of its market and to more effectively and promptly regulate activity on its market.

Notwithstanding that approval, FINRA will continue to perform certain functions pursuant to a RSA,¹³ including, among other things, the handling of certain contested disciplinary proceedings arising out of FINRA-led investigation and enforcement activities.¹⁴

Technical Amendments Permitting Nasdaq Regulation To Serve Complaints and Memoranda of Authorities

Nasdaq also proposes two technical updates to its Code of Procedure. Specifically, the proposed amendments will permit Nasdaq Regulation Department to serve (1) complaints and; (2) memoranda of authority in support of temporary cease-and-desist orders in contested disciplinary proceedings. Under the current rules, which Nasdaq adopted before the March 2020 rule change permitting Nasdaq Regulation to litigate certain contested disciplinary matters, only FINRA's Department of Enforcement may serve a respondent with either a complaint or a memorandum of authorities supporting a temporary cease-and-desist order. These technical amendments would

avoid the need for FINRA to serve Nasdaq-authored complaints and memoranda of authority on respondents, streamlining litigation in contested disciplinary proceedings handled by Nasdaq Regulation. These technical amendments also align the two affected rules with the remainder of General 5 (the Nasdaq Discipline Rules), which rules grant Nasdaq Regulation and FINRA's Department of Enforcement equivalent powers.

Pursuant to Rule 9131(a) (contained in General 5), "a complaint shall be served on each Party by the [FINRA] Department of Enforcement." The proposed amendment would permit Nasdaq Regulation to also serve a complaint. Similarly, in contested disciplinary proceedings in which Nasdaq or FINRA seeks a temporary cease-and-desist order, Rule 9810(b)(2) (contained in General 5) permits only FINRA's Department of Enforcement to serve a memorandum of authorities in support of the temporary cease-and-desist request. This proposed amendment grants Nasdaq Regulation the same authority as FINRA's Department of Enforcement to serve a memorandum of authorities.

2. Statutory Basis

The Exchange believes that its proposals are consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁶ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

In addition, the Exchange believes that the proposals furthers the objectives of Section 6(b)(7) of the Act,¹⁷ in particular, in that these changes will continue to provide for fair procedures for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof.

The Exchange believes that its proposal is in keeping with those principles because it will ensure that contested matters retained by the Nasdaq Regulation Department are handled effectively, efficiently and with

immediacy. Nasdaq will manage these cases directly in all instances, with Nasdaq retaining the option to refer cases to FINRA if Nasdaq's resources are constrained or if another circumstance warrants FINRA litigating a contested disciplinary proceeding under Nasdaq's supervision. This approach allows Nasdaq to take timely action when appropriate, enforce its rules, and uphold investor protection and market integrity. The proposed amendments, however, would not change or alter in any way the disciplinary processes around how contested matters are handled. Rather, they will result in more effective regulation because it will facilitate timely and more efficient action. Internalizing the litigation function in Nasdaq-led contested matters will also facilitate effective regulation because the Exchange will continue to bring to bear its overall market and surveillance expertise throughout the disciplinary proceedings. Permitting Nasdaq to serve (1) complaints and (2) memoranda of authority in support of temporary cease-and-desist orders are ministerial changes that will enable Nasdaq to more quickly and efficiently litigate contested disciplinary matters arising out of Nasdaq-led investigations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is primarily administrative in nature and does not introduce any competitive concerns. Rather than addressing competitive issues, the purpose and effect of the proposed rule change is to enable Nasdaq to litigate contested disciplinary proceedings arising out of Nasdaq-led investigations and enforcement activities. Permitting Nasdaq to serve (1) complaints and (2) memoranda of authority in support of temporary cease-and-desist orders are ministerial changes and do not introduce any competitive concerns.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal**

¹² FINRA's Office of Hearing Officers plays no role in uncontested disciplinary proceedings.

¹³ In addition to work performed pursuant to a RSA, FINRA also performs work for matters covered by agreements to allocate regulatory responsibility under Rule 17d-2 of the Act.

¹⁴ Although Nasdaq anticipates handling contested disciplinary proceedings arising out of Nasdaq-led investigations and enforcement activities, Nasdaq retains the right to refer particular matters arising out of Nasdaq-led investigations or enforcement activities to FINRA's Department of Enforcement to handle in appropriate circumstances.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78f(b)(7).

Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such 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-NASDAQ-2024-083 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-NASDAQ-2024-083. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication

submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2024-083 and should be submitted on or before January 21, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-31340 Filed 12-27-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101980; File No. SR-CboeEDGA-2024-050]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update Its Fee Schedule Regarding Uncontrolled External Distributors

December 19, 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 December 16, 2024, Cboe EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the "Exchange" or "EDGA") proposes to update its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/edga/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements

concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Market Data section of its Fee Schedule to adopt a new fee waiver for Uncontrolled External Distributors.³ Particularly, the Exchange proposes to: (i) adopt a waiver of External Distribution fees for Uncontrolled External Distributors of the Summary Depth Feed and (ii) adopt fee waiver of External Distribution fees and Data Consolidation fees for Uncontrolled External Distributors of the Cboe One Summary Feed and Cboe One Premium Feed.⁴

EDGA Top and Summary Depth Data

By way of background, the Exchange offers the EDGA Top Data Feed, which is a data feed that offers top-of-book quotations and last sale information based on orders entered into the Exchange's System. The EDGA Top Data Feed benefits investors by facilitating their prompt access to real-time top-of-book information contained in EDGA Top Data. The Exchange's affiliated equities exchanges (*i.e.*, Cboe BYX, Inc. ("BYX"), Cboe BZX Exchange, Inc. ("BZX"), and Cboe EDGX Exchange, Inc. ("EDGX") (collectively, "Affiliates" and together with the Exchange, "Cboe Equities Exchanges") also offer similar top-of-book data feeds. Particularly, each of the Exchange's Affiliates offer top-of-book quotation and last sale information based on their own quotation and trading activity that is substantially similar to the information provided by the Exchange through the EDGA Top Data Feed.

In addition to EDGA Top Data Feed, the Exchange offers EDGA Summary Depth Data Feed, which is a data feed that offers aggregated two-sided quotations for all displayed orders

³ The Exchange initially adopted this fee waiver on December 2, 2024 (SR-CboeEDGA-2024-049). On December 16, 2024, the Exchange withdrew that filing and submitted this filing.

⁴ For clarity, the Exchange also proposes to modify the applicable sections of its Fee Schedule for these data feeds to use numbered footnotes in lieu of asterisks.

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

entered into the System for up to five (5) price levels. The EDGA Summary Depth Data Feed also contains the individual last sale information, Market Status, Trading Status, and Trade Break messages.⁵ The EDGA Summary Depth Data Feed benefits investors by facilitating their prompt access to real-time market depth information contained in EDGA Summary Depth Data. The Exchange's Affiliates also offer similar depth-of-book data feeds. Particularly, each of the Exchange's Affiliates offer depth-of-book quotations up to five (5) price levels based on their own quotation and trading activity that is substantially similar to the information provided by the Exchange through the EDGA Summary Depth.

The Exchange proposes to make the following fee changes relating to EDGA Summary Depth.

EDGA Summary Depth Data Feed New Uncontrolled External Distributor External Distribution Fee Waiver

Currently, the Exchange does not assess an External Distribution fee to any External Distributor⁶ of the EDGA Top Data Feed and as such, the Exchange does not propose a fee waiver for this. However, all External Distributors of EDGA Summary Depth Data Feed are charged an External Distribution fee of \$2,500 per month.⁷ The Exchange proposes to adopt a new waiver which will provide that new Uncontrolled External Distributors of the EDGA Summary Depth feed will not be charged the External Distributor fee until such time they enlist one or more Users⁸ to receive the EDGA Summary Depth Feed (the "New Uncontrolled External Distributor EDGA Depth Fee Waiver").⁹ "Uncontrolled External Distributors" distribute data externally to a User that is not an affiliate of the Uncontrolled Distributor and is unable to control the entitlements of and

display of information to such User (*i.e.*, a data feed subscriber).¹⁰ To be eligible for the New Uncontrolled External Distributor EDGA Depth Fee Waiver, a new Uncontrolled External Distributor must not have received EDGA Summary Depth feed within the last 18 months.¹¹ As discussed further below, the Exchange seeks to adopt the proposed New Uncontrolled External Distributor EDGA Depth Fee Waiver to incentivize vendors to adopt the EDGA Summary Depth feed proactively without having to wait for customer demand to start development and integration of data feeds. The Exchange notes that both the Exchange and its Affiliates currently offer similar credits to External Distributors (which both Uncontrolled and Controlled External Distributors are eligible for) for the purposes of allowing them time to enlist new users to receive certain data feeds. For example, the Exchange and its Affiliates currently offer a one (1) month New External Distributor Credit applicable to External Distributors of top-of-book data feeds.¹² They also offer a three (3) month new External Credit applicable to External Distributors of summary depth-of-book feeds.¹³

Cboe One Summary and Premium

By way of background, Cboe One Premium is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer ("BBO") of all displayed orders for securities traded on EDGA and its Affiliates and contains optional functionality which enables recipients to receive aggregated two-sided quotations from EDGA and its Affiliates for up to five (5) price levels.¹⁴ The Cboe One Premium Data Feed is created using the data from the

Exchange and its Affiliates' Summary Depth data feeds. In contract, Cboe One Summary is a data feed that disseminates, on a real-time basis, the aggregate BBO of all displayed orders for securities traded on EDGA and its affiliated equities exchanges and also contains individual last sale information for the EDGA and its affiliated equities exchanges.¹⁵ The Cboe One Summary Data Feed is created using the data from the Exchange and its Affiliates' Top data feeds. Currently, the Exchange offers the New External Distributor Credit which provide that new External Distributors of the Cboe One Premium Feed and Cboe One Summary Feed will not be charged an External Distributor Fee for their first three (3) months and one (1) month, respectively, in order to allow them to enlist new Users to receive the respective feed.¹⁶ The Exchange proposes to make the following fee change relating to both the Cboe One Summary Data Feed and the Cboe One Premium Data Feed.

Cboe One Summary and Premium New Uncontrolled External Distributor External Distribution and Data Consolidation Fee Waivers

Currently, the Exchange assesses all External Distributors of Cboe One Summary an External Distribution fee of \$5,000 per month and External Distributors of Cboe One Premium an External Distribution fee of \$12,500 per month.¹⁷ The Exchange proposes to adopt fee waivers which will provide that new Uncontrolled External Distributors of the Cboe One Summary and Cboe One Premium feeds will not be charged either the (i) External Distribution fees nor (ii) Data Consolidation fee until such time they enlist one or more Users to receive the Cboe One Summary or Cboe One Premium Feeds (the "New Uncontrolled External Distributor Cboe One Summary and Cboe One Premium Fee Waiver").¹⁸

⁵ See Exchange Rule 13.8(f).

⁶ See EDGA Fees Schedule noting a cost a monthly External Distribution cost of \$0.

⁷ External Distribution Fees for EDGA Summary Depth is subject to the New External Distributor Credit and eligible for a free trial. See EDGA Equities Exchange Fees Schedule, Market Data Fees.

⁸ The Exchange defines a "User" of an Exchange Market Data Product as a natural person, a proprietorship, corporation, partnership or entity, or device (computer or other automated service), that is entitled to receive Exchange data. See EDGA Equities Exchange Fees Schedule, Market Data Fees.

⁹ Uncontrolled External Distributors will receive at least the New External Distributor credit of at least three months for EDGA Summary Depth. For example, if an Uncontrolled Distributor enlists a new subscriber of EDGA Summary Depth during its second month taking EDGA Summary Depth, the Uncontrolled External Distributor will still receive a credit for the remainder of the second month, as well as the third month under the existing New External Distributor Credit program.

¹⁰ See Cboe Global Markets North American Data Policies. The Exchange proposes to codify the definition of an "Uncontrolled External Distributor" in the Definitions section of the Market Data Fees schedule in the Exchange's Fees Schedule for transparency and clarity.

¹¹ The Exchange notes that it has a similar 18 month requirement for participants to be considered eligible for the New Member Program. See EDGA Equities Exchange Fees Schedule, New Member Program.

¹² See *e.g.*, EDGX Equities Exchange Fees Schedule, Market Data Fees.

¹³ See *e.g.*, *Id.*

¹⁴ The Cboe Aggregated Market ("Cboe One") Feed is a data feed that contains the aggregate best bid and offer of all displayed orders for securities traded on the Exchange and its affiliated exchanges (*i.e.*, EDGX, EDGA, and BZX). See Exchange Rule 13.8(b). The Cboe One Feed contains optional functionality which enables recipients to receive aggregated two-sided quotations from the Cboe Equities Exchanges for up to five (5) price levels ("Cboe One Premium Feed"). The Cboe One Premium external distribution fee is equal to the aggregate EDGX Summary Depth, BYX Summary Depth, EDGA Summary Depth, and BZX Summary Depth external distribution fees.

¹⁵ The Exchange notes that when it first adopted the New External Distributor Credit for Cboe One Summary, it similarly applied for a new External Distributor's first three (3) months. See Securities Exchange Act Release No. 74283 (February 18, 2015), 80 FR 9809 (February 24, 2015) (SR-EDGA-2015-09).

¹⁶ See EDGA Fee Schedule.

¹⁷ External Distribution Fees for both Cboe One Summary and Cboe One Premium are subject to the New External Distribution Credit and eligible for a free trial. See EDGA Equities Exchange Fees Schedule.

¹⁸ The proposed waivers of the External Distribution fees for each of Cboe One Summary and Cboe One Premium will be applied separately. For example, when an Uncontrolled External Distributor that is receiving a fee waiver for both Cboe One Summary and Cboe One Premium enlists a first User for Cboe One Summary, the Uncontrolled External Distributor will no longer

To be eligible for either fee waiver for the applicable feed(s) (Cboe One Summary and/or Cboe One Premium), the new Uncontrolled Data Distributor must not have received the applicable data feed(s) for which it seeks a waiver in the last 18 months.¹⁹ For clarity, similar to the New Uncontrolled External Distributor EDGA Depth Fee Waiver, while the Uncontrolled External Distributor receives the New Uncontrolled External Distributor Cboe One Summary and Cboe One Premium Fee Waiver, the Uncontrolled External Distributor will not have any customers receiving this data. As described herein, once the New Uncontrolled External Distributor enlists its first User, it is no longer eligible to receive the New Uncontrolled External Distributor Cboe One Summary and Cboe One Premium Fee Waiver.

To start, the Exchange's proposal to waive the External Distributor fee for New Uncontrolled External Distributors until a User is enlisted, will prevent the combined cost of subscribing to BYX, EDGA, EDGX, and BZX Summary Depth feeds for new Uncontrolled External Distributors to be greater than those currently charged to subscribe to the Cboe One Premium feed. Similarly, the proposed External Distributor fee waiver for Cboe One Summary will prevent the combined cost of subscribing to BYX, EDGA, EDGX, and BZX Top feeds for new Uncontrolled External Distributors to be greater than those currently charged to subscribe to the Cboe One Summary feed.

Next, the Exchange proposes to waive the Data Consolidation fee for New Uncontrolled External Distributors until its first User enlists for the Cboe One feeds. The Exchange currently charges Distributors of the Cboe One Feeds a separate Data Consolidation Fee of \$1,000 per month, which reflects the value of the aggregation and consolidation function the Exchange performs in creating the Cboe One Options Feed.²⁰ As stated above, the

eligible to receive the waiver for Cboe One Summary, but will still receive the waiver for Cboe One Premium until and unless it enlists a new subscriber for Cboe One Premium. Additionally, Uncontrolled External Distributors will receive at least the one month New External Distributor Credit for Cboe One Summary and the New External Distributor credit of at least three months for Cboe One Premium. For example, if an Uncontrolled Distributor enlists a new subscriber of Cboe One Premium during its second month taking Cboe One Premium, the Uncontrolled External Distributor will still receive a credit for the remainder of the second month, as well as the third month under the existing New External Distributor Credit program.

¹⁹ See *supra* note 11.

²⁰ See Cboe EDGA Fee Schedule. If a vendor distributes the Cboe One Options Feed to another firm, who then re-distributes the Cboe One Options

Exchange creates the Cboe One feeds from data derived from the Cboe Equities Exchanges. Distributors (including vendors) could similarly create a competing product to the Cboe One feeds based on these individual data feeds offered by the Exchanges and could charge its clients a fee that it believes reflects the value of the aggregation and consolidation function.

The Exchange proposes to adopt this fee waiver to similarly prevent new Uncontrolled External Distributors of the Cboe One Summary or Cboe One Premium feeds from being charged a Data Consolidation Fee until such time they enlist one or more Users to receive the Cboe One Premium or Cboe One Summary feeds.

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.²¹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²² 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) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes this proposal is consistent with Section 6(b)(8) of the Act, which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.²³ In addition, the Exchange believes that the proposed rule change is consistent with Section 11(A) of the Act as it supports (i) fair competition among brokers and dealers, among exchange markets, and between

exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.²⁴

First, the Exchange notes that the EDGA Summary Depth Feed, Cboe One Summary Data Feed and Cboe One Premium Data Feed (together, the "Applicable Feeds") are distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make these data products available. Distributors (including vendors) and Users can therefore discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Further, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

The Exchange proposes that the proposed waivers applicable to EDGA Depth and Cboe One Feeds (together, the "New Uncontrolled External Distributor Fee Waivers") only apply to Uncontrolled External Distributors for two reasons. The first is to account for Uncontrolled External Distributors needing to develop to the data feed itself. By way of background, the other category of External Data Distributors are Controlled Distributors.²⁵ Controlled Distributors both (i) provides data to a User and (ii) controls the entitlements of and display of information to such User.²⁶ Therefore, the key distinction between Uncontrolled Distributors and Controlled Distributors is that Uncontrolled Distributors distribute a data feed and Controlled Distributors enable visible data for one of its Users. The proposed fee waivers will allow Uncontrolled External Distributors the necessary time to develop to the data feed itself and program all of the different messages, fields and flags and not subject them to any fees until such time they are able to recoup their costs from end-users. Additionally, once the data feed is setup on the Uncontrolled External Distributors end, there are typically long lead times for Uncontrolled External Distributors to onboard new downstream data feed customers. The lead times, or sales cycles, are vastly different for

²⁴ 15 U.S.C. 78k-1.

²⁵ Controlled Distributors may be Internal or External Distributors. See *supra* note 10. "Controlled External Distributors" provide data to an unaffiliated User (*i.e.*, externally distribute) and unlike Uncontrolled External Distributors, they control the entitlement of and display of info to such User.

²⁶ *Id.*

Feed, both entities would be subject to the Data Consolidation Fee. A vendor will only be assessed a single Data Consolidated Fee, even if it distributes Cboe One Options Feed to more than one entity.

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(5).

²³ 15 U.S.C. 78f(b)(8).

Uncontrolled versus Controlled Distributors, as Uncontrolled Distributors are attempting to locate Users who need to receive a real-time market data feed for downstream ingestion on their side (whether this be for trading, analysis, or application development). In contrast, Controlled Distributors are only entitling individual Users to view the data on a pre-existing Display application. For an Uncontrolled Distributor to both set up and find its first User as a data feed subscriber, it can easily take several months. As there is more uncertainty with the viability of both developing a data feed and finding Users for this data feed after the Uncontrolled External Distributor develops it, the Exchange believes it is therefore reasonable, equitable and not unfairly discriminatory for this discount to only apply to Uncontrolled External Distributors to encourage development of their data offerings.

The Exchange has also taken into consideration its affiliated relationship with its Affiliates in its design of the proposed waivers²⁷ to ensure that vendors would be able to offer similar products to its Cboe One Summary and Cboe One Premium Feeds on the same terms as the Exchange from a cost perspective. While the Cboe Equities Exchanges are the exclusive distributors of the individual data feeds from which certain data elements may be taken to create the Cboe One feeds, they are not the exclusive distributors of the aggregated and consolidated information that comprises the Cboe One feeds. Any entity that receives, or elects to receive, the individual data feeds would be able to, if it so chooses, to create a data feed with the same information included in either of the Cboe One feeds and sell and distribute it to its clients so that it could be received by those clients as quickly as the Cboe One feeds would be received by those same clients. Such entities would also not be assessed any greater fees by the Exchange than the Exchange assess for the Cboe One feeds (*i.e.*, those who elect to distribute and consolidate the individual data fees and those who elect to distribute the Cboe One feeds will all be eligible for the proposed fee waivers offered by the Exchange).

New External Distributor Credit

The Exchange believes it is reasonable to not charge Uncontrolled External Distributors of an Applicable Feed(s) until such time they enlist one or more Users to receive the applicable feed as

such Distributors will not be subject to the External Distribution Fees for the applicable product(s) during this period.²⁸ Additionally, the Exchange and its Affiliates offer a similar credit now that all External Distributors, including Controlled External Distributors, may receive.²⁹ The proposed credit is intended to incentivize new Uncontrolled External Distributors to enlist Users to subscribe to the Applicable Feeds in an effort to broaden the products' distribution to data feed Users. While this incentive is not available to Internal Distributors of these products, the Exchange believes it is appropriate as Internal Distributors have no Users outside of their own firm. Furthermore, External Distributors are subject to higher risks of launch as the data is provided outside their own firm. In contrast, Internal Distributors who only subscribe to a specific Exchange offered market data product when there is a need as they themselves are using the information, External Distributors do not use the data themselves, but as noted, take the risk of onboarding the data to sell as a service to downstream customers.³⁰ For these reasons, the Exchange believes it is appropriate, equitable and not unfairly discriminatory to provide additional incentives to External Distributors so they have sufficient time to test the data within their own systems prior to going live externally. As discussed above, the Exchange also believes it is appropriate to limit this specific credit to Uncontrolled External Distributors given the longer development times associated with both the integration of the data feed and onboarding Users.

Data Consolidation Fee

The Exchange believes it is reasonable to not charge Uncontrolled External Distributors of Cboe One Summary and Cboe One Premium a Data Consolidation Fee until such time they enlist one or more Users to receive the applicable feed as such Distributors will not be subject to the Data Consolidation Fee for the applicable product(s) during this period. For the avoidance of doubt,

²⁸ As noted above, Distributors may still receive this credit for any of the applicable feeds of which there are no Users (*i.e.*, the Uncontrolled Distributor may still receive this credit for Cboe One Summary if there is a User subscribed for EDGA Summary Depth).

²⁹ See *e.g.*, EDGX Equities Exchange Fees Schedule, Market Data Fees.

³⁰ The Exchange notes that in addition to the existing New External Distributor Credit offered by it and its affiliates, other exchanges have offered similar waivers for external redistribution. See EDGA Equities Exchange Fees Schedule, Market Data Fees and Securities Exchange Act Release No. 90407 (November 12, 2020), 85 FR 73570 (November 18, 2020) (SR-NYSE-2020-91).

once an Uncontrolled External Distributor enlists its first User, this waiver will no longer be applicable—at no time will an Uncontrolled External Distributor receive this waiver while it has customers receiving the applicable data feed. As previously discussed, the Exchange believes the proposed Data Consolidation Fee Waiver for Uncontrolled External Distributors is not designed to permit unfair discrimination against Controlled External Distributors because of the longer lead times in the development Uncontrolled External Distributors experience. Further, as previously discussed, the Exchange believes only applying this to a subset of External Distributors and not any Internal Distributors is equitable and not unfairly discriminatory given the additional risk External Distributors assume when building out a product for which they have no existing use cases. Therefore, the Exchange believes the proposed application of the Data Consolidation Fee Waiver is reasonable and would not permit unfair discrimination.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The proposed rule changes are grounded in the Exchange's efforts to compete more effectively and to assist in mitigating business costs (*i.e.*, the costs associated with the development of data feeds and seeking Users to onboard for such data feeds) for Uncontrolled External Distributors. Further, as previously discussed, the Exchange believes the proposed Data Consolidation Fee Waiver for Uncontrolled External Distributors is not designed to permit unfair discrimination against Controlled External Distributors because of the longer lead times in the development Uncontrolled External Distributors experience. 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 all Uncontrolled External Distributors.

²⁷ The Exchange notes that its Affiliates will also be proposing to adopt these same credits.

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 Act³¹ and paragraph (f) of Rule 19b-4³² thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeEDGA-2024-050 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-CboeEDGA-2024-050. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeEDGA-2024-050 and should be submitted on or before January 21, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-30900 Filed 12-27-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101997; File No. SR-CboeBZX-2024-127]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule Related to Physical Port Fees

December 19, 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 December 18, 2024, Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") 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 BZX Exchange, Inc. (the "Exchange" or "BZX Equities") proposes to amend its Fees 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 amend its fee schedule relating to physical connectivity fees.³

By way of background, a physical port is utilized by a Member or non-Member

³ The Exchange initially filed the proposed fee changes on July 3, 2023 (SR-CboeBZX-2023-046). On September 1, 2023, the Exchange withdrew that filing and submitted SR-CboeBZX-2023-067. On September 29, 2023, the Securities and Exchange Commission issued a Suspension of and Order Instituting Proceedings to Determine whether to Approve or Disapprove a Proposed Rule Change to Amend its Fees Schedule Related to Physical Port Fees (the "OIP") in anticipation of a possible U.S. government shutdown. On October 2, 2023, the Exchange filed the proposed fee change (SR-CboeBZX-2023-080). On October 13, 2023, the Exchange withdrew that filing and on business date October 16, 2023 submitted SR-CboeBZX-2023-084. On December 12, 2023, the Exchange withdrew that filing and submitted SR-CboeBZX-2023-103. On February 9, 2024, the Exchange withdrew that filing and submitted SR-CboeBZX-2024-016. On April 9, 2024, the Exchange withdrew that filing and submitted SR-CboeBZX-2024-027. On June 7, 2024, the Exchange withdrew that filing and submitted SR-CboeBZX-2024-051. On August 29, 2024, the Exchange withdrew that filing and submitted SR-CboeBZX-2024-079. On October 25, 2024, the Exchange withdrew that filing and submitted SR-CboeBZX-2024-106. On October 28, 2024, the Exchange withdrew that filing and submitted SR-CboeBZX-2024-108. On December 18, 2024, the Exchange withdrew that filing and submitted this filing.

³¹ 15 U.S.C. 78s(b)(3)(A).

³² 17 CFR 240.19b-4(f).

³³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

to connect to the Exchange at the data centers where the Exchange's servers are located. The Exchange currently assesses the following physical connectivity fees for Members and non-Members on a monthly basis: \$2,500 per physical port for a 1 gigabit ("Gb") circuit and \$7,500 per physical port for a 10 Gb circuit. The Exchange proposes to increase the monthly fee for 10 Gb physical ports from \$7,500 to \$8,500 per port. The Exchange notes the proposed fee change better enables it to continue to maintain and improve its market technology and services and also notes that the proposed fee amount, even as amended, continues to be in line with, or even lower than, amounts assessed by other exchanges for similar connections.⁴ The Exchange also notes that a single 10 Gb physical port can be used to access the Systems of the following affiliate exchanges: the Cboe BYX Exchange, Inc., Cboe EDGX Exchange, Inc. (options and equities platforms), Cboe EDGA Exchange, Inc., and Cboe C2 Exchange, Inc., ("Affiliate Exchanges").⁵ Notably, only one monthly fee currently (and will continue) to apply per 10 Gb physical port regardless of how many affiliated exchanges are accessed through that one port.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. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4)¹⁰ of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities. This belief is based on various factors as described below.

First, the Exchange believes its proposal is reasonable as it reflects a moderate increase in physical connectivity fees for 10 Gb physical ports and its offering, even as amended, continues to be more affordable as compared to analogous physical connectivity offerings at competitor exchanges.¹¹

The Exchange also believes the current fee does not properly reflect the quality of the service and product, as fees for 10 Gb physical ports have been static in nominal terms since 2018, and therefore falling in real terms due to inflation. As a general matter, the Producer Price Index ("PPI") is a family of indexes that measures the average change over time in selling prices received by domestic producers of goods and services. PPI measures price change from the perspective of the seller. This contrasts with other metrics, such as the Consumer Price Index (CPI), that measure price change from the purchaser's perspective.¹² About 10,000 PPIs for individual products and groups of products are tracked and released each month.¹³ PPIs are available for the output of nearly all industries in the

goods-producing sectors of the U.S. economy—mining, manufacturing, agriculture, fishing, and forestry—as well as natural gas, electricity, and construction, among others. The PPI program covers approximately 69 percent of the service sector's output, as measured by revenue reported in the 2017 Economic Census.

For purposes of this proposal, the relevant industry-specific PPI is the Data Processing, hosting and related services ("Data PPI") and more particularly the more granular service line Data Processing, Hosting and Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT) Infrastructure Provisioning Services.¹⁴

The Data PPI was introduced in January 2002 by the Bureau of Labor Statistics ("BLS") as part of an ongoing effort to expand Producer Price Index coverage of the services sector of the U.S. economy and is identified as NAICS—518210 in the North American Industry Classification System ("NAICS").¹⁵ According to the BLS "[t]he primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers' transactions and data. Price movements for the NAICS 518210 index are based on changes in the revenue received by companies that provide data processing services and price movements for the service line NAICS 518210 index are based on changes in the revenue received by companies that provide, among other things, IT infrastructure provisioning services. Each month, companies provide net transaction prices for a specified service. The transaction is an actual contract selected by probability, where the price-determining

⁴ See e.g., The Nasdaq Stock Market LLC ("Nasdaq"), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gb physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange's 10 Gb physical port) are assessed \$22,000 per month, per port.

⁵ The Affiliate Exchanges are also submitting contemporaneous identical rule filings.

⁶ The Exchange notes that conversely, other exchange groups charge separate port fees for access to separate, but affiliated, exchanges. See e.g., Securities and Exchange Release No. 99822 (March 21, 2024), 89 FR 21337 (March 27, 2024) (SR-MIAX-2024-016).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ *Id.*

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ See e.g., The Nasdaq Stock Market LLC ("Nasdaq"), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gbps physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange's 10 Gbps physical port) are assessed \$22,000 per month, per port.

¹² See <https://www.bls.gov/ppi/overview.htm>.

¹³ *Id.*

¹⁴ Provisioning is the process of preparing, assigning, and activating IT infrastructure components, such as servers, storage, and network connectivity, according to user requirements. It is a critical part of IT operations, as it ensures that computing resources are available when needed and that they are set up and connected to work correctly.

¹⁵ See <https://www.bls.gov/ppi/overview.htm>. Among the industry-specific PPIs is for North American Industry Classification System ("NAICS") Code 518210: "Data Processing and Related Services." NAICS index codes categorize products and services that are common to particular industries. According to BLS, these codes "provide comparability with a wide assortment of industry-based data for other economic programs, including productivity, production, employment, wages, and earnings."

characteristics are held constant while the service is repriced. The prices used in index calculation are the actual prices billed for the selected service contract.”¹⁶

The service (product) lines for which price indexes are available under the Data PPI are: (1) business process management services (2) data management and storage information transformation and other services and (3) hosting ASP and other IT infrastructure provisioning services. The most apt of these industry and product specific categorizations for purposes of this present proposal to modify fees for the 10 Gb physical port fee measures inflation for the provision of data processing, hosting and related services as well as other information technology infrastructure provisioning services which BLS identifies as identified as NAICS—5182105.¹⁷ The Exchange believes that this measure of inflation is particularly appropriate because the Exchange’s connectivity services involve hosting and providing connections to its customers’ telecommunications and information technology equipment, as well as preparing, assigning, and activating IT infrastructure components, such as servers, storage, and network connectivity. The Exchange also uses its “proprietary software,” *i.e.*, its own proprietary matching engine software, to receive orders on the Exchange’s proprietary trading platform as well as to collect, organize, store and report customers’ transactions. In other words, the Exchange is in the business of data processing, hosting, ASP, and providing other IT infrastructure provisioning services.

The Exchange further believes the Data PPI is an appropriate measure for purposes of the proposed rule change on the basis that it is a stable metric with limited volatility, unlike other consumer-side inflation metrics. In fact, the Data PPI has not experienced a greater than 2.16% increase for any one calendar year period since Data PPI was introduced into the PPI in January 2002. For example, the average calendar year change from January 2002 to December 2023 was .62%, with a cumulative increase of 15.67% over this 21-year period. The Exchange believes the Data PPI is considerably less volatile than other inflation metrics such as CPI, which has had individual calendar-year increases of more than 6.5%, and a

cumulative increase of over 73% over the same period.¹⁸

As noted above, the current 10 Gb physical port fee remained unchanged for six years, particularly since June 2018.¹⁹ Since its last increase over 6 years ago however, there has been notable inflation, including under the industry- and product-specific PPI, which as described above is a tailored measure of inflation. Particularly, the Hosting, ASP and other IT Infrastructure Provisioning Services inflation measure had a starting value of 102.2 in June 2018 (the month the Exchange started assessing the current fee) and an ending value of 115.66 in November 2024, representing an 13% increase.²⁰ This indicates that companies who are also in the hosting ASP and other IT infrastructure provisioning services have generally increased prices for a specified service covered under NAICS 5182105 by an average of 13% during this period.

The Exchange also believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2018. The impact of this inflationary effect is also independent of any change in the Exchange’s costs in providing its goods and services. The Exchange therefore believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects. Additionally, the Exchange historically does not increase fees every year notwithstanding inflation. Other exchanges have also filed for increases in certain fees, based in part on comparisons to inflation.²¹ Accordingly, based on the above-described percentage change based on an industry- and product-specific inflationary measure, and in conjunction with the rationale further described above and below, the Exchange believes the proposed fee increase is reasonable.

Next, the Exchange believes significant investments into, and enhanced performance of, the Exchange, in the years following the last 10 Gb physical port fee increase support the

reasonableness of the proposed fee increase. These investments enhanced the quality of its services, as measured by, among other things, increased throughput and faster processing speeds. Customers have therefore greatly benefitted from these investments, while the Exchange’s ability to recoup its investments has been hampered.

For example, the Exchange and its affiliated exchanges recently launched a multi-year initiative to improve Cboe Exchange Platform performance and capacity requirements to increase competitiveness, support growth and advance a consistent world class platform. The goal of the project, among other things, is to provide faster and more consistent order handling and matching performance for options, while ensuring quicker processing time and supporting increasing volumes and capacity needs. For example, the Exchange recently performed switch hardware upgrades. Particularly, the Exchange replaced existing customer access switches with newer models, which the Exchange believes resulted in increased determinism. The recent switch upgrades also increased the Exchange’s capacity to accommodate more physical ports by nearly 50%. Network bandwidth was also increased nearly two-fold as a result of the upgrades, which among other things, can lead to reduce message queuing. The Exchange also believes these newer models result in less natural variance in the processing of messages. The Exchange notes that it incurred costs associated with purchasing and upgrading to these newer models, of which the Exchange has not otherwise passed through or offset.

As of April 1, 2024, market participants also having the option of connecting to a new data center (*i.e.*, Secaucus NY6 Data Center (“NY6”)), in addition to the current data centers at NY4 and NY5. The Exchange made NY6 available in response to customer requests in connection with their need for additional space and capacity. In order to make this space available, the Exchange expended significant resources to prepare this space, and will also incur ongoing costs with respect to maintaining this offering, including costs related to power, space, fiber, cabinets, panels, labor and maintenance of racks. The Exchange also incurred a large cost with respect to ensuring NY6 would be latency equalized, as it is for NY4 and NY5.

The Exchange also has made various other improvements since the current physical port rates were adopted in 2018. For example, the Exchange has

¹⁶ See <https://www.bls.gov/ppi/factsheets/producer-price-index-for-the-data-processing-and-related-services-industry-naics-518210.htm>.

¹⁷ See <https://data.bls.gov/timeseries/PCU5182105182105>.

¹⁸ See <https://www.usinflationcalculator.com/inflation/consumer-price-index-and-annual-percent-changes-from-1913-to-2008/>.

¹⁹ See Securities and Exchange Release No. 83442 (June 14, 2018), 83 FR 28675 (June 20, 2018) (SR–CboeBZX–2018–037).

²⁰ See <https://data.bls.gov/timeseries/PCU5182105182105>.

²¹ See, *e.g.*, Securities Exchange Act Release Nos. 34–100994 (September 10, 2024), 89 FR 75612 (September 16, 2024) (SR–NYSEARCA–2024–79).

updated its customer portal to provide more transparency with respect to firms' respective connectivity subscriptions, enabling them to better monitor, evaluate and adjust their connections based on their evolving business needs. The Exchange also performs proactive audits on a weekly basis to ensure that all customer cross connects continue to fall within allowable tolerances for Latency Equalized connections. Accordingly, the Exchange expended, and will continue to expend, resources to innovate and modernize technology so that it may benefit its Members and continue to compete among other equities markets. The ability to continue to innovate with technology and offer new products to market participants allows the Exchange to remain competitive in the equities space which currently has 16 equities markets and potential new entrants. If the Exchange were not able to assess incrementally higher fees for its connectivity, it would effectively impact how the Exchange manages its technology and hamper the Exchange's ability to continue to invest in and fund access services in a manner that allows it to meet existing and anticipated access demands of market participants. Disapproval of fee changes such as the proposal herein, could also have the adverse effect of discouraging an exchange from improving its operations and implementing innovative technology to the benefit of market participants if it believes the Commission would later prevent that exchange from recouping costs and monetizing its operational enhancements, thus adversely impacting competition as well as the interests of market participants and investors.

Finally, the proposed fee is also the same as is concurrently being proposed for its Affiliate Exchanges. Further, Members are able to utilize a single port to connect to all of its Affiliate Exchanges and will only be charged one single fee (*i.e.*, a market participant will only be assessed the proposed \$8,500 even if it uses that physical port to connect to the Exchange and another (or even all 6) of its Affiliate Exchanges. Particularly, the Exchange believes the proposed monthly per port fee is reasonable, equitable and not unfairly discriminatory since as the Exchange has determined to not charge multiple fees for the same port. Indeed, the Exchange notes that several ports are in fact purchased and utilized across one or more of the Exchange's affiliated Exchanges (and charged only once).

The Exchange also believes that the proposed fee change is not unfairly discriminatory because it would be

assessed uniformly across all market participants that purchase the physical ports. The Exchange believes increasing the fee for 10 Gb physical ports and charging a higher fee as compared to the 1 Gb physical port is equitable as the 1 Gb physical port is 1/10th the size of the 10 Gb physical port and therefore does not offer access to many of the products and services offered by the Exchange (*e.g.*, ability to receive certain market data products). Thus, the value of the 1 Gb alternative is lower than the value of the 10 Gb alternative, when measured based on the type of Exchange access it offers. Moreover, market participants that purchase 10 Gb physical ports utilize the most bandwidth and therefore consume the most resources from the network. The Exchange also anticipates that firms that utilize 10 Gb ports will benefit the most from the Exchange's investment in offering NY6 as the Exchange anticipates there will be much higher quantities of 10 Gb physical ports connecting from NY6 as compared to 1 Gb ports. Indeed, the Exchange notes that 10 Gb physical ports account for approximately 90% of physical ports across the NY4, NY5, and NY6 data centers, and to date, 80% of new port connections in NY6 are 10 Gb ports. As such, the Exchange believes the proposed fee change for 10 Gb physical ports is reasonably and appropriately allocated.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed fee change will not impact intramarket competition because it will apply to all similarly situated Members equally (*i.e.*, all market participants that choose to purchase the 10 Gb physical port). Additionally, the Exchange does not believe its proposed pricing will impose a barrier to entry to smaller participants and notes that its proposed connectivity pricing is associated with relative usage of the various market participants. For example, market participants with modest capacity needs can continue to buy the less expensive 1 Gb physical port (which cost is not changing) or may choose to obtain access via a third-party re-seller. While pricing may be increased for the larger capacity physical ports, such options provide far more capacity and are purchased by those that consume more resources from the network. Accordingly, the proposed connectivity fees do not favor certain categories of market participants in a manner that

would impose a burden on competition; rather, the allocation reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most.

The proposed fee change also does not impose a burden on competition or on other Self-Regulatory Organizations that is not necessary or appropriate. As described above, the Exchange evaluated its proposed fee change using objective and stable metric with limited volatility. Utilizing Data Processing PPI over a specified period of time is a reasonable means of recouping a portion of the Exchange's investment in maintaining and enhancing the connectivity service identified above. The Exchange believes utilizing Data Processing PPI, a tailored measure of inflation, to increase certain connectivity fees to recoup the Exchange's investment in maintaining and enhancing its services and products would not impose a burden on competition.

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 Act²² and paragraph (f) of Rule 19b-4²³ 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:

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f).

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-2024-127 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-2024-127. 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-2024-127 and should be submitted on or before January 21, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-30910 Filed 12-27-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101995; File No. SR-CboeEDGX-2024-085]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule Related to Physical Port Fees

December 19, 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 December 18, 2024, Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") 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 EDGX Exchange, Inc. (the "Exchange" or "EDGX Equities") proposes to amend its Fees 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 amend its fee schedule relating to physical connectivity fees.³

By way of background, a physical port is utilized by a Member or non-Member to connect to the Exchange at the data centers where the Exchange's servers are located. The Exchange currently assesses the following physical connectivity fees for Members and non-Members on a monthly basis: \$2,500 per physical port for a 1 gigabit ("Gb") circuit and \$7,500 per physical port for a 10 Gb circuit. The Exchange proposes to increase the monthly fee for 10 Gb physical ports from \$7,500 to \$8,500 per port. The Exchange notes the proposed fee change better enables it to continue to maintain and improve its market technology and services and also notes that the proposed fee amount, even as amended, continues to be in line with, or even lower than, amounts assessed by other exchanges for similar connections.⁴ The Exchange also notes that a single 10 Gb physical port can be

³ The Exchange initially filed the proposed fee changes on July 3, 2023 (SR-CboeEDGX-2023-044). On September 1, 2023, the Exchange withdrew that filing and submitted SR-CboeEDGX-2023-057. On September 29, 2023, the Securities and Exchange Commission issued a Suspension of and Order Instituting Proceedings to Determine whether to Approve or Disapprove a Proposed Rule Change to Amend its Fees Schedule Related to Physical Port Fees (the "OIP") in anticipation of a possible U.S. government shutdown. On September 29, 2023, the Exchange filed the proposed fee change (SR-CboeEDGX-2023-62). On October 13, 2023, the Exchange withdrew that filing and on business date October 16, 2023 submitted SR-CboeEDGX-2023-065. On December 12, the Exchange withdrew that filing and submitted SR-CboeEDGX-2023-079. On December 20, the Exchange withdrew that filing and submitted SR-CboeEDGX-2023-081. On February 12, 2024, the Exchange withdrew that filing and submitted SR-CboeEDGX-2024-013. On April 9, 2024, the Exchange withdrew that filing and submitted SR-CboeEDGX-2024-020. On June 7, 2024, the Exchange withdrew that filing and submitted SR-CboeEDGX-2024-035. On August 29, 2024, the Exchange withdrew that filing and submitted SR-CboeEDGX-2024-056. On October 25, 2024, the Exchange withdrew that filing and submitted SR-CboeEDGX-2024-071. On December 18, 2024, the Exchange withdrew that filing and submitted this filing.

⁴ See e.g., The Nasdaq Stock Market LLC ("Nasdaq"), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gb Ultra fiber connection to the respective exchange, which is analogous to the Exchange's 10Gb physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gb LX LCN Circuits (which are analogous to the Exchange's 10 Gb physical port) are assessed \$22,000 per month, per port.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²⁴ 17 CFR 200.30-3(a)(12).

used to access the Systems of the following affiliate exchanges: the Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc. (options and equities platforms), Cboe EDGA Exchange, Inc., and Cboe C2 Exchange, Inc., (“Affiliate Exchanges”).⁵ Notably, only one monthly fee currently (and will continue) to apply per 10 Gb physical port regardless of how many affiliated exchanges are accessed through that one port.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. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4)¹⁰ of the Act, which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities. This belief is based on various factors as described below.

First, the Exchange believes its proposal is reasonable as it reflects a moderate increase in physical connectivity fees for 10 Gb physical ports and its offering, even as amended, continues to be more affordable as

compared to analogous physical connectivity offerings at competitor exchanges.¹¹

The Exchange also believes the current fee does not properly reflect the quality of the service and product, as fees for 10 Gb physical ports have been static in nominal terms since 2018, and therefore falling in real terms due to inflation. As a general matter, the Producer Price Index (“PPI”) is a family of indexes that measures the average change over time in selling prices received by domestic producers of goods and services. PPI measures price change from the perspective of the seller. This contrasts with other metrics, such as the Consumer Price Index (CPI), that measure price change from the purchaser’s perspective.¹² About 10,000 PPIs for individual products and groups of products are tracked and released each month.¹³ PPIs are available for the output of nearly all industries in the goods-producing sectors of the U.S. economy—mining, manufacturing, agriculture, fishing, and forestry—as well as natural gas, electricity, and construction, among others. The PPI program covers approximately 69 percent of the service sector’s output, as measured by revenue reported in the 2017 Economic Census.

For purposes of this proposal, the relevant industry-specific PPI is the Data Processing, hosting and related services (“Data PPI”) and more particularly the more granular service line Data Processing, Hosting and Related Services: Hosting, Active Server Pages (ASP), and Other Information Technology (IT) Infrastructure Provisioning Services.¹⁴

The Data PPI was introduced in January 2002 by the Bureau of Labor Statistics (“BLS”) as part of an ongoing effort to expand Producer Price Index coverage of the services sector of the U.S. economy and is identified as

NAICS—518210 in the North American Industry Classification System (“NAICS”).¹⁵ According to the BLS “[t]he primary output of NAICS 518210 is the provision of electronic data processing services. In the broadest sense, computer services companies help their customers efficiently use technology. The processing services market consists of vendors who use their own computer systems—often utilizing proprietary software—to process customers’ transactions and data. Price movements for the NAICS 518210 index are based on changes in the revenue received by companies that provide data processing services and price movements for the service line NAICS 518210 index are based on changes in the revenue received by companies that provide, among other things, IT infrastructure provisioning services. Each month, companies provide net transaction prices for a specified service. The transaction is an actual contract selected by probability, where the price-determining characteristics are held constant while the service is repriced. The prices used in index calculation are the actual prices billed for the selected service contract.”¹⁶

The service (product) lines for which price indexes are available under the Data PPI are: (1) business process management services (2) data management and storage information transformation and other services and (3) hosting ASP and other IT infrastructure provisioning services. The most apt of these industry and product specific categorizations for purposes of this present proposal to modify fees for the 10 Gb physical port fee measures inflation for the provision of data processing, hosting and related services as well as other information technology infrastructure provisioning services which BLS identifies as identified as NAICS—518210.¹⁷ The Exchange believes that this measure of inflation is particularly appropriate because the Exchange’s connectivity services involve hosting and providing connections to its customers’

⁵ The Affiliate Exchanges are also submitting contemporaneous identical rule filings.

⁶ The Exchange notes that conversely, other exchange groups charge separate port fees for access to separate, but affiliated, exchanges. See e.g., Securities and Exchange Release No. 99822 (March 21, 2024), 89 FR 21337 (March 27, 2024) (SR-MIAX-2024-016).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ *Id.*

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ See e.g., The Nasdaq Stock Market LLC (“Nasdaq”), General 8, Connectivity to the Exchange. Nasdaq and its affiliated exchanges charge a monthly fee of \$15,000 for each 10Gbps Ultra fiber connection to the respective exchange, which is analogous to the Exchange’s 10Gbps physical port. See also New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago Inc., NYSE National, Inc. Connectivity Fee Schedule, which provides that 10 Gbps LX LCN Circuits (which are analogous to the Exchange’s 10 Gbps physical port) are assessed \$22,000 per month, per port.

¹² See <https://www.bls.gov/ppi/overview.htm>.

¹³ *Id.*

¹⁴ Provisioning is the process of preparing, assigning, and activating IT infrastructure components, such as servers, storage, and network connectivity, according to user requirements. It is a critical part of IT operations, as it ensures that computing resources are available when needed and that they are set up and connected to work correctly.

¹⁵ See <https://www.bls.gov/ppi/overview.htm>. Among the industry-specific PPIs is for North American Industry Classification System (“NAICS”) Code 518210: “Data Processing and Related Services.” NAICS index codes categorize products and services that are common to particular industries. According to BLS, these codes “provide comparability with a wide assortment of industry-based data for other economic programs, including productivity, production, employment, wages, and earnings.”

¹⁶ See <https://www.bls.gov/ppi/factsheets/producer-price-index-for-the-data-processing-and-related-services-industry-naics-518210.htm>.

¹⁷ See <https://data.bls.gov/timeseries/PCU5182105182105>.

telecommunications and information technology equipment, as well as preparing, assigning, and activating IT infrastructure components, such as servers, storage, and network connectivity. The Exchange also uses its “proprietary software,” *i.e.*, its own proprietary matching engine software, to receive orders on the Exchange’s proprietary trading platform as well as to collect, organize, store and report customers’ transactions. In other words, the Exchange is in the business of data processing, hosting, ASP, and providing other IT infrastructure provisioning services.

The Exchange further believes the Data PPI is an appropriate measure for purposes of the proposed rule change on the basis that it is a stable metric with limited volatility, unlike other consumer-side inflation metrics. In fact, the Data PPI has not experienced a greater than 2.16% increase for any one calendar year period since Data PPI was introduced into the PPI in January 2002. For example, the average calendar year change from January 2002 to December 2023 was .62%, with a cumulative increase of 15.67% over this 21-year period. The Exchange believes the Data PPI is considerably less volatile than other inflation metrics such as CPI, which has had individual calendar-year increases of more than 6.5%, and a cumulative increase of over 73% over the same period.¹⁸

As noted above, the current 10 Gb physical port fee remained unchanged for six years, particularly since June 2018.¹⁹ Since its last increase over 6 years ago however, there has been notable inflation, including under the industry- and product-specific PPI, which as described above is a tailored measure of inflation. Particularly, the Hosting, ASP and other IT Infrastructure Provisioning Services inflation measure had a starting value of 102.2 in June 2018 (the month the Exchange started assessing the current fee) and an ending value of 115.66 in November 2024, representing an 13% increase.²⁰ This indicates that companies who are also in the hosting ASP and other IT infrastructure provisioning services have generally increased prices for a specified service covered under NAICS 5182105 by an average of 13% during this period.

The Exchange also believes that it is reasonable to increase its fees to compensate for inflation because, over time, inflation has degraded the value of each dollar that the Exchange collects in fees, such that the real revenue collected today is considerably less than that same revenue collected in 2018. The impact of this inflationary effect is also independent of any change in the Exchange’s costs in providing its goods and services. The Exchange therefore believes that it is reasonable for it to offset, in part, this erosion in the value of the revenues it collects. Additionally, the Exchange historically does not increase fees every year notwithstanding inflation. Other exchanges have also filed for increases in certain fees, based in part on comparisons to inflation.²¹ Accordingly, based on the above-described percentage change based on an industry- and product-specific inflationary measure, and in conjunction with the rationale further described above and below, the Exchange believes the proposed fee increase is reasonable.

Next, the Exchange believes significant investments into, and enhanced performance of, the Exchange, in the years following the last 10 Gb physical port fee increase support the reasonableness of the proposed fee increase. These investments enhanced the quality of its services, as measured by, among other things, increased throughput and faster processing speeds. Customers have therefore greatly benefitted from these investments, while the Exchange’s ability to recoup its investments has been hampered.

For example, the Exchange and its affiliated exchanges recently launched a multi-year initiative to improve Cboe Exchange Platform performance and capacity requirements to increase competitiveness, support growth and advance a consistent world class platform. The goal of the project, among other things, is to provide faster and more consistent order handling and matching performance for options, while ensuring quicker processing time and supporting increasing volumes and capacity needs. For example, the Exchange recently performed switch hardware upgrades. Particularly, the Exchange replaced existing customer access switches with newer models, which the Exchange believes resulted in increased determinism. The recent switch upgrades also increased the Exchange’s capacity to accommodate

more physical ports by nearly 50%. Network bandwidth was also increased nearly two-fold as a result of the upgrades, which among other things, can lead to reduce message queuing. The Exchange also believes these newer models result in less natural variance in the processing of messages. The Exchange notes that it incurred costs associated with purchasing and upgrading to these newer models, of which the Exchange has not otherwise passed through or offset.

As of April 1, 2024, market participants also having the option of connecting to a new data center (*i.e.*, Secaucus NY6 Data Center (“NY6”)), in addition to the current data centers at NY4 and NY5. The Exchange made NY6 available in response to customer requests in connection with their need for additional space and capacity. In order to make this space available, the Exchange expended significant resources to prepare this space, and will also incur ongoing costs with respect to maintaining this offering, including costs related to power, space, fiber, cabinets, panels, labor and maintenance of racks. The Exchange also incurred a large cost with respect to ensuring NY6 would be latency equalized, as it is for NY4 and NY5.

The Exchange also has made various other improvements since the current physical port rates were adopted in 2018. For example, the Exchange has updated its customer portal to provide more transparency with respect to firms’ respective connectivity subscriptions, enabling them to better monitor, evaluate and adjust their connections based on their evolving business needs. The Exchange also performs proactive audits on a weekly basis to ensure that all customer cross connects continue to fall within allowable tolerances for Latency Equalized connections. Accordingly, the Exchange expended, and will continue to expend, resources to innovate and modernize technology so that it may benefit its Members and continue to compete among other equities markets. The ability to continue to innovate with technology and offer new products to market participants allows the Exchange to remain competitive in the equities space which currently has 16 equities markets and potential new entrants. If the Exchange were not able to assess incrementally higher fees for its connectivity, it would effectively impact how the Exchange manages its technology and hamper the Exchange’s ability to continue to invest in and fund access services in a manner that allows it to meet existing and anticipated access demands of market participants. Disapproval of fee changes

¹⁸ See <https://www.usinflationcalculator.com/inflation/consumer-price-index-and-annual-percent-changes-from-1913-to-2008/>.

¹⁹ See Securities and Exchange Release No. 83450 (June 15, 2018), 83 FR 28884 (June 21, 2018) (SR–CboeEDGX–2018–016).

²⁰ See <https://data.bls.gov/timeseries/PCU5182105182105>.

²¹ See, *e.g.*, Securities Exchange Act Release Nos. 34–100994 (September 10, 2024), 89 FR 75612 (September 16, 2024) (SR–NYSEARCA–2024–79).

such as the proposal herein, could also have the adverse effect of discouraging an exchange from improving its operations and implementing innovative technology to the benefit of market participants if it believes the Commission would later prevent that exchange from recouping costs and monetizing its operational enhancements, thus adversely impacting competition as well as the interests of market participants and investors.

Finally, the proposed fee is also the same as is concurrently being proposed for its Affiliate Exchanges. Further, Members are able to utilize a single port to connect to all of its Affiliate Exchanges and will only be charged one single fee (*i.e.*, a market participant will only be assessed the proposed \$8,500 even if it uses that physical port to connect to the Exchange and another (or even all 6) of its Affiliate Exchanges. Particularly, the Exchange believes the proposed monthly per port fee is reasonable, equitable and not unfairly discriminatory since as the Exchange has determined to not charge multiple fees for the same port. Indeed, the Exchange notes that several ports are in fact purchased and utilized across one or more of the Exchange's affiliated Exchanges (and charged only once).

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ports. As such, the Exchange believes the proposed fee change for 10 Gb physical ports is reasonably and appropriately allocated.

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The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed fee change will not impact intramarket competition because it will apply to all similarly situated Members equally (*i.e.*, all market participants that choose to purchase the 10 Gb physical port). Additionally, the Exchange does not believe its proposed pricing will impose a barrier to entry to smaller participants and notes that its proposed connectivity pricing is associated with relative usage of the various market participants. For example, market participants with modest capacity needs can continue to buy the less expensive 1 Gb physical port (which cost is not changing) or may choose to obtain access via a third-party re-seller. While pricing may be increased for the larger capacity physical ports, such options provide far more capacity and are purchased by those that consume more resources from the network. Accordingly, the proposed connectivity fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most.

The proposed fee change also does not impose a burden on competition or on other Self-Regulatory Organizations that is not necessary or appropriate. As described above, the Exchange evaluated its proposed fee change using objective and stable metric with limited volatility. Utilizing Data Processing PPI over a specified period of time is a reasonable means of recouping a portion of the Exchange's investment in maintaining and enhancing the connectivity service identified above. The Exchange believes utilizing Data Processing PPI, a tailored measure of inflation, to increase certain connectivity fees to recoup the Exchange's investment in maintaining and enhancing its services and products would not impose a burden on competition.

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The Exchange neither solicited nor received comments on the proposed rule change.

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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-2024-085 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-2024-085. 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

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f).

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-2024-085 and should be submitted on or before January 21, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-30909 Filed 12-27-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-149, OMB Control No. 3235-0130]

Submission for OMB Review; Comment Request; Extension: Rule 17Ad-2(c), (d), and (h)

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in Rule 17Ad-2(c), (d), and (h), (17 CFR 240.17Ad-2(c), (d), and (h)), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17Ad-2(c), (d), and (h) enumerates the requirements with which transfer agents must comply to inform the Commission or the

appropriate regulator of a transfer agent's failure to meet the minimum performance standards set by the Commission rule by filing a notice.

While it is estimated that there are 740 transfer agents, only approximately three notices pursuant to Rule 17Ad-2(c), (d), and (h) are filed annually. In view of: (a) the readily available nature of most of the information required to be included in the notice (since that information must be compiled and retained pursuant to other Commission rules); (b) the summary fashion that such information must be presented in the notice (most notices are one page or less in length); and (c) the experience of the staff regarding the notices, the Commission staff estimates that, on average, most notices require approximately one-half hour to prepare. The Commission staff thus estimates that transfer agents spend an average of a total of one and a half hours per year complying with the rule (3 × .5 hours = 1.5 hours).

The retention period for the recordkeeping requirement under Rule 17Ad-2(c), (d), and (h) is not less than two years following the date the notice is submitted. The recordkeeping requirement under this rule is mandatory to assist the Commission in monitoring transfer agents who fail to meet the minimum performance standards set by the Commission rule. This rule does not involve the collection of confidential information. Please note that a transfer agent is not required to file under the rule unless it does not meet the minimum performance standards for turnaround, processing or forwarding items received for transfer during a month.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view and comment on this information collection request at: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202410-3235-005 or send an email comment to MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov within 30 days of the day after publication of this notice by January 30, 2025.

Dated: December 23, 2024.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-31359 Filed 12-27-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-653, OMB Control No. 3235-0703]

Submission for OMB Review; Comment Request; Extension: Regulation SCI, Form SCI

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in Regulation Systems Compliance and Integrity ("Regulation SCI") (17 CFR 242.1000-1007) and Form SCI (17 CFR 249.1900) under the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a *et seq.*).

Regulation SCI requires certain key market participants to, among other things: (1) have comprehensive policies and procedures in place to help ensure the robustness and resiliency of their technological systems, and also that their technological systems operate in compliance with the federal securities laws and with their own rules; and (2) provide certain notices and reports to the Commission to improve Commission oversight of securities market infrastructure.

Regulation SCI advances the goals of the national market system by enhancing the capacity, integrity, resiliency, availability, and security of the automated systems of entities important to the functioning of the U.S. securities markets, as well as reinforcing the requirement that such systems operate in compliance with the Exchange Act and rules and regulations thereunder, thus strengthening the infrastructure of the U.S. securities markets and improving its resilience when technological issues arise. In this respect, Regulation SCI establishes an updated and formalized regulatory framework, thereby helping to ensure more effective Commission oversight of such systems.

Respondents consist of national securities exchanges and associations, registered clearing agencies, exempt clearing agencies, plan processors, and alternative trading systems. There are currently 48 respondents, and the Commission staff estimates that, on

²⁴ 17 CFR 200.30-3(a)(12).

average, 2 new respondents may become SCI entities each year, 1 of which would be a self-regulatory organization ("SRO"). Accordingly, Commission staff estimates that over the next three years there will be an average of 50 respondents per year.

In addition, in December 2020, the Commission adopted amendments to Regulation SCI in connection with updates to the national market system for the collection, consolidation, and dissemination of information with respect to quotations for and transactions in national market system ("NMS") stocks ("Infrastructure Amendments"). Specifically, the Commission adopted a definition of "SCI competing consolidator" that will subject competing consolidators to Regulation SCI, after a transition period, if they are above a specified consolidated market data gross revenue threshold.¹ The Infrastructure Amendments increased the number of respondents to the collections of information in Regulation SCI, and the Commission estimates that seven competing consolidators will meet this definition and be subject to the requirements of Regulation SCI.²

Rule 1001(a) requires each SCI entity to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its SCI systems and, for purposes of security standards, indirect SCI systems, have levels of capacity, integrity, resiliency, availability, and security, adequate to maintain the SCI entity's operational capability and promote the maintenance of fair and orderly markets. The Commission staff estimates that the total annual initial recordkeeping burden for 7 new respondents will be 4,511 hours, and the annual ongoing recordkeeping burden for all 55 respondents will be, on average, 12,760 hours. The Commission staff estimates that the 7 new respondents would incur, on average, an annual initial internal cost of compliance of \$1,696,578, as well as outside legal or consulting costs of \$305,500. In addition, all respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$4,801,060.

Rule 1001(b) requires each SCI entity to establish, maintain, and enforce written policies and procedures

reasonably designed to ensure that its SCI systems operate in a manner that complies with the Exchange Act and the rules and regulations thereunder and the entity's rules and governing documents, as applicable. The Commission staff estimates that the total annual initial recordkeeping burden for 7 new respondents will be 1,755 hours, and the annual ongoing recordkeeping burden for all respondents will be, on average, 8,105 hours. The Commission staff estimates that the 7 new respondents would incur an initial internal cost of compliance of \$628,160, as well as outside legal or consulting costs of \$175,500. In addition, all respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$2,881,660.

Rule 1001(c) requires each SCI entity to establish, maintain, and enforce reasonably designed written policies and procedures that include the criteria for identifying responsible SCI personnel, the designation and documentation of responsible SCI personnel, and escalation procedures to quickly inform responsible SCI personnel of potential SCI events. The Commission staff estimates that the total annual initial recordkeeping burden for 7 new respondents will be 741 hours, and the annual ongoing recordkeeping burden for all respondents will be, on average, 2,145. The Commission staff estimates that the 7 new respondents would incur an initial internal cost of compliance of \$309,868, and all respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$958,485.

Rule 1004 requires each SCI entity to establish standards for the designation of certain members or participants for BC/DR plan testing, to designate members or participants in accordance with these standards, to require participation by designated members or participants in such testing at least annually, and to coordinate such testing on an industry- or sector-wide basis with other SCI entities. The Commission staff estimates that the total annual initial recordkeeping burden for 9 new respondents will be 2,700 hours, and the annual ongoing recordkeeping burden for all respondents that are not plan processors will be, on average, 7,425 hours. The Commission staff estimates that the 7 new respondents would incur an initial internal cost of compliance of \$902,865. In addition, all respondents that are not plan processors will incur, on average, an estimated ongoing annual internal cost of compliance of \$2,217,600. In addition, the Commission staff estimates that the 2 plan processor respondents will incur

an estimated ongoing annual cost of \$108,000 for outside legal services (\$54,000 per plan processor respondent $\times$ 2 respondents).

Rule 1002(b)(1) requires each SCI entity, upon any responsible SCI personnel having a reasonable basis to conclude that an SCI event has occurred, to notify the Commission immediately. The Commission staff estimates that the total annual ongoing burden for all 55 respondents will be, on average, 440 hours. The Commission staff estimates that respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$151,882.50.

Rule 1002(b)(2) requires each SCI entity, within 24 hours of any responsible SCI personnel having a reasonable basis to conclude that the SCI event has occurred, to submit a written notification to the Commission pertaining to the SCI event on a good faith, best efforts basis. These notifications are required to be submitted on Form SCI. The Commission staff estimates that the total annual ongoing burden for all 55 respondents will be, on average, 6,600 hours. The Commission staff estimates that respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$2,427,325.

Rule 1002(b)(3) requires each SCI entity to provide updates to the Commission pertaining to an SCI event on a regular basis, or at such frequency as reasonably requested by a representative of the Commission, until the SCI event is resolved and the SCI entity's investigation of the SCI event is closed. The Commission staff estimates that the total annual ongoing burden for all 55 respondents will be, on average, 578 hours. The Commission staff estimates that all respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$202,235.

Rule 1002(b)(4) requires each SCI entity to submit written interim reports, as necessary, and a written final report regarding an SCI event to the Commission. These reports are required to be submitted on Form SCI. The Commission staff estimates that the total annual ongoing burden for all 55 respondents will be, on average, 9,625 hours. The Commission staff estimates that all respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$3,795,800.

Rule 1002(b)(5) requires each SCI entity to submit to the Commission quarterly reports containing a summary description of any systems disruption or systems intrusion that has had, or the

¹ See Securities Exchange Act Release No. 34-90610 (December 9, 2020), 86 FR 18596 (April 9, 2021) (File No. S7-03-20) ("Infrastructure Adopting Release").

² Some of these respondents were estimated to incur no, or only part of, the estimated initial burdens because they were already subject to Regulation SCI (*i.e.*, as plan processors, SROs or affiliates of SROs).

SCI entity reasonably estimates would have, no or a de minimis impact on the SCI entity's operations or on market participants. These reports are required to be submitted on Form SCI. The Commission staff estimates that the total annual ongoing burden for all 55 respondents will be, on average, 8,800 hours. The Commission staff estimates that respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$3,329,040.

In addition, the Commission staff estimates that all 55 respondents will incur, on average, annual costs of \$319,000 for outside legal advice in preparation of certain notifications required by Rule 1002(b).

Rule 1002(c)(1)(i) requires each SCI entity, promptly after any responsible SCI personnel has a reasonable basis to conclude that an SCI event (other than a systems intrusion) has occurred, to disseminate certain information to its members or participants. The Commission staff estimates that the total annual ongoing burden for all 55 respondents will be, on average, 1,155 hours. The Commission staff estimates that all respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$506,815.

Rule 1002(c)(1)(ii) requires each SCI entity, when known, to promptly disseminate additional information about an SCI event (other than a systems intrusion) to its members or participants. Rule 1002(c)(1)(iii) requires each SCI entity to provide to its members or participants regular updates of any information required to be disseminated under Rules 1002(c)(1)(i) and (ii) until the SCI event is resolved. The Commission staff estimates that the total annual ongoing burden for all 55 respondents will be, on average, 6,435 hours. The Commission staff estimates that all respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$2,841,795.

Rule 1002(c)(2) requires each SCI entity to disseminate certain information regarding a systems intrusion to its members or participants, and provides an exception when the SCI entity determines that dissemination of such information would likely compromise the security of its SCI systems or indirect SCI systems, or an investigation of the systems intrusion, and documents the reasons for such determination. The Commission staff estimates that the total annual ongoing burden for all 55 respondents will be, on average, 550 hours. The Commission staff estimates that all respondents will incur, on average, an estimated ongoing

annual internal cost of compliance of \$242,330.

In addition, the Commission staff estimates that all 55 respondents will incur, on average, annual costs of \$182,600 for outside legal advice in preparation of certain notifications required by Rule 1002(c).

Rule 1003(a)(1) requires each SCI entity to submit to the Commission quarterly reports describing completed, ongoing, and planned material changes to its SCI systems and security of indirect SCI systems during the prior, current, and subsequent calendar quarters. These reports are required to be submitted on Form SCI. The Commission staff estimates that the total annual ongoing burden for all 55 respondents will be, on average, 27,500 hours. The Commission staff estimates that all respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$9,204,800.

Rule 1003(a)(2) requires each SCI entity to promptly submit a supplemental report notifying the Commission of a material error in or material omission from a report previously submitted under Rule 1003(a)(1). These reports are required to be submitted on Form SCI. The Commission staff estimates that the total annual ongoing burden for all 55 respondents will be, on average, 825 hours. The Commission staff estimates that all respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$293,040.

Rule 1003(b)(1) requires each SCI entity to conduct an SCI review of its compliance with Regulation SCI not less than once each calendar year, with an exception for penetration test reviews, which are required to be conducted not less than once every three years. Rule 1003(b)(1) also provides an exception for assessments of SCI systems directly supporting market regulation or market surveillance, which are required to be conducted at a frequency based on the risk assessment conducted as part of the SCI review, but in no case less than once every three years. Rule 1003(b)(2) requires each SCI entity to submit a report of the SCI review to senior management no more than 30 calendar days after completion of the review. The Commission staff estimates that the total annual ongoing burden for all 55 respondents will be, on average, 37,950 hours. The Commission staff estimates that all respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$13,623,225.

Rule 1003(b)(3) requires each SCI entity to submit the report of the SCI

review to the Commission and to its board of directors or the equivalent of such board, together with any response by senior management, within 60 calendar days after its submission to senior management. These reports are required to be submitted on Form SCI. The Commission staff estimates that the total annual ongoing burden for all 55 respondents will be, on average, 55 hours. The Commission staff estimates that all respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$25,410.

In addition, the Commission staff estimates that all respondents will incur, on average, annual costs of \$2,750,000 for outside legal advice in preparation of certain notifications required by Rule 1003(b).

Rule 1006 requires each SCI entity, with a few exceptions, to file any notification, review, description, analysis, or report to the Commission required under Regulation SCI electronically on Form SCI through the EDFS. An SCI entity will submit to the Commission an EAUF to register each individual at the SCI entity who will access the EDFS system on behalf of the SCI entity. The Commission staff estimates that the total annual initial burden for 7 new respondents will be 2 hours, and the annual ongoing burden for all respondents will be, on average, 8 hours. The Commission staff estimates that the 7 new respondents would incur an initial internal cost of compliance of \$903. In addition, all 55 respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$3,795, as well as outside costs to obtain a digital ID of \$2,750.

Rule 1002(a) requires each SCI entity, upon any responsible SCI personnel having a reasonable basis to conclude that an SCI event has occurred, to begin to take appropriate corrective action. The Commission staff estimates that the total annual initial recordkeeping burden for 7 new respondents will be 741 hours, and the annual ongoing recordkeeping burden for all 55 respondents will be, on average, 2,145 hours. The Commission staff estimates that the 7 new respondents would incur an initial internal cost of compliance of \$309,868. In addition, all 55 respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$949,190.

Rule 1003(a)(1) requires each SCI entity to establish reasonable written criteria for identifying a change to its SCI systems and the security of indirect SCI systems as material. The Commission staff estimates that the total annual initial recordkeeping burden for 7 new respondents will be 741 hours,

and the annual ongoing recordkeeping burden for all 55 respondents will be, on average, 1,485 hours. The Commission staff estimates that the 7 new respondents would incur an initial internal cost of compliance of \$309,868. In addition, all 55 respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$711,095.

Regulation SCI also requires SCI entities to identify certain types of events and systems. The Commission staff estimates that the total annual initial recordkeeping burden for 7 new respondents will be 1,287 hours, and the annual ongoing recordkeeping burden for all 55 respondents will be, on average, 2,145 hours. The Commission staff estimates that the 7 new respondents would incur an initial internal cost of compliance of \$507,936. In addition, all 55 respondents will incur, on average, an estimated ongoing annual internal cost of compliance of \$949,190.

Rules 1005 and 1007 establish recordkeeping requirements for SCI entities other than SROs. The Commission staff estimates that for 6 new respondents that are not SROs the average annual initial burden would be 935 hours, and the annual ongoing burden for all 19 respondents will be, on average, 475 hours. The Commission staff estimates that 6 new respondents would incur an estimated internal initial internal cost of compliance of \$72,930, as well as a one-time cost of \$5,400 to modify existing recordkeeping systems. In addition, all 19 respondents will incur, on average, an estimated ongoing internal cost of compliance of \$37,050.

The Commission estimates that the increase in the number of SCI entities raises the total industry annual burden hours to 150,619 hours and cost to \$3,848,749 respectively.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view and comment on this information collection request at: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202410-3235-003 or send an email comment to MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov within 30 days of the day after publication of this notice by January 30, 2025.

Dated: December 23, 2024.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-31351 Filed 12-27-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101998; File Nos. SR-NASDAQ-2024-028; SR-CboeBZX-2024-091]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Hashdex Nasdaq Crypto Index US ETF and Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Franklin Crypto Index ETF, a Series of the Franklin Crypto Trust

December 19, 2024.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) ¹ and Rule 19b-4 thereunder, ² each of The Nasdaq Stock Market LLC (“Nasdaq”) and Cboe BZX Exchange, Inc. (“BZX”, and together with Nasdaq, the “Exchanges”) filed with the Securities and Exchange Commission (“Commission”) proposed rule changes to list and trade shares of the following. Nasdaq proposes to list and trade shares of the Hashdex Nasdaq Crypto Index US ETF ³ under Nasdaq Rule 5711(d) (Commodity-Based Trust Shares); and BZX proposes to list and trade shares of the Franklin Crypto Index ETF, a series of the Franklin Crypto Trust, ⁴ under BZX Rule 14.11(e)(4) (Commodity-Based Trust Shares). Each filing was subject to notice and comment. ⁵

Each of the foregoing proposed rule changes, as modified by their respective amendments, is referred to herein as a “Proposal” and together as the “Proposals.” Each trust (or series of a trust) described in a Proposal is referred to herein as a “Trust” and together as the “Trusts.” As described in more detail in the Proposals’ respective

amended filings, ⁶ each Proposal seeks to list and trade shares of a Trust that would hold both spot bitcoin ⁷ and spot ether, ⁸ in whole or in part. ⁹ This order approves the Proposals. ¹⁰

II. Discussion and Commission Findings

After careful review, the Commission finds that the Proposals are consistent with the Exchange Act and rules and regulations thereunder applicable to a national securities exchange. ¹¹ In particular, the Commission finds that the Proposals are consistent with Section 6(b)(5) of the Exchange Act, ¹² which requires, among other things, that the Exchanges’ rules be designed to “prevent fraudulent and manipulative acts and practices” and, “in general, to protect investors and the public interest;” and with Section 11A(a)(1)(C)(iii) of the Exchange Act, ¹³ which sets forth Congress’ finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

A. Exchange Act Section 6(b)(5)

The Commission has explained that one way an exchange that lists bitcoin-based or ether-based exchange-traded products (“ETPs”) can meet the obligation under Exchange Act Section 6(b)(5) that its rules be designed to prevent fraudulent and manipulative acts and practices is by demonstrating that the exchange has a comprehensive surveillance-sharing agreement with a

⁶ See *supra* notes 3–4.

⁷ Bitcoins are digital assets that are issued and transferred via a distributed, open-source protocol used by a peer-to-peer computer network through which transactions are recorded on a public transaction ledger known as the “Bitcoin blockchain.” The Bitcoin protocol governs the creation of new bitcoins and the cryptographic system that secures and verifies bitcoin transactions.

⁸ Ether is a digital asset that is native to, and minted and transferred via, a distributed, open-source protocol used by a peer-to-peer computer network through which transactions are recorded on a public transaction ledger known as “Ethereum.” The Ethereum protocol governs the creation of new ether and the cryptographic system that secures and verifies transactions on Ethereum.

⁹ Each Trust could also hold cash and cash equivalents. See Hashdex Filing at 80970; Franklin Filing at 8.

¹⁰ The Franklin Filing is being approved on an accelerated basis. See *infra* Section III.

¹¹ In approving the Proposals, the Commission has considered the Proposals’ impacts on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78k-1(a)(1)(C)(iii).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 101218 (Sept. 30, 2024), 89 FR 80970 (Oct. 4, 2024) (SR-NASDAQ-2024-028) (“Hashdex Filing”).

⁴ See Amendment No. 1 to Proposed Rule Change to List and Trade Shares of the Franklin Crypto Index ETF, a Series of the Franklin Crypto Trust, under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares (SR-CboeBZX-2024-091), filed Dec. 17, 2024, available at: <https://www.sec.gov/comments/sr-cboebzx-2024-091/sr-cboebzx2024091.htm> (“Franklin Filing”).

⁵ The Commission did not receive any comments on the Franklin Filing. Comments received on the Hashdex Filing are available at: <https://www.sec.gov/comments/sr-nasdaq-2024-028/srnasdaq2024028.htm>.

regulated market of significant size related to the underlying or reference assets.¹⁴ Such an agreement would assist in detecting and deterring fraud and manipulation related to that underlying asset.

The Commission has also consistently recognized, however, that this is not the *exclusive* means by which an ETP listing exchange can meet this statutory obligation.¹⁵ A listing exchange could, alternatively, demonstrate that “other means to prevent fraudulent and manipulative acts and practices will be sufficient” to justify dispensing with a surveillance-sharing agreement with a regulated market of significant size.¹⁶

In the Spot Bitcoin ETP Approval Order, the Commission determined that having a comprehensive surveillance-sharing agreement with a U.S.-regulated market that, based on evidence from robust correlation analysis, is consistently highly correlated with the ETPs’ underlying assets (spot bitcoin)

¹⁴ See, e.g., 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, Securities Exchange Act Release No. 99306 (Jan. 10, 2024), 89 FR 3008 (Jan. 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) (“Spot Bitcoin ETP Approval Order”); Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Shares of Ether-Based Exchange-Traded Products, 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) (“Spot Ether ETP Approval Order”); Order Granting Approval of Proposed Rule Changes To List and Trade Shares of the Grayscale Ethereum Mini Trust and ProShares Ethereum ETF, Securities Exchange Act Release No. 100541 (July 17, 2024), 89 FR 59786 (July 23, 2024) (SR–NYSEARCA–2024–44; SR–NYSEARCA–2024–53) (“Second Spot Ether ETP Approval Order”); Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Grayscale Bitcoin Mini Trust and Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Pando Asset Spot Bitcoin Trust, Securities Exchange Act Release No. 100610 (July 26, 2024), 89 FR 62821 (Aug. 1, 2024) (SR–NYSEARCA–2024–45; SR–CboeBZX–2023–101) (“Second Spot Bitcoin ETP Approval Order”).

¹⁵ See, e.g., 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 Trust, Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579, 37580 (Aug. 1, 2018) (SR–BatsBZX–2016–30) (“Winklevoss Order”); Spot Bitcoin ETP Approval Order at 3009; Spot Ether ETP Approval Order at 46938; Second Spot Bitcoin ETP Approval Order at 62822; Second Spot Ether ETP Approval Order at 59786.

¹⁶ See, e.g., Spot Bitcoin ETP Approval Order at 3009 (quoting Winklevoss Order at 37580).

constituted “other means” sufficient to satisfy the Exchange Act Section 6(b)(5) standard.¹⁷ Specifically, given the consistently high correlation between the bitcoin futures market of the Chicago Mercantile Exchange (“CME”) and a sample of spot bitcoin markets—confirmed by the Commission through robust¹⁸ correlation analysis using data at hourly, five-minute, and one-minute intervals—the Commission was 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 Commission was able to conclude that the comprehensive surveillance-sharing agreement among the listing exchanges and the CME can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the spot bitcoin ETPs considered in the Spot Bitcoin ETP Approval Order.

The Commission reached similar conclusions in the Spot Ether ETP Approval Order with respect to the spot ether ETPs considered in that order, having confirmed the consistently high correlation between the CME ether futures market and a sample of spot ether markets.¹⁹

The Trusts in the present Proposals will hold both spot bitcoin and spot ether, and the proportion of bitcoin and ether to be held by each Trust will be based on free-float market capitalizations, as described by the Exchanges in their respective amended filings.²⁰ Other than that the Trusts will hold both spot bitcoin and spot ether,²¹

¹⁷ See *id.* at 3009–11. See also Second Spot Bitcoin ETP Approval Order at 62822.

¹⁸ The Commission stated that the “robustness” of its correlation analysis rested on the pre-requisites of (1) the correlations being calculated with respect to bitcoin futures that trade on the CME, a U.S. market regulated by the Commodity Futures Trading Commission, (2) the lengthy sample period of price returns for both the CME bitcoin futures market and the spot bitcoin market, (3) the frequent intra-day trading data in both the CME bitcoin futures market and the spot bitcoin market over that lengthy sample period, and (4) the consistency of the correlation results throughout the lengthy sample period. See Spot Bitcoin ETP Approval Order at 3010 n.38.

¹⁹ See Spot Ether ETP Approval Order at 46938–41. See also Second Spot Ether ETP Approval Order at 59786–87.

²⁰ See Hashdex Filing at 80972; Franklin Filing at 10.

²¹ The Commission has previously approved the listing and trading of commodity-based trust shares where the underlying trust held more than one commodity. See, e.g., Securities Exchange Act Release Nos. 82448 (Jan. 5, 2018) 83 FR 1428 (Jan. 11, 2018) (SR–NYSEARCA–2017–131) (Notice of Filing of Amendment No. 2 and Order Approving on an Accelerated Basis a Proposed Rule Change,

the structure of the Trusts, the terms of their operation and the trading of their shares, and the representations in their respective amended filings are substantially similar to those of the spot bitcoin ETP and spot ether ETP proposals approved in prior Commission orders.²² In addition, the Commission finds that the spot bitcoin market continues to be consistently highly correlated with the CME bitcoin futures market,²³ and that the spot ether market continues to be consistently highly correlated with the CME ether futures market.²⁴ As such, based on the record before the Commission, including the Commission’s correlation analyses, the Commission is able to conclude that the Exchanges’ comprehensive surveillance-sharing agreements with the CME²⁵ can be reasonably expected to assist in surveilling for fraudulent and

as Modified by Amendment No. 2, To List and Trade Shares of the Sprott Physical Gold and Silver Trust Under NYSE Arca Rule 8.201–E); 62692 (Aug. 11, 2010), 75 FR 50789 (Aug. 17, 2010) (SR–NYSEARCA–2010–56) (Order Granting Approval of Proposed Rule Change To List and Trade Shares of the ETFS Precious Metals Basket Trust). See also Franklin Filing at 7 n.16; Letter from Hashdex Asset Management, Ltd., dated Oct. 25, 2024, regarding SR–NASDAQ–2024–028, at 2–3.

²² See Spot Bitcoin ETP Approval Order; Spot Ether ETP Approval Order; Second Spot Bitcoin ETP Approval Order; Second Spot Ether ETP Approval Order. See also *infra* Section II.B.

²³ The Commission examined correlation between the CME bitcoin futures market and the Coinbase and Kraken spot bitcoin trading platforms at hourly, five-minute, and one-minute intervals, using the same data sources and methodology as in the Spot Bitcoin ETP Approval Order (see Spot Bitcoin ETP Approval Order at 3010 n.35), for the period from October 1, 2021, to August 22, 2024. The correlation between the CME bitcoin futures market and this subset of spot bitcoin platforms for the full sample period is no less than 98.9 percent using data at an hourly interval, 93.9 percent using data at a five-minute interval, and 83.1 percent using data at a one-minute interval. The rolling three-month correlation results range between 94.9 and 99.5 percent using data at an hourly interval, 83.8 and 96.1 percent using data at a five-minute interval, and 79.0 and 87.3 percent using data at a one-minute interval.

²⁴ The Commission examined correlation between the CME ether futures market and the Coinbase and Kraken spot ether trading platforms at hourly, five-minute, and one-minute intervals, using the same data sources and methodology as in the Spot Ether ETP Approval Order (see Spot Ether ETP Approval Order at 46939–40 n.45), for the period from October 1, 2021, to August 22, 2024. The correlation between the CME ether futures market and this subset of spot ether platforms for the full sample period is no less than 98.9 percent using data at an hourly interval, 92.8 percent using data at a five-minute interval, and 81.6 percent using data at a one-minute interval. The rolling three-month correlation results range between 96.0 and 99.5 percent using data at an hourly interval, 87.9 and 95.8 percent using data at a five-minute interval, and 78.4 and 85.1 percent using data at a one-minute interval.

²⁵ Both Exchanges and the CME are members of the Intermarket Surveillance Group. See Hashdex Filing at 80979; Franklin Filing at 6.

manipulative acts and practices in the specific context of the Proposals.

B. Exchange Act Section 11A(a)(1)(C)(iii)

Each Proposal sets forth aspects of its proposed ETP, including the availability of pricing information, transparency of portfolio holdings, and types of surveillance procedures, that are consistent with other ETPs that the Commission has approved.²⁶ This includes commitments regarding: the availability of quotation and last-sale information for the shares of each Trust; the availability on the websites of each Trust of certain information related to the Trusts, including net asset values; the dissemination of intra-day indicative values by one or more major market data vendors, updated every 15 seconds throughout the Exchanges' regular trading hours; the Exchanges' surveillance procedures and ability to obtain information regarding trading in the shares of the Trusts; the conditions under which the Exchanges would implement trading halts and suspensions; and the requirements of registered market makers in the shares of each Trust.²⁷ In addition, in each Proposal, the applicable Exchange deems the shares of the applicable Trust to be equity securities, thus rendering trading in such shares subject to that Exchange's existing rules governing the trading of equity securities.²⁸ Further, the applicable listing rules of each Exchange require that all statements and representations made in its filing regarding, among others, the description of the applicable Trust's holdings, limitations on such holdings, and the applicability of that Exchange's listing rules specified in the filing, will constitute continued listing requirements.²⁹ Moreover, each Proposal states that: the applicable Trust will represent to the applicable Exchange that it will advise that Exchange of any failure to comply with the applicable continued listing requirements; pursuant to obligations under Section 19(g)(1) of the Exchange Act, that Exchange will monitor for compliance with the continued listing requirements; and if the applicable Trust is not in compliance with the applicable listing requirements, that

Exchange will commence delisting procedures.³⁰

The Commission therefore finds that the Proposals, as with other ETPs that the Commission has approved,³¹ are reasonably designed to promote fair disclosure of information that may be necessary to price the shares of the Trusts appropriately, to prevent trading when a reasonable degree of transparency cannot be assured, to safeguard material non-public information relating to the Trusts' portfolios, and to ensure fair and orderly markets for the shares of the Trusts.

III. Accelerated Approval of the Franklin Filing

The Commission finds good cause to approve the Franklin Filing prior to the 30th day after the date of publication of notice of its Amendment No. 1³² in the **Federal Register**. The amendment clarified the description of its Trust; further described the terms of the Trust; and conformed various representations in the amended filing to BZX's listing standards and to representations that exchanges have made for other ETPs that the Commission has approved.³³ The amended filing is now substantially similar to filings for other spot bitcoin ETPs and spot ether ETPs that the Commission has approved,³⁴ and as discussed above in Section II.A, both (i) the spot bitcoin market and the CME bitcoin futures market and (ii) the spot ether market and the CME ether futures market remain consistently highly correlated. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,³⁵ to approve the Franklin Filing on an accelerated basis.

IV. Conclusion

This approval order is based on all of the Exchanges' representations and descriptions in their respective amended filings, which the Commission has carefully evaluated as discussed above.³⁶ For the reasons set forth above,

including the Commission's correlation analyses, the Commission finds, pursuant to Section 19(b)(2) of the Exchange Act,³⁷ that the Proposals are consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) and Section 11A(a)(1)(C)(iii) of the Exchange Act.³⁸

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,³⁹ that the Hashdex Filing (SR–NASDAQ–2024–028) be, and hereby is, approved; and that the Franklin Filing (SR–CboeBZX–2024–091) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁰

Vanessa A. Countryman,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101985; File No. SR–NYSEARCA–2024–89]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 to a Proposed Rule Change To Adopt Temporary Rule 7.34–E(T) and Revise Rules 1.1 and 7.34–E to Lengthen the Current Extended Trading Sessions

December 19, 2024.

On October 25, 2024, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b–4 thereunder,² a proposed rule change to adopt temporary rule 7.34–E(T) and revise rules 1.1 and 7.34–E to lengthen the current extended trading sessions. The proposed rule change was published for comment in the **Federal Register** on November 14, 2024.³ On December 13, 2024, the Exchange filed Amendment No. 1 to the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment No. 1

³⁷ 15 U.S.C. 78s(b)(2).

³⁸ 15 U.S.C. 78f(b)(5); 15 U.S.C. 78k–1(a)(1)(C)(iii).

³⁹ 15 U.S.C. 78s(b)(2).

⁴⁰ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 101559 (November 7, 2024), 89 FR 90143 ("Initial Proposal").

²⁶ See, e.g., Spot Bitcoin ETP Approval Order at 3011; Spot Ether ETP Approval Order at 46941; Second Spot Bitcoin ETP Approval Order at 62822; Second Spot Ether ETP Approval Order at 59787.

²⁷ See Hashdex Filing at 80976–78; Franklin Filing at 15–17, 19–26.

²⁸ See Hashdex Filing at 80977; Franklin Filing at 23.

²⁹ See Nasdaq Rule 5711(d)(iii); BZX Rule 14.11(a).

³⁰ See Hashdex Filing at 80977; Franklin Filing at 25.

³¹ See *supra* note 26.

³² See *supra* note 4.

³³ See also *supra* Section II.B.

³⁴ See Spot Bitcoin ETP Approval Order; Spot Ether ETP Approval Order; Second Spot Bitcoin ETP Approval Order; Second Spot Ether ETP Approval Order.

³⁵ 15 U.S.C. 78s(b)(2).

³⁶ In addition, the shares of the Trust in the Hashdex Filing must comply with the requirements of Nasdaq Rule 5711(d) (Commodity-Based Trust Shares) to be listed and traded on Nasdaq on an initial and continuing basis; and the shares of the Trust in the Franklin Filing must comply with the requirements of BZX Rule 14.11(e)(4) (Commodity-Based Trust Shares) to be listed and traded on BZX on an initial and continuing basis.

amended and replaced the proposed rule change in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt temporary Rule 7.34–E(T) and revise Rules 1.1 and 7.34–E to permit the Exchange to lengthen the current extended trading hours for NMS stocks to 1:30 a.m. E.T. through 11:30 p.m. E.T. on Monday through Thursday, and 1:30 a.m. E.T. through 8:00 p.m. E.T. on Friday. This Amendment No. 1 supersedes the Initial Proposal in its entirety.

The text of 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt temporary Rule 7.34–E(T) and revise Rules 1.1 (Definitions) and 7.34–E (Trading Sessions) to permit the Exchange to lengthen current extended trading hours for NMS stocks to 1:30 a.m. E.T. through 11:30 p.m. E.T. on Monday through Thursday, and 1:30 a.m. E.T. through 8:00 p.m. E.T. on Friday. The Exchange also proposes certain technical, conforming changes to Rule 5.1–E(a) (General Provisions and Unlisted Trading Privileges) and Commentary .08 to Rule 9.5320–E (Prohibition Against Trading Ahead of Customer Orders).

Background

The Exchange currently offers three trading sessions each day the Exchange

is open for business unless the Exchange determines otherwise, as follows.

The Exchange's first trading session, the Early Trading Session, begins at 4:00 a.m. Eastern Time ("E.T.") and concludes at the commencement of the Core Trading Session.⁴ The Exchange begins accepting orders 90 minutes before the Early Trading Session begins.⁵

The second or Core Trading Session begins for each security at 9:30 a.m. E.T. and ends at the conclusion of Core Trading Hours or the Core Closing Auction, whichever comes later.⁶ The final session is the Late Trading Session, which begins following the conclusion of the Core Trading Session and concludes at 8:00 p.m. E.T.

Current Rule 7.34–E(b) requires that orders entered into the Exchange marketplace include a designation for which trading session(s) the order will remain in effect. The Exchange will reject orders entered without a trading session designation. An order is only eligible to participate in the designated trading session(s) and may remain in effect for one or more consecutive trading sessions on a particular day. Unless otherwise specified, an order designated for a later trading session will be accepted but not eligible to trade until the designated trading session begins. The Exchange will reject orders designated solely for a trading session that has already ended.

Current Rule 7.34–E(c) describes the order types that are permitted in each session, as follows.

Early Trading Session

Orders and modifiers defined in Rule 7.31–E designated for the Early Trading Session are eligible to participate in the Early Trading Session unless otherwise specified in Rule 7.34–E(c)(1)(A)–(F).

Pursuant to Rule 7.34–E(c)(1)(A), Market Orders and Pegged Orders are not eligible to participate in the Early Trading Session, and such orders that include a designation for the Early Trading Session will be rejected. Market Pegged Orders and Discretionary Pegged Orders, regardless of the session designated for the order, may not be entered before or during the Early Trading Session and will also be rejected. Under Rule 7.34–E(c)(1)(B), Limit Orders designated Immediate or Cancel ("IOC") are ineligible to participate in the Early Open Auction

and will be rejected if entered before the Early Open Auction concludes. Pursuant to Rule 7.34–E(c)(1)(C), Limit Orders designated IOC entered before or during the Early Trading Session and designated for the Core Trading Session will be rejected if entered before the Auction Processing Period for the Core Open Auction.

Rule 7.34–E(c)(1)(D) provides that for securities that are not eligible for an auction on the Exchange, Market Orders designated for the Core Trading Session and Auction-Only Orders will be routed to the primary listing market on arrival. Any order routed directly to the primary listing market on arrival will be cancelled if that market is not accepting orders.

Pursuant to Rule 7.34–E(c)(1)(E), Market-on-Open Orders ("MOO Orders"), Market-on-Close Orders ("MOC Orders"), Limit-on-Close Orders ("LOC Orders"), Primary Only Orders, and Directed Orders designated for the Early Trading Session will be rejected.

Finally, pursuant to Rule 7.34–E(c)(1)(F), Non-Displayed Limit Orders, Mid-Point Liquidity Orders ("MPL Orders"), Tracking Orders, and RPI Orders entered before the Auction Processing Period for the Early Open Auction concludes will also be rejected.

Core Trading Session

All orders and modifiers defined in Rule 7.31–E that are designated for the Core Trading Session are eligible to participate in the Core Trading Session unless otherwise specified in Rules 7.34–E(c)(2)(A)–(C).

Pursuant to Rule 7.34–E(c)(2)(A), Market Orders in securities that are not eligible for the Core Open Auction will be routed to the primary listing market until the first opening print of any size on the primary listing market or 10:00 a.m. E.T., whichever is earlier. Pursuant to Rule 7.34–E(c)(2)(B), Auction-Only Orders in securities that are not eligible for an auction on the Exchange will be accepted and routed directly to the primary listing market. Finally, Rule 7.34–E(c)(2)(C) provides that Limit Orders designated IOC entered before or during the Core Trading Session and designated for the Late Trading Session will be rejected if entered before the Auction Processing Period for the Closing Auction.

Late Trading Session

The orders and modifiers defined in Rule 7.31–E that are designated for the Late Trading Session are eligible to participate in the Late Trading Session unless otherwise specified in Rules 7.34–E(c)(3)(A)–(C).

⁴ See Rule 7.34–E(a)(1).

⁵ See *id.*

⁶ See Rule 7.34–E(a)(2). "Core Trading Hours" means the hours of 9:30 a.m. E.T. through 4:00 p.m. E.T. or such other hours as may be determined by the Exchange from time to time. See Rule 1.1.

Pursuant to Rule 7.34–E(c)(3)(A), Market Orders and Pegged Orders are not eligible to participate in the Late Trading Session. The Exchange will reject Market Orders and Pegged Orders that include a designation for the Late Trading Session. Further, under Rule 7.34–E(c)(3)(B), orders that are routed directly to the primary listing market on arrival will be cancelled if that market is not accepting orders. Finally, pursuant to Rule 7.34–E(c)(3)(C), MOO Orders, MOC Orders, LOC Orders, Primary Only Orders, and Directed Orders designated for the Late Trading Session will be rejected.

Customer Disclosures

Rule 7.34–E(d) provides that no ETP Holder may accept an order from a non-ETP Holder for execution in the Early or Late Trading Session without disclosing to such non-ETP Holder that Limit Orders are the only orders that are eligible for execution during the Early and Late Trading Sessions⁷ and that an order must be designated specifically for trading in the Early and/or Late Trading Session to be eligible for trading in the Early and/or Late Trading Session.⁸ In addition, Rule 7.34–E(d)(3) provides that an ETP Holder must disclose to non-ETP Holders that extended hours trading involves material trading risks, including the possibility of lower liquidity, high volatility, changing prices, unlinked markets, an exaggerated effect from news announcements, wider spreads and any other relevant risk. The absence of an updated underlying index value or intraday indicative value is an additional trading risk in extended hours for Derivative Securities Products.

The disclosures required pursuant to Rule 7.34–E(d)(3) may take the form described in subparagraphs (1) through (7) thereunder or such other form as provides substantially similar information, including risks of lower liquidity; higher volatility; changing prices; unlinked markets; news announcements; wider spreads; and lack of calculation or dissemination of underlying index value or intraday indicative value.

Finally, Rule 7.34–E(e) provides that trades on the Exchange executed and reported outside of the Core Trading Session are designated as .T trades.

Proposed Rule Change

As recently announced,⁹ the Exchange proposes to facilitate the

trading of NMS securities on the Exchange beginning at 1:30 a.m. E.T. through 11:30 p.m. E.T. on Monday through Thursday, and 1:30 a.m. E.T. through 8:00 p.m. E.T. on Friday. The Exchange would retain the current structure of the Early and Late Trading Sessions, including eligible order types and required disclosures as described above, while extending the beginning of the Early Trading Session and end time of the Late Trading Session and accepting orders earlier than currently.

To effectuate these changes, the Exchange proposes to adopt a temporary Rule 7.34–E titled “7.34–E(T).” The proposed temporary rule would be identical to current Rule 7.34–E with three exceptions.

First, the beginning and ending times of the Early and Late Trading Sessions, respectively, as set forth in Rule 7.34–E(a)(1) and (3) would be changed to reflect the proposed longer extended trading hours. The Exchange proposes to end the Late Trading Session at 8:00 p.m. E.T. on Friday in order to maximize the available time to make changes at the end of the week before weekend testing.

Second, the Exchange would shorten the time it will begin accepting orders before commencement of the Early Trading Session as set forth in proposed Rule 7.34–E(a)(1) from 90 minutes to 30 minutes such that orders would be accepted beginning at 1:00 a.m. E.T. The Exchange does not propose to change the time when the Core Trading Session would begin or end or make any other rule changes impacting the Core Trading Session.

Third, the Exchange proposes to supplement its current customer disclosures set forth in proposed Rule 7.34–E(d)(3) to add six additional potential risks associated with Extended Hours Trading based on the recently approved rules of 24X National Exchange LLC,¹⁰ as follows:

- Proposed Rule 7.34–E(d)(viii) would address the potential risks of trading during when financial market infrastructure companies such as other markets, banks, Fedwire Funds Service, and certain other providers of settlement services, would be closed.

Exchange to 22 Hours a Day,” October 25, 2024, available at <https://ir.theice.com/press/news-details/2024/The-New-York-Stock-Exchange-Plans-to-Extend-Weekday-Trading-on-its-NYSE-Arca-Equities-Exchange-to-22-Hours-a-Day/default.aspx>.

¹⁰ See Securities Exchange Act Release No. 101777 (November 27, 2024), 89 FR 97092, 97110–111 (December 06, 2024) (In the Matter of the Application of 24X National Exchange LLC for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission) (“Release No. 101777”); see 24X Rule 3.21(g) & (i)(1)–(5).

The proposed rule would advise that during hours in which these financial market infrastructure companies are closed may lead to an increased passage of time between execution and final settlement of the resulting transaction. Proposed Rule 7.34–E(d)(viii) is based on and substantially the same as 24X Rule 3.21(g).

- Proposed Rule 7.34–E(d)(ix) would address the potential risks of trading during hours in which primary listing markets may not be open. As proposed, proposed [sic] Rule 7.34–E(d)(ix) would provide that during Extended Hours Trading, the primary listing exchanges for securities traded on the Exchange may not be open and, thus, trading in listed securities may not be occurring on the primary listing exchanges. The proposed rule would also advise customers that the primary listing exchanges may not be available to perform their regulatory surveillance and other regulatory obligations with regard to their listed securities during Extended Hours Trading. Proposed Rule 7.34–E(d)(ix) is based on and substantially the same as 24X Rule 3.21(i)(1).

- Proposed Rule 7.34–E(d)(x) would address the potential risks of trading during hours in which there may be limited or different regulatory protections. As proposed, the rule would advise that the regulatory protections available during Extended Hours Trading may be more limited or different than those available during the Core Trading Session. For example, the proposed rule would note that certain mechanisms that address volatility in individual symbols and the equities market may not be available during Extended Hours Trading. Proposed Rule 7.34–E(d)(x) is based on and substantially the same as 24X Rule 3.21(i)(2).

- Proposed Rule 7.34–E(d)(xi) would address the potential risk of trading because of limited trading alternatives. As proposed, the rule would advise that Exchange may be the only exchange trading certain securities during Extended Hours Trading and that, with more limited trading alternatives during Extended Hours Trading, customers may experience losses if their orders cannot be executed normally due to systems failures or other issues on the Exchange. Proposed Rule 7.34–E(d)(xi) is based on and substantially the same as 24X Rule 3.21(i)(3).

- Proposed Rule 7.34–E(d)(xii) would address the potential risk related to continuous trading during Extended Hours Trading. As proposed, the rule would advise that, with more limited breaks in trading, there may be a greater

⁷ See Rule 7.34–E(d)(1).

⁸ See *id.* at (d)(2).

⁹ See “The New York Stock Exchange Plans to Extend Weekday Trading on its NYSE Arca Equities

risk related to system maintenance and testing, as well as the pausing and resumption of trading. Proposed Rule 7.34–E(d)(xii) is based on and substantially the same as 24X Rule 3.21(i)(4).

• Finally, proposed Rule 7.34–E(d)(xiii) would advise that Extended Hours Trading may present additional unforeseen risks in addition to those discussed above. Proposed Rule 7.34–E(d)(xiii) is based on and substantially the same as 24X Rule 3.21(i)(5).

The current version of Rule 7.34–E would remain operative until transition to the proposed new Extended Trading Hours set forth in Rule 7.34–E(T)(a) becomes operative. As proposed, the Exchange would not commence operation of Extended Hours Trading as set forth in Rule 7.34–E(T)(a) unless the Equity Data Plans (as proposed to be defined in Rule 1.1, discussed below) have established a mechanism to collect, consolidate, process and disseminate quotation and transaction information at all times during Extended Trading Hours that is equivalent to the mechanism established for the Core Trading Session, and (2) have provided the Exchange with notification that they are prepared to collect, consolidate, process and disseminate quotation and transaction information to accommodate Extended Trading Hours. Specifically, prior to commencing operation during Extended Hours Trading as set forth in Rule 7.34–E(T)(a), the Exchange will file a proposed rule change pursuant to Section 19(b) of the Act and the rules thereunder to amend its rules to delete the current version of Rule 7.34–E and preamble and delete the “T” designation in Rule 7.34–E(T), and confirm that the Exchange is able to comply with its obligations under the Act and the rules thereunder during Extended Trading Hours and that such Equity Data Plans are prepared to collect, consolidate, process and disseminate quotation and transaction information at all times during Extended Trading Hours. The Exchange believes that these limitations are designed to reasonably ensure that consolidated quotation and transaction data are provided in a manner that is consistent with the existing extended hours sessions on exchanges.¹¹

The Exchange would accordingly add the following legend to current Rule 7.34–E (new text italicized):

This version of Rule 7.34–E will remain operative until Extended Hours Trading as set forth in Rule 7.34–E(T) is operative. For the avoidance of doubt, notwithstanding

anything to the contrary in these Rules, the Exchange shall not commence operation of Extended Hours Trading as set forth in Rule 7.34–E(T) unless the Equity Data Plans (1) have established a mechanism to collect, consolidate, process and disseminate quotation and transaction information at all times during Extended Trading Hours that is equivalent to the mechanism established for the Core Trading Session, and (2) have provided the Exchange with notification that they are prepared to collect, consolidate, process and disseminate quotation and transaction information to accommodate Extended Trading Hours. Prior to commencing operation during Extended Hours Trading as set forth in Rule 7.34–E(T), the Exchange will file a proposed rule change pursuant to Section 19(b) of the Exchange Act and the rules thereunder to amend its rules to delete the current version of Rule 7.34–E and preamble and delete the “T” designation in Rule 7.34–E(T), and confirm that the Exchange is able to comply with its obligations under the Exchange Act and the rules thereunder during Extended Trading Hours and that such Equity Data Plans are prepared to collect, consolidate, process and disseminate quotation and transaction information at all times during Extended Trading Hours. The rule change must be filed with the SEC within 18 months of the SEC’s approval of the Exchange’s rule filing adopting Rule 7.34–E(T). If the Exchange fails to file such a rule change within 18 months of approval of Rule 7.34–E(T), the Exchange will promptly file a proposed rule change to delete Rule 7.34–E(T).

The proposed language is substantially the same as text contained in 24X Rule 1.5(c) (Definitions). The Exchange would also revise current Rule 1.1 to add two definitions.

First, the Exchange would define “Equity Data Plans” to mean the effective national market system plan(s) governing the collection, consolidation, processing and dissemination of consolidated equity market data via the exclusive securities information processors (“SIPs”), including (1) Consolidated Tape Association Plan (“CTA Plan”), (2) Consolidated Quotation Plan (“CQ Plan”), (3) the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (“UTP Plan”), (4) the CT Plan established by the Limited Liability Company Agreement of CT Plan LLC, and (5) any successor thereto to the named Plan(s). Except for the reference to the CT Plan established by the Limited Liability Company Agreement of CT Plan LLC, the proposed definition is the same as 24X Rule 1.5(o).

Second, the Exchange would define Extended Hours Trading to mean trading during the Early Trading Session

and the Late Trading Session. The term is used without capitalization in current Rule 7.34–E(d) describing required customer disclosures. The Exchange proposes to use the proposed definition in proposed Rule 7.34–E(T)(d) and current Rule 7.34–E(d), with the exception of subsection (d)(4) of the current and proposed temporary rules, which use the phrase generically. The Exchange believes the proposal would add transparency and clarity to the Exchange’s rules.

The Exchange would also make certain technical, conforming changes to Rule 5.1–E(a) and Commentary .08 to Rule 9.5320–E as follows.

First, the Exchange would replace obsolete references to the “Opening session” and “Late Trading Session” and the associated session start and end times in Pacific Time in Rule 5.1–E(a)(2)(i) with the defined term “Extended Hours Trading.” The Exchange would also delete a stray period at the end of the rule heading. The proposed changes would add transparency and clarity to the Exchange’s rules.

Finally, the Exchange would replace the obsolete reference to “6:30 a.m. to 1:00 p.m. Pacific Standard Time” in Commentary .08 to Rule 9.5320–E with “the Core Trading Session.” The proposed change would also add transparency and clarity to the Exchange’s rules.

The Exchange believes that the proposal will benefit investors and the national market system by increasing market accessibility, promoting capital formation, and facilitating portfolio management. The proposed extended trading sessions would operate in the same fashion as the current sessions, and the rules that apply to the current sessions would apply to the proposed longer Early and Late Trading Sessions in unmodified form. In addition, all NMS stocks would continue to be eligible to trade in the proposed longer extended hours sessions. Moreover, as discussed below, the existing safeguards applicable to pre-market and post-market sessions including, among other things, operational safeguards, availability of consolidated last sale and quotation information, and specific disclosures to investors regarding the heightened risks of after-hours trading, and market surveillance capabilities, would be applicable to the proposed extended Early and Late Trading Sessions.

Operations

As noted, the proposed longer trading sessions will operate in the same way as the current sessions from an operational

¹¹ See Release No. 101777, 89 FR at 97105.

perspective. All order types eligible for such sessions and order type behaviors will remain unchanged. The Exchange will also route to away markets between 1:30 a.m. E.T. through 11:30 p.m. E.T. on Monday through Thursday, and 1:30 a.m. E.T. through 8:00 p.m. E.T. on Friday, just as it currently does between 4:00 a.m. E.T. and 9:30 a.m. E.T. and between 4:00 p.m. E.T. and 8:00 p.m. E.T. Order processing during the proposed longer trading sessions will also function the same way as it does in the current sessions. There will be no changes to the ranking, display, or decrementation processes or rules. The Exchange will report the best bid and offer on the Exchange to the appropriate network processor, as it currently does beginning at 4:00 a.m. E.T. using the same formats and delivery mechanisms. Trades executed and reported outside of the Core Trading Session as proposed will be reported to the appropriate network processor with the “.T” modifier, just as currently. No fee changes are proposed in connection with this proposal.

In addition, the Exchange will continue to work with primary listing exchanges to coordinate trading halts where appropriate, including halts implemented due to significant material events (*i.e.*, a bankruptcy declaration). During the proposed extended Early and Late Trading Sessions, the Exchange would pause trading in the underlying security until trading resumes on the primary listing market for the security. Generally, regardless of trading session, when a halt has been declared on the primary market, the Exchange will also halt trading automatically in the subject security on NYSE Arca. Exchange staff will be available during the proposed extended trading sessions in order to maintain a fair and orderly market, make any necessary rulings or take any action that may be necessary. Similarly, Exchange staff will be available if any action such as declaration of a halt in a NYSE Arca primary symbol would be necessary in the event of a system malfunction or significant material event such as a bankruptcy declaration.

The Exchange notes that, to the extent material corporate news is released during the Extended Trading Hours and the primary listing market does not impose a halt, the requirements of proposed Rule 7.34–E(T)(d)(3)(v) (which is part of the current rule) and proposed Rules 7.34–E(T)(d)(3)(viii)–(xiii) that disclosures be provided to investors relating to the risks associated with news announcements and the additional risks of trading during Extended Trading Hours, respectively, will help ensure that market participants,

including investors, are informed about the potential risks associated with trading during that time period.¹²

Securities Information Processor (“SIP”) Readiness

The Exchange will submit all quotes and trades that are generated in the extended Early and Late Trading Session to the consolidated quote and trade systems maintained by the SIPs for public dissemination. Accordingly, once these extended trading hours are operative, quotes and trades will be made available to the investing public in the same manner that quotes and trades are currently made available.

The two SIPs—the Securities Industry Automation Corporation (“SIAC”) and Nasdaq—both currently operate from 4:00 a.m. E.T. through 8:00 p.m. E.T. The Exchange has informed both SIPs, as well as the Operating Committee of the CTA and the CQ Plans and the UTP Plan (collectively, the “Operating Committee”), of its intention to extend trading hours to commence at 1:30 a.m. E.T. through 11:30 p.m. E.T. on Monday through Thursday, and 1:30 a.m. E.T. through 8:00 p.m. E.T. on Friday, and has submitted change requests to both SIPs requesting that the SIPs similarly extend their hours of operation. The Exchange will work with the Operating Committee and the SIPs regarding the extension of the SIPs’ operating hours and, in the near term, expects to request a vote of the Operating Committee instructing the SIPs to proceed with such extension.

As noted above, the Exchange will not make the proposed extended hours operative unless the Equity Data Plans have established a mechanism to collect, consolidate, process and disseminate quotation and transaction information at all times during Extended Trading Hours that is equivalent to the mechanism established for the Core Trading Session, and provided the Exchange with notification that they are prepared to collect, consolidate, process and disseminate quotation and transaction information to accommodate Extended Trading Hours. As also previously noted, at that point the Exchange will file a proposed rule change to, among other things, confirm that such Equity Data Plans are prepared to collect, consolidate, process and disseminate quotation and transaction information at all times during Extended Trading Hours.

Market Surveillance

Trading on the Exchange is subject to a comprehensive regulatory program applicable to the current Early, Core, and Late Trading Sessions that includes a suite of surveillances that reviews trading during each trading session as well as routine examinations of ETP Holders consistent with the current exam-based regulatory program. The Exchange’s current regulatory program would be fully applicable to trading in the proposed extended Early and Late Trading Sessions.

Customer Disclosures

As noted above, given the potential trading and other risks of extended hours trading Products, Rule 7.34–E(d) prohibits ETP Holders from accepting orders from non-ETP Holders for execution during the Early or Late Trading Session without making the specified disclosures in the Rule. As further discussed above, the Exchange proposes to enhance these disclosures by including additional mandatory disclosures regarding the potential risks associated with trading during Extended Hours Trading based on recently approved 24X Rule 3.21.¹³ The Exchange notes that Rule 7.34–E(d), as amended, would be fully applicable to the proposed extended trading sessions and would place the same disclosure obligation on ETP Holders.

Implementation

The Exchange will begin accepting orders for the extended Early and Late Trading Session as set forth in proposed Rule 7.34–E(T) subject to the effectiveness of this proposed rule change and subject to the conditions set forth in the proposed legend to current Rule 7.34–E described above.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁴ in that 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.

Generally, the Exchange believes that the proposal, including the proposed temporary rule to support longer extended hours trading, would remove

¹³ See text accompanying note 10, *supra*.

¹⁴ 15 U.S.C. 78f(b)(5).

¹² See Release No. 101777, 89 FR at 97109.

impediments to and perfect the mechanism of a free and open market and a national market system by providing a rules framework to support the lengthening of the current extended trading hours for NMS stocks to 1:30 a.m. E.T. through 11:30 p.m. E.T. on Monday through Thursday, and 1:30 a.m. E.T. through 8:00 p.m. E.T. on Friday, which the Exchange believes will increase market accessibility, promote capital formation, and facilitate portfolio management.

The Exchange further believes that adopting a temporary rule that would only be operative upon transition to the new proposed Extended Trading Hours, and adding a legend to the current version of Rule 7.34–E specifying that the current rule will remain operative until that time, would promote transparency in Exchange rules and add clarity as to which rules are operative and when, thereby reducing potential confusion, and making the Exchange's rules easier to navigate. Moreover, the proposed legend would provide that the Exchange will not commence operation of the longer Extended Trading Hours prior to filing a proposed rule change to amend its rules confirming that the Exchange is able to comply with its obligations under the Act during the longer extended trading session and that the Equity Data Plans are prepared to collect, consolidate, process and disseminate quotation and transaction information at all times during the proposed Extended Trading Hours. This requirement would promote transparency because trading will not occur unless the Equity Data Plans are able to collect, consolidate, process and disseminate consolidated quotation and transaction data during the proposed longer session. The requirement would also be designed to ensure that consolidated quotation and transaction data are provided in a manner that is consistent with the Exchange's current extended hours sessions, and that the proposed change is thus designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in NMS stocks, and perfect the mechanism of a free and open market and a national market system.

Finally, the Exchange believes that applying the current requirements for extended hours trading such as order designation, permitted orders, and mandatory customer disclosures as well as the operational and regulatory safeguards already in place for the

current Early, Core, and Late Sessions to the proposed extended sessions, would promote just and equitable principles of trade and protect investors and the public interest. In addition, the proposed enhanced disclosures based on the approved rules of another exchange will, together with the existing disclosures, provide investors with important information that should help to inform their decisions as to whether trading during the Exchange's proposed longer extended hours is suitable for them. The Exchange believes that the expanded customer disclosures are consistent with the Act and, in particular, the Section 6(b)(5)¹⁵ requirement that an exchange's rules be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and protect investors and the public interest.

The Exchange believes that adding a definition of Equity Data Plan to Rule 1.1 would remove impediments to and perfect the mechanism of a free and open market and national market system by adding clarity and transparency to the Exchange's rules with respect to the a [sic] critical element that must be in place for the proposed longer extended trading session. As discussed above, trading in the new extended session will not occur unless the Equity Data Plans are able to collect, consolidate, process and disseminate consolidated quotation and transaction data during the new session. Similarly, the Exchange believes that adding a definition of Extended Hours Trading to Rule 1.1 would remove impediments to and perfect the mechanism of a free and open market and national market system by adding clarity to the Exchange's rules through the introduction of a definition that can be utilized immediately and that would not need to be updated once the Exchange migrates to 22 hour trading, 5 days a week. The Exchange further believes that eliminating obsolete legacy material from Rule 5.1–E(a) and Commentary .08 to Rule 9.5320–E similarly removes impediments to and perfects the mechanism of a free and open market by removing confusion that may result from having obsolete material in the Exchange's rulebook. The Exchange believes that eliminating such obsolete material would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency, thereby reducing potential confusion.

¹⁵ 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is designed to propose rule changes to lengthen the current extended trading hours for NMS stocks to 1:30 a.m. E.T. through 11:30 p.m. E.T. on Monday through Thursday, and 1:30 a.m. E.T. through 8:00 p.m. E.T. on Friday. The Exchange operates in a highly competitive environment in which unaffiliated exchange competitors and new entrants could compete to offer extended hours trading of similar duration, and the proposal would therefore enable the Exchange to compete on a more level playing field with these competitors.

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. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, 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–2024–89 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–2024–89. 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-2024-89 and should be submitted on or before January 21, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-30903 Filed 12-27-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102006; File No. SR-NASDAQ-2024-085]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Exchange Rules 1015, 9261, 9341, 9524 and 9830 To Permit Hearings by Video Conference

December 19, 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 December 19, 2024, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rules 1015, 9261, 9341, 9524 and 9830 to allow for video conference hearings before the Office of Hearing Officers ("OHO") and the Exchange Review Council ("ERC") under specified conditions.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to harmonize Exchange Rules 1015, 9261, 9341, 9524 and 9830 with changes by the Financial Industry Regulatory Authority, Inc. ("FINRA") to its Rules 1015, 9261, 9341, 9524 and 9830 that would allow for the use of video conference for reasons in addition to COVID-19. The proposal also deletes expired references to temporary amendments.³ The Exchange originally filed proposed rule change SR-NASDAQ-2020-076, which allowed the Exchange's Office of Hearing Officers ("OHO") and the Exchange Review Council ("ERC") to conduct hearings, on a temporary basis, by video conference, if warranted by the COVID-19-related public health risks posed by an in-person hearing.⁴ These were extended several times due to the continuing public health risks and

logistical challenges related to COVID-19, including whether hearing participants could safely travel and abide by state or local quarantine requirements.⁵ The use of high quality, secure and user-friendly video conference technology in hearings has demonstrated that video is an effective and efficient alternative to in-person hearings.⁶

The Exchange is proposing to make the temporary amendments regarding video conference hearings permanent, with some modifications that would allow for the use of video conference for reasons in addition to COVID-19. The proposed rule change will continue to improve and modernize the Exchange's operations so that parties, panelists, and the Exchange staff may proceed expeditiously by video conference in the event of certain circumstances, including where unforeseen events make appearing in person difficult or impracticable. As described below, impracticability is intended to account for an uncommon situation or extraordinary circumstance. The proposed rule change further promotes efficiency by giving OHO and the ERC authority to act quickly if a future unexpected event impaired their ability to conduct in-person hearings safely.

OHO conducts hearings in disciplinary proceedings and hearings for temporary and permanent cease and desist orders. When orders in disciplinary proceedings are appealed, the ERC holds hearings on oral argument. The ERC also conducts hearings in membership proceedings and eligibility proceedings. Under the proposed rule change, OHO and the ERC's authority to order hearings by

⁵ See Securities Exchange Act Release No. 90774 (December 22, 2020), 85 FR 86614 (December 30, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2020-092); Securities Exchange Act Release No. 91763 (May 4, 2021), 86 FR 25055 (May 10, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2021-033); Securities Exchange Act Release No. 92911 (September 9, 2021), 86 FR 51395 (September 15, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2021-067); Securities Exchange Act Release No. 93852 (December 22, 2021), 86 FR 74201 (December 29, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2021-104); Securities Exchange Act Release No. 94610 (April 5, 2022), 87 FR 21225 (April 11, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2022-028); Securities Exchange Act Release No. 95436 (August 5, 2022), 87 FR 49624 (August 11, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2022-044); Securities Exchange Act Release No. 96282 (November 9, 2022), 87 FR 68788 (November 16, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2022-059).

⁶ See Securities Exchange Act Release No. 97403 (April 28, 2023), 88 FR 28645 (May 4, 2023) (SR-FINRA-2023-008).

³ See Securities Exchange Act Release No. 96282 (November 9, 2022), 87 FR 68788 (November 16, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2022-059) (temporary amendments expiring on January 31, 2023).

⁴ See Securities Exchange Act Release No. 90390 (November 10, 2020), 85 FR 73302 (November 17, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-NASDAQ-2020-076).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

video conference would extend beyond the public health risks posed by COVID-19 to other similar situations in which proceeding in person may endanger the health or safety of the participants or would be impracticable. For example, appearing in person may be impracticable in the event of a natural disaster or terrorist attack that caused travel to be cancelled for a period of time. As with the temporary amendments, under the proposed rule change, in-person hearings will remain the default method for hearings before OHO and the ERC, and their exercise of authority under the proposed rule change would be discretionary. In-person hearings may take place where safe and appropriate.

Evidentiary Hearings

For evidentiary hearings, the proposed rule change would give OHO or the ERC authority to order an evidentiary hearing to occur by video conference, in whole or in part, if OHO or the ERC determines that proceeding in person may endanger the health or safety of the participants or would be impracticable. OHO and the ERC would have such authority on their own. In addition, under the proposed rule change, parties could file a joint motion requesting the hearing to occur, in whole or in part, by video conference based on a showing of good cause. Whether acting on its own or based on a joint motion of the parties, OHO and the ERC would have reasonable discretion to exercise their authority under the proposed rule change. In deciding whether to schedule a hearing by video conference, OHO and the ERC could consider and balance a variety of factors including, for example and without limitation, a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.

Oral Argument

The proposed rule change would give the ERC authority to order an oral argument hearing to occur by video conference, in whole or in part, if it determines that proceeding in person may endanger the health or safety of the participants or would be impracticable. The ERC would have such authority on its own. In addition, under the proposed rule change, the ERC would have authority—on its own or on consideration of a motion by any party—to order oral argument to occur by video conference, in whole or in part, for other reasons (*i.e.* reasons not limited to public health, safety or impracticability). Under such

circumstances, an opposing party would have the opportunity to demonstrate that the hearing should proceed in person because proceeding by video conference would materially disadvantage that party. Whether a party has shown material disadvantage would depend on the facts and circumstances. Considerations may include, for example and without limitation, case complexity, the issues on appeal, and whether the respondent is pro se and desires to appear in person. Whether acting on its own or based on a motion of a party, the ERC would have reasonable discretion to exercise its authority under the proposed rule change. In deciding whether to order an oral argument hearing by video conference, the ERC could consider and balance a variety of factors including, for example and without limitation, a hearing participant's individual health concerns, access to video conference technology, whether a party has delayed or refused to appear in person, and whether proceeding by video conference would materially disadvantage any party.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by continuing to provide greater harmonization between the Exchange rules and FINRA rules of similar purpose,⁹ resulting in less burdensome and more efficient regulatory compliance. The proposal also deletes expired references to temporary amendments.

The Exchange believes that the proposed rule change protects investors and the public interest by permitting the use of broadly available technology to allow hearings to proceed by video conference under certain circumstances. The Exchange's disciplinary and eligibility proceedings and other review processes serve a critical role in providing investor protection and maintaining fair and orderly markets by, for example, sanctioning misconduct and preventing further customer harm

by members and associated persons. The proposed rule change would encourage the prompt resolution of these cases while preserving a fair process.

The proposed rule change promotes efficiency by permitting hearings to occur by video conference in situations where the hearings would otherwise be postponed for an uncertain period of time. As discussed, COVID-19 necessitated the Exchange to propose the temporary amendments, which were extended due to the continuing health risks of COVID-19, as well as limitations on travel, quarantine requirements, and other logistical challenges to safely conducting hearings in person. The proposed rule change further promotes efficiency by giving OHO and the ERC authority to act quickly if a future unexpected event impaired their ability to conduct in-person hearings safely.

The proposed rule change also serves to provide a fair procedure for the disciplining of members and persons associated with members by allowing hearings to proceed by video conference not only due to public health or safety reasons, but also at a party or the parties' request for reasons particular to them. The Adjudicator could allow a hearing to proceed by video conference in the exercise of reasonable discretion and subject to procedural safeguards that ensure fairness.

Thus, the proposed rule change represents a significant step toward modernizing the Exchange's procedures in a manner that preserves in-person hearings, but allows for the use of high quality, secure and user-friendly video conference technology under certain circumstances.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather intended solely to allow for the use of video conference for reasons in addition to COVID-19 where unforeseen events make appearing in person difficult or impracticable. In its filing, FINRA provided an economic impact assessment analyzing the potential impacts of the proposed rule change, including anticipated costs, benefits,

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ See Securities Exchange Act Release No. 97403 (April 28, 2023), 88 FR 28645 (May 4, 2023) (SR-FINRA-2023-008).

and distributional and competitive effects.¹⁰

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹¹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹²

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-NASDAQ-2024-085 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NASDAQ-2024-085. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly.

We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2024-085 and should be submitted on or before January 21, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-30917 Filed 12-27-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101978; File No. SR-NASDAQ-2024-084]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Modify Certain Initial Listing Liquidity Requirements

December 19, 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 December 12, 2024, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify certain initial listing liquidity requirements.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to modify Listing Rules 5405 and 5505 to require that a company listing on the Nasdaq Global Market or Nasdaq Capital Market in connection with an initial public offering (“IPO”) satisfy the applicable minimum Market Value of Unrestricted Publicly Held Shares (“MVUPHS”) requirement solely from the proceeds of the offering. Nasdaq is also proposing to make similar changes affecting companies that uplist to Nasdaq from the U.S. over-the-counter market (“OTC market”) in conjunction with a public offering.

Nasdaq Listing Rules require a company to have a minimum Market Value of Unrestricted Publicly Held

¹⁰ See Securities Exchange Act Release No. 97403 (April 28, 2023), 88 FR 28645 (May 4, 2023) [SR-FINRA-2023-008].

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Shares. For initial listing on the Nasdaq Global Market, a company must have a minimum MVUPHS of \$8 million under the Income Standard, \$18 million under the Equity Standard, and \$20 million under either the Market Value or Total Assets/Total Revenue Standards.³ For initial listing on the Nasdaq Capital Market, a company must have a minimum MVUPHS of \$5 million under the Net Income Standard, and \$15 million under either the Equity or Market Value of Listed Securities Standards.⁴

Unrestricted Publicly Held Shares are shares that are not held by an officer, director or 10% shareholder of the company and which are not subject to resale restrictions of any kind.⁵ In the case of a company listing in conjunction with a public offering, previously issued shares registered for resale ("Resale Shares"), and not held by an officer, director or 10% shareholder of the company, are counted as Unrestricted Publicly Held Shares in addition to the shares being sold in the offering.

The MVUHPS standard is one of the core liquidity requirements within the Nasdaq listing rules. Like the other liquidity requirements, it is meant to ensure that there is sufficient liquidity to provide price discovery and support an efficient and orderly market for the company's securities. Nonetheless, Nasdaq has observed that the securities companies that meet the applicable MVUPHS requirement by including Resale Shares have experienced higher volatility on the date of listing than those of similarly situated companies that meet the requirement with only the proceeds from the offering. Nasdaq believes that the Resale Shares may not contribute to liquidity to the same degree as the shares sold in the public offering. As such, Nasdaq believes it is appropriate to modify the rules to exclude the Resale Shares from the calculation of MVUPHS for initial listing of companies listing in conjunction with a public offering.

Accordingly, Nasdaq proposes to modify Listing Rules 5405(b) and 5505(b) to provide that a company listing in connection with an initial public offering, including through the issuance of American Depositary Receipts, must satisfy the applicable MVUPHS requirement for each initial listing standard for primary equity

securities⁶ with the proceeds of that offering.

Related to this change, Nasdaq believes it also is appropriate to apply a similar requirement to companies trading in the OTC market that qualify for listing based on an offering. Specifically, a company trading in the OTC market prior to listing must currently satisfy either a minimum daily trading volume on the OTC market of 2,000 shares over the past 30 trading days with trading occurring in at least 50% of those days (the "ADV Requirement") or, alternatively, list in connection with a firm commitment underwritten public offering of at least \$4 million.⁷ This alternative recognizes that where a company is listing in connection with a significant firm commitment underwritten public offering the liquidity characteristics of the prior trading will change and reflect the offering, just like in an IPO, and shares in the offering will be the primary source of liquidity upon listing.

Given Nasdaq's observations about the liquidity characteristics of IPOs with Resale Shares, Nasdaq believes it is appropriate to treat OTC companies relying on an offering in a similar manner, given that the liquidity in such listings is also expected to be supported by the offering. Accordingly, Nasdaq proposes to modify the alternative to the ADV requirement in Listing Rules 5405(a)(4) and 5505(a)(5). As revised, a company relying on the alternative will be required to satisfy the applicable MVUPHS requirements with only the proceeds from the offering. As a result, Nasdaq also proposes to modify Listing Rules 5405(a)(4) and 5505(a)(5) to increase the size of the required public offering for this alternative to the ADV Requirement from \$4 million to \$5 million for Capital Market applicants and \$8 million for Global Market applicants to align with the minimum MVUHPS requirement for each market.⁸ If the company qualifies under a different standard, instead of the income standard, the minimum raise instead would have to satisfy the MVUPHS requirement of the applicable standard.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰

in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Specifically, Nasdaq believes that the proposal to modify Listing Rules 5405(b) and 5505(b) to require that a company listing on the Nasdaq Global Market or Capital Market in connection with an IPO satisfy the applicable minimum MVUPHS requirement solely from the proceeds of the offering is designed to protect investors and the public interest and to remove impediments to and perfect the mechanism of a free and open market and a national market system because Nasdaq believes that the change will likely result in less volatile trading of affected companies upon listing. As described above, the MVUHPS standard is one of the core liquidity requirements within the Nasdaq listing rules designed to ensure that there is sufficient liquidity to provide price discovery and support an efficient and orderly market for the company's securities. Based on Nasdaq's experience, companies that meet the applicable MVUPHS requirement by including Resale Shares are more likely to be subject to volatile trading on the date of listing than similarly situated companies that meet the requirement with only the proceeds from the offering. Nasdaq believes that this proposed change will help ensure that the initial pool of liquidity available for trading meets or exceeds the minimum applicable MVUHPS requirement.

Nasdaq also believes that the proposal to modify Listing Rules 5405(a)(4) and 5505(a)(5) to require that a company that is trading on the OTC market at the time of its application and that is listing in conjunction with a firm commitment public offering in lieu of meeting the ADV Requirement must satisfy the applicable MVUPHS requirements with only the proceeds from the offering is designed to protect investors and the public interest and to remove impediments to and perfect the mechanism of a free and open market and a national market system because, Nasdaq believes it is appropriate to align the minimum offering size for this alternative to the ADV Requirement with the minimum MVUHPS requirement for each market¹¹ by modifying Listing Rules 5405(a)(4) and 5505(a)(5) to set the minimum offering under this alternative to \$5 million on

⁶ See footnotes 3 and 4, above.

⁷ See Listing Rules 5405(a) and 5505(a). This requirement is the same under the listing rules of both the Nasdaq Global Market and Nasdaq Capital Market.

⁸ See footnotes 3 and 4, above.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ See text accompanying footnotes 3 and 4, above.

³ See Listing Rules 5405(b)(1)(C), 5405(b)(2)(C), 5405(b)(3)(B), and 5405(b)(4)(B).

⁴ See Listing Rules 5505(b)(1)(B), 5505(b)(2)(C), and 5505(b)(3)(C).

⁵ See Listing Rule 5005(a)(46).

the Capital Market and to \$8 million on the Global Market because, in the case where a company does not meet the ADV Requirement, the offering serves as the primary source of price discovery in the same way the offering does in an IPO, as described above. Moreover, failure to align these requirements could allow a company to begin trading on the OTC market and then uplist to Nasdaq a short time later with an offering that does not satisfy the proposed new requirements for companies listed in connection with an IPO, as described above.

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. While Nasdaq does not believe there will be any impact on inter-market 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. Moreover, each national securities exchange can elect how to structure its listing requirements and respond in a competitive manner. In that regard, Nasdaq notes, for example, that in 2019 Nasdaq first enhanced its initial listing requirements to exclude holders of restricted stock from the calculation of the market value of publicly held shares and to impose a requirement that a minimum number of shareholders hold at least \$2,500 worth of unrestricted stock, however New York Stock Exchange and NYSE American have not adopted comparable requirements and compete for listings on such basis.¹²

Nasdaq also believes that any impact on intra-market competition from the proposed change affecting companies listing on the Nasdaq Global and Capital Markets in connection with an IPO or uplisting from the OTC market, as described above, will be necessary to better protect investors, in furtherance of a central purpose of the Act. In that regard, companies listing on Nasdaq through other means, such as those listing on the Nasdaq Global Select Market or listing through a Direct Listing, are already subject to higher initial listing standards than companies impacted by this proposed change and Nasdaq has not observed similar concerns with the trading of these companies' securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such 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-NASDAQ-2024-084 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NASDAQ-2024-084. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2024-084 and should be submitted on or before January 21, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024-30898 Filed 12-27-24; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the Optional Peg Rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 4.38 percent for the January-March quarter of FY 2025.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any Third Party Lender's commercial loan which funds any portion of the cost of a 504 project (see 13 CFR 120.801) shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given State, the maximum interest rate will be the rate permitted by the constitution or laws of the given State.

David Parrish,

Chief, Secondary Market Division.

[FR Doc. 2024-31199 Filed 12-27-24; 8:45 am]

BILLING CODE 8026-09-P

¹² Securities Exchange Act Release No. 86314 (July 5, 2019), 84 FR 33102 (July 11, 2019) (approving SR-NASDAQ-2019-009).

¹³ 17 CFR 200.30-3(a)(12).

SOCIAL SECURITY ADMINISTRATION**[Docket No. SSA–2024–0043]****Privacy Act of 1974; Matching Program****AGENCY:** Social Security Administration (SSA).**ACTION:** Notice of a new matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a new matching program with the United States Department of Health and Human Service, the Office of Child Support Services (OCSS). Under this matching program, OCSS will provide SSA with online query access to the National Directory of New Hires (NDNH) for administration of the Supplemental Security Income (SSI), Disability Insurance (DI), and Ticket-to-Work and Self-Sufficiency (Ticket) programs, and will provide SSA with quarterly wage and unemployment insurance data from NDNH through a batch match for administration of the SSI program.

DATES: The deadline to submit comments on the proposed matching program is January 29, 2025.

The matching program will be applicable on January 29, 2025, or once a minimum of 30 days after publication of this notice has elapsed, whichever is later. The matching program will be in effect for a period of 18 months.

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2024–0043 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the internet. Please visit the Federal eRulemaking portal at <https://www.regulations.gov>. Use the Search function to find docket number SSA–2024–0043 and then submit your comments. The system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each submission manually. It may take up to a week for your comments to be viewable.

2. *Fax:* Fax comments to (833) 410–1613.

3. *Mail:* Matthew Ramsey, Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, or emailing Matthew.Ramsey@ssa.gov. Comments are also available for public viewing on the Federal eRulemaking portal at <https://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT:

Interested parties may submit general questions about the matching program to Cynthia Scott, Division Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, at telephone: (410) 966–1943, or send an email to Cynthia.Scott@ssa.gov.

SUPPLEMENTARY INFORMATION: None.

Matthew Ramsey,

Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

PARTICIPATING AGENCIES:

SSA and OCSS.

AUTHORITY FOR CONDUCTING THE MATCHING PROGRAM:

The legal authorities for disclosures under this agreement are the Act and the Privacy Act of 1974, as amended. Section 453(j)(4) of the Social Security Act (Act) provides that OCSS shall provide the Commissioner of Social Security with all information in the NDNH. 42 U.S.C. 653(j)(4). SSA has authority to use data to determine entitlement and eligibility for, and to conduct, programs it administers pursuant to 1631(e)(1)(B) and (f) (SSI), 224(h) (DI), 1148 (Ticket) of the Act. 42 U.S.C. 1383(e)(1)(B) and (f), 42 U.S.C. 424a(h), and 42 U.S.C. 1320b–19, and 222(d) (Rehabilitation Services), 42 U.S.C. 422(d), and 1615(d) and (e), 42 U.S.C. 1382d(d) and (e). Disclosures under this agreement shall be made in accordance with 5 U.S.C. 552a(b)(3), and in compliance with the matching procedures in 5 U.S.C 552a(o), (p), and (r).

With respect to the SSI program, subsection 1631(f) of the Act (42 U.S.C. 1383(f)) provides that “the head of any federal agency shall provide such information as the Commissioner of Social Security needs for purposes of determining eligibility for or amount of benefits, or verifying information with respect thereto.”

With respect to the DI program, subsection 224(h) of the Act (42 U.S.C.

424a(h)) provides that “the head of any Federal agency shall provide such information within its possession as the Commissioner of Social Security may require for purposes of making a timely determination of the amount of the reduction, if any, required by this section in benefits payable under this subchapter, or verifying other information necessary in carrying out the provisions of this section.”

With respect to the Ticket program, subsections 1148(b)(4)(d), and (h) of the Act (42 U.S.C. 1320b–19(b)(4), (d), and (h)) require SSA to verify earnings of beneficiaries and recipients to make payments to employment network providers under the Ticket program. With respect to cost-reimbursement payments to State Vocational Rehabilitation (VR) Agencies for services to beneficiaries outside of the Ticket program, subsections 222(d) and 1615(d) and (e) of the Act (42 U.S.C. 422(d), 1382d(d) and (e)) requires SSA to verify earnings of beneficiaries and recipients to ensure accurate payments.

PURPOSE(S):

This agreement governs a matching program between OCSS and SSA. The agreement covers the following information exchange operations wherein OCSS will provide SSA with online query access to the NDNH for administration of SSI, DI, and Ticket programs, and will provide SSA with quarterly wage and unemployment insurance data from NDNH through a batch match for administration of the SSI program.

The Commissioner of Social Security is required to verify eligibility of a recipient or applicant for SSI using independent or collateral sources. SSI benefits may not be determined solely based on declarations by the applicant concerning eligibility factors or other relevant facts. Information is also obtained, as necessary, in order to assure that SSI benefits are only provided to eligible individuals (or eligible spouses) and that the amounts of such benefits are correct. Section 1631(e)(1)(B) of the Act (42 U.S.C. 1383(e)(1)(B)). The Commissioner of Social Security may review DI benefits to determine if a reduction in benefits is required based on wages or self-employment. Section 224(h) of the Act (42 U.S.C. 424a(h)).

The Commissioner also evaluates the work activity (employment and earnings levels) of DI and SSI beneficiaries as a basis to make payments to Employment Networks and State VR Agencies under the Ticket program Public Law (Pub. L.) 106–170 and to State VR Agencies pursuant to the State VR reimbursement

program, subsections 222(d) and 1615(d) and (e) of the Act (42 U.S.C. 422(d), 1382d(d) and (e).

This agreement assists SSA in:

(1) establishing or verifying eligibility or payment amounts, or both under the SSI program;

(2) establishing or verifying eligibility or continuing entitlement under the DI program; and

(3) administering the Ticket program.

These activities include overpayment avoidance and recovery for all three programs. SSA evaluates the cost-benefits, including programmatic and operational impact, which NDNH information has on SSA programs and operations. OCSS and SSA have been parties to matching agreements and recertification for these purposes since 2001.

SSA will use the NDNH comparison information stored in SSA electronic folders, paper folders, and obtained through online query of the NDNH to administer the SSI, DI, and Ticket programs efficiently, as set forth in this agreement. SSA will make the online request through its authorized query applications. This query will submit the request through OCSS' web service. SSA's use of authorized query applications to access the OCSS web service is understood by OCSS and SSA to apply throughout the agreement. This agreement also governs the use, treatment, and safeguarding of the information exchanged.

CATEGORIES OF INDIVIDUALS:

The individuals whose information is involved in this matching program are individuals who are applicants or recipients of Title II, Title XVI, Ticket-to-Work and Self-Sufficiency programs.

CATEGORIES OF RECORDS:

SSA will provide electronically to OCSS the following data elements in the finder file:

- Individual's Social Security number (SSN); and

- Name (first, middle, last)

For the Quarterly Batch Match (SSI), OCSS will provide electronically to SSA the following data elements from the NDNH in the quarterly wage file:

- Quarterly wage record identifier
- For employees:

- (1) Name (first, middle, last)

- (2) SSN

- (3) Verification request code

- (4) Processed date

- (5) Non-verifiable indicator

- (6) Wage amount

- (7) Reporting period

- For employers of individuals in the quarterly wage file of the NDNH:

- (1) Name

- (2) Employer identification number

- (3) Address(es)

- Transmitter agency code

- Transmitter state code

- State or agency name

OCSS will provide electronically to SSA the following data elements from the NDNH in the unemployment insurance file:

- Unemployment insurance record identifier

- Processed date

- SSN

- Verification request code

- Name (first, middle, last)

- Address

- Unemployment insurance benefit amount

- Reporting period

- Transmitter agency code

- Transmitter state code

- State or agency name

Online Query Access (SSI, DI, and Ticket programs). Data elements on quarterly wage screen:

- Quarterly wage record identifier

- Date report processed

- Name/SSN verified

- For Employees:

- (1) SSN

- (2) Name (first, middle, last)

- (3) Date of hire

- For Employers:

- (1) Name

- (2) Employer identification number

- (3) Employer Federal Information Processing System (FIPS) code (if present)

- (4) Address(es)

Data elements on the new hire screen:

- New hire record identifier

- Name/SSN verified

- Date report processed

- For Employees

- (1) Name

- (2) Employer identification number

- (3) Employer FIPS code (if present)

- (4) Address(es)

Data elements on the unemployment insurance screen:

- Unemployment insurance record identifier

- Name/SSN verified

- SSN

- Name (first, middle, last)

- Address

- Unemployment insurance benefit amount

- Reporting period

- Payer state

- Date report processed

SYSTEM(S) OF RECORDS:

SSA's System of Records (SOR) are the Supplemental Security Income Record and Special Veterans Benefits (SSR), 60-0103, last fully published at

71 FR 1830 (January 11, 2006) and amended at 72 FR 69723 (December 10, 2007), 83 FR 31250-31251 (July 3, 2018), 83 FR 54969 (November 1, 2018), at 89 FR 825 (January 5, 2024), and at 89 FR 14554 (February 27, 2024); the Completed Determination Record-Continuing Disability Determination file (CDR-CDD), 60-0050, last fully published at 71 FR 1813 (January 11, 2006), amended at 72 FR 69723 (December 10, 2007), 83 FR 54969 (November 1, 2018), 84 FR 17907 (April 26, 2019), and at 89 FR 825 (January 5, 2024); the Master Beneficiary Record (MBR), 60-0090, last fully published at 71 FR 1826 (January 11, 2006), amended at 72 FR 69723 (December 10, 2007), 78 FR 40542 (July 5, 2013), 83 FR 31250-31251 (July 3, 2018), and 83 FR 54969 (November 1, 2018), at 89 FR 825 (January 5, 2024), and at 89 FR 14554 (February 27, 2024); the Electronic Disability (eDIB) Claim File, (60-0320) last fully published at 85 FR 34477 (June 4, 2020), and at 89 FR 14554 (February 27, 2024); the Ticket-to-Work and Self-Sufficiency Program Payment Database, (60-0295) last fully published at 66 FR 17985 (April 4, 2001), and amended at 72 FR 69723 (December 10, 2007), 83 FR 54969 (November 1, 2018), and at 89 FR 825 (January 5, 2024); and the Ticket-to-Work Program Manager (PM) Management Information System, (60-0300) last fully published at 66 FR 32656 (June 15, 2001), and amended at 72 FR 69723 (December 10, 2007), 83 FR 54969 (November 1, 2018), and at 89 FR 825 (January 5, 2024).

OCSE's SOR is the OCSE National Directory of New Hires, System No. 09-80-0381 published in full at 89 FR 25625 (April 11, 2024).

[FR Doc. 2024-31294 Filed 12-27-24; 8:45 am]

BILLING CODE 4191-02-P

DEPARTMENT OF STATE

[Public Notice: 12623]

Proposal To Extend the Cultural Property Agreement Between the United States and Chile

ACTION: Notice.

SUMMARY: Proposal to extend the Memorandum of Understanding Between the Government of the United States of America and the Government of the Republic of Chile Concerning the Imposition of Import Restrictions on Categories of Archaeological Material of Chile ("the Chile Agreement").

FOR FURTHER INFORMATION CONTACT:

Allison Davis Lehmann, Cultural Heritage Center, Bureau of Educational

and Cultural Affairs: (202) 904-0878; culprop@state.gov; include “Chile” in the subject line.

SUPPLEMENTARY INFORMATION: Pursuant to the authority vested in the Principal Deputy Assistant Secretary of State for Educational and Cultural Affairs, and pursuant to 19 U.S.C. 2602(f)(1), an extension of the Chile Agreement is hereby proposed.

A copy of the Chile Agreement, the Designated List of categories of material currently restricted from import into the United States, and related information can be found at the Cultural Heritage Center website: <https://culturalheritage.state.gov>.

Allison R. Davis Lehmann,

Executive Director, Cultural Property Advisory Committee, Department of State.

[FR Doc. 2024-31256 Filed 12-27-24; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice: 12619]

Notice of Public Meeting in Preparation for International Maritime Organization PPR 12 Meeting

ACTION: Notice of public meeting.

The Department of State will conduct a public meeting at 12:00 p.m. EST on Tuesday, January 21, 2025, virtually via Microsoft Teams. The primary purpose of the meeting is to prepare for the 12th session of the International Maritime Organization’s (IMO) Pollution Prevention and Response Sub-Committee (PPR 12) to be held in London, United Kingdom from January 27th to 31st, 2025.

Members of the public may participate in the public meeting up to the capacity of the Microsoft Teams line. The Microsoft Teams information is Conference Call-in number +1 410-874-6742; Phone Conference ID 751 408 844#. To RSVP, participants should contact the meeting coordinator, Ms. Nicole M. Schindler, by email at Nicole.M.Schindler@uscg.mil no later than Monday, January 20, 2025.

The agenda items to be considered at this meeting mirror those to be considered at PPR 12, and include:

- Adoption of the agenda;
- Decisions of other IMO bodies;
- Safety and pollution hazards of chemicals and preparation of consequential amendments to the IBC Code (7.3);
- Amendments to MARPOL Annex II in order to improve the effectiveness of cargo tank stripping, tank washing operations and prewash procedures

for products with a high melting point and/or high viscosity 7.38);

- Development of guidance on matters relating to in-water cleaning (1.21);
- Reduction of the impact on the Arctic of Black Carbon emissions from international shipping (3.3);
- Evaluation and harmonization of rules and guidance on the discharge of discharge water from EGCS into the aquatic environment, including conditions and areas (1.23);
- Amendments to the 2017 Guidelines addressing additional aspects of the NOx Technical Code 2008 with regard to particular requirements related to marine diesel engines with Selective Catalytic Reduction (SCR) systems (resolution MEPC.291(71), as amended by resolution MEPC.313(74)) (7.46);
- Review of the IBTS Guidelines and amendments to the IOPP Certificate and Oil Record Book (2.13);
- Revision of MARPOL Annex IV and associated guidelines (1.26);
- Follow-up work emanating from the Action Plan to address marine plastic litter from ships (4.3);
- Unified interpretation of provisions of IMO environment-related conventions (7.1);
- Biennial agenda and provisional agenda for PPR 13;
- Election of Chair and Vice-Chair for 2026;
- Any other business; and
- Report to the Marine Environment Protection Committee.

Please note: The IMO may, on short notice, adjust the PPR 12 agenda to accommodate the constraints associated with the meeting format. Any changes to the agenda will be reported to those who RSVP.

Those who plan to participate should contact the meeting coordinator, Ms. Nicole M. Schindler, by email at Nicole.M.Schindler@uscg.mil no later than Monday, January 20, 2025, by phone at (206) 820-5710 no later than Monday, January 20, 2025, or in writing at United States Coast Guard (CG-OES), ATTN: Ms. Nicole M. Schindler, 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington, DC 20593-7509 no later than Thursday, January 16, 2025. Any requests for reasonable accommodation should be provided to Ms. Schindler no later than January 14, 2025. Additional information regarding this and other IMO public meetings may be found at: <https://www.dco.uscg.mil/IMO>.

(Authority: 22 U.S.C. 2656 and 5 U.S.C. 552)

Leslie W. Hunt,

Coast Guard Liaison Officer, Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2024-30959 Filed 12-27-24; 8:45 am]

BILLING CODE 4710-09-P

DEPARTMENT OF STATE

[Public Notice: 12622]

Cultural Property Advisory Committee Meeting

ACTION: Notice of meeting.

SUMMARY: The Department of State announces the location, dates, times, and agenda for the next meeting of the Cultural Property Advisory Committee (“the Committee”).

DATES: The Committee will meet from February 4–6, 2025, from 9 a.m. to 5 p.m. (EST). The public may participate in, or observe, the virtual open session on February 4, 2025, from 1 p.m. to 2 p.m. (EST).

ADDRESSES: The Committee will meet at 2200 C Street NW, Washington, DC 20520. The public will participate via videoconference.

FOR FURTHER INFORMATION CONTACT:

Allison Davis Lehmann, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: (202) 904-0878; (culprop@state.gov).

SUPPLEMENTARY INFORMATION: The Principal Deputy Assistant Secretary for the Bureau of Educational and Cultural Affairs calls a meeting of the Cultural Property Advisory Committee (“the Committee”) in accordance with the Convention on Cultural Property Implementation Act (19 U.S.C. 2601–2613) (“the Act”). A portion of this meeting will be closed to the public pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

Meeting Agenda: The Committee will review a request from the Government of the Socialist Republic of Vietnam seeking import restrictions on archaeological and ethnological materials, the proposed extension of the agreement with the Government of the Republic of Chile, the proposed extension of the agreement with the Government of the Italian Republic, and the proposed extension of the agreement with the Government of the Kingdom of Morocco.

The Open Session: The public can observe the virtual open session on February 4, 2025. Registered participants may provide oral comments for up to a maximum of five (5) minutes each. The Department provides specific

instructions on how to observe or provide oral comments at the open session at <https://eca.state.gov/highlight/cultural-property-advisory-committee-meeting-february-4-6-2025>.

Register to speak at the open session by sending an email with your name and organizational affiliation, as well as any requests for reasonable accommodation, by January 27, 2025. Those who submit written comments in advance of the meeting are not required to make an oral comment during the open session.

The Committee will review written comments if received by 11:59 p.m. (EST) on January 27, 2025. Written comments may be submitted in two ways, depending on whether they contain confidential information:

General Comments: For general comments, use <https://www.regulations.gov>, enter the docket DOS-2024-0048 and follow the prompts.

Confidential Comments: For comments that contain privileged or confidential information (within the meaning of 19 U.S.C. 2605(i)(1)), please email submissions to culprop@state.gov. Include “Vietnam,” “Chile,” “Italy,” and/or “Morocco” in the subject line.

Disclaimer: The Cultural Heritage Center website contains additional information about each agenda item, including categories of archaeological and ethnological material that may be included in import restrictions: <https://eca.state.gov/highlight/cultural-property-advisory-committee-meeting-february-4-6-2025>. Comments should relate specifically to the determinations specified in the Act at 19 U.S.C. 2602(a)(1). Written comments submitted via [regulations.gov](https://www.regulations.gov) are not private and are posted at <https://www.regulations.gov>. Because written comments cannot be edited to remove any personally identifying or contact information, we caution against including any such information in an electronic submission without appropriate permission to disclose that information (including trade secrets and commercial or financial information that is privileged or confidential within the meaning of 19 U.S.C. 2605(i)(1)). We request that any party soliciting or aggregating written comments from other persons inform those persons that the Department will not edit their comments to remove any identifying or contact information and that they therefore should not include any such

information in their comments that they do not want publicly disclosed.

Allison R. Davis Lehmann,
Executive Director, Cultural Property Advisory Committee, Department of State.

[FR Doc. 2024-31255 Filed 12-27-24; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice: 12620]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: “Recasting the Past: The Art of Chinese Bronzes, 1100–1900” Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition “Recasting the Past: The Art of Chinese Bronzes, 1100–1900” at The Metropolitan Museum of Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202-632-6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA-5), Suite 5H03, Washington, DC 20522-0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236-3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,
Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2024-30962 Filed 12-27-24; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice: 12621]

Notice of Receipt of Request From the Government of the Socialist Republic of Vietnam

ACTION: Notice.

SUMMARY: Notice of receipt of request from Vietnam for cultural property protection.

FOR FURTHER INFORMATION CONTACT: Anne Compton, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: (202) 904-0878; culprop@state.gov; include “Vietnam” in the subject line.

SUPPLEMENTARY INFORMATION: The Government of the Socialist Republic of Vietnam made a request to the Government of the United States on November 13, 2024, under Article 9 of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Vietnam’s request seeks U.S. import restrictions on archaeological and ethnological materials representing Vietnam’s cultural patrimony. The Cultural Heritage Center website will provide instructions for public comment and additional information on the request, including categories of material that may be included in import restrictions: <https://eca.state.gov/highlight/cultural-property-advisory-committee-meeting-february-4-6-2025>. This notice is published pursuant to authority vested in the Principal Deputy Assistant Secretary of State for Educational and Cultural Affairs and pursuant to 19 U.S.C. 2602(f)(1).

Allison R. Davis Lehmann,
Executive Director, Cultural Property Advisory Committee, Department of State.

[FR Doc. 2024-31254 Filed 12-27-24; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice: 12624]

Proposal To Extend the Cultural Property Agreement Between the United States and Italy

ACTION: Notice.

SUMMARY: Proposal to extend the Memorandum of Understanding Between the Government of the United States of America and the Government of the Italian Republic Concerning the Imposition of Import Restrictions on Categories of Archaeological Material of Italy (“the Italy Agreement”).

FOR FURTHER INFORMATION CONTACT:

Andrew Zonderman, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: (202) 904-0878; culprop@state.gov; include "Italy" in the subject line.

SUPPLEMENTARY INFORMATION: Pursuant to the authority vested in the Principal Deputy Assistant Secretary of State for Educational and Cultural Affairs, and pursuant to 19 U.S.C. 2602(f)(1), an extension of the Italy Agreement is hereby proposed. A copy of the Italy Agreement, the Designated List of categories of material currently restricted from import into the United States, and related information can be found at the Cultural Heritage Center website: <https://culturalheritage.state.gov>.

Allison R. Davis Lehmann,

Executive Director, Cultural Property Advisory Committee, Department of State.

[FR Doc. 2024-31257 Filed 12-27-24; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice: 12610]

Review of the Foreign Terrorist Organization Designations of al-Qa'ida in the Indian Subcontinent, Boko Haram, Hizballah, ISIS-West Africa, and Jemaah Islamiyah

Based upon a review of the Administrative Records assembled pursuant to section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C)) ("INA"), and in consultation with the Attorney General and the Secretary of the Treasury, the Secretary of State concluded that the circumstances that were the basis for the designations of al-Qa'ida in the Indian Subcontinent (and other aliases); Boko Haram (and other aliases); Hizballah (and other aliases); ISIS-West Africa (and other aliases); and Jemaah Islamiyah (and other aliases) as Foreign Terrorist Organizations have not changed in such a manner as to warrant revocation of the designations and that the national security of the United States does not warrant a revocation of the designations.

Therefore, the Secretary of State has determined that the designations of the aforementioned organizations, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Hillary Batjer Johnson,

Deputy Coordinator, Bureau of Counterterrorism, Department of State.

[FR Doc. 2024-31259 Filed 12-27-24; 8:45 am]

BILLING CODE 4710-AD-P

DEPARTMENT OF STATE

[Public Notice: 12625]

Proposal To Extend the Cultural Property Agreement Between the United States and Morocco

ACTION: Notice.

SUMMARY: Proposal to extend the Memorandum of Understanding Between the Government of the United States of America and the Government of the Kingdom of Morocco Concerning the Imposition of Import Restrictions on Categories of Archaeological and Ethnological Material of Morocco ("the Morocco Agreement").

FOR FURTHER INFORMATION CONTACT:

Virginia Herrmann, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: (202) 904-0878; culprop@state.gov; include "Morocco" in the subject line.

SUPPLEMENTARY INFORMATION: Pursuant to the authority vested in the Principal Deputy Assistant Secretary of State for Educational and Cultural Affairs, and pursuant to 19 U.S.C. 2602(f)(1), an extension of the Morocco Agreement is hereby proposed.

A copy of the Morocco Agreement, the Designated List of categories of material currently restricted from import into the United States, and related information can be found at the Cultural Heritage Center website: <https://culturalheritage.state.gov>.

Allison R. Davis Lehmann,

Executive Director, Cultural Property Advisory Committee, Department of State.

[FR Doc. 2024-31258 Filed 12-27-24; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice: 12616]

U.S. Advisory Commission on Public Diplomacy

ACTION: Notice of meeting.

SUMMARY: The U.S. Advisory Commission on Public Diplomacy (ACPD) will hold an in-person public meeting with online access. A panel of experts will discuss the People's

Republic of China's approach to public diplomacy and utilizing the information space to advance PRC objectives.

DATES: Thursday, January 16, 2025, from 11:00am until 12:30pm.

ADDRESSES: The meeting will be held at the U.S. Capitol Visitor Center, First St SE, Washington, DC 20515, Room SVC-203.

SUPPLEMENTARY INFORMATION: This meeting is open to the public, including the media and members and staff of governmental and non-governmental organizations. To attend the event, please register at: https://iipstate.my.site.com/CRMEventRegistration/s/registration-page?event=VR10qHSXpuwn44sd2aGpqbWFigDBWJtQeXEveDMms_. Doors will open at 10:30 a.m. Please allow time to pass through security and check in at the appointment desk with photo identification. To request reasonable accommodation, please contact Kristy Zamary via email ZamaryKK@state.gov or phone 202-472-8198 by Thursday, December 27, 2024.

Since 1948, the ACPD has been charged with appraising activities intended to understand, inform, and influence foreign publics and to increase the understanding of, and support for, these same activities. The ACPD conducts research and public and private symposia that provides honest assessments of public diplomacy efforts, and disseminates findings through reports, white papers, and other publications. The Commission reports to the President, Secretary of State, and Congress and is supported by the Office of the Under Secretary of State for Public Diplomacy and Public Affairs.

For more information please visit <https://www.state.gov/bureaus-offices/under-secretary-for-public-diplomacy-and-public-affairs/united-states-advisory-commission-on-public-diplomacy/>, or contact Executive Director Sarah Arkin at ArkinSE@state.gov or Senior Advisor Dan Langenkamp at LangenkampDB@state.gov, both reachable at 202-472-8198.

(Authority: 22 U.S.C. 2651a, 22 U.S.C. 1469, 5 U.S.C. 1001 *et seq.*, and 41 CFR 102-3.150.)

Kristina K. Zamary,

Program Assistant, U.S. Advisory Commission on Public Diplomacy, Department of State.

[FR Doc. 2024-30859 Filed 12-27-24; 8:45 am]

BILLING CODE 4710-45-P

**OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE**

[Docket Nos. USTR–2024–0024 and USTR–
2024–0025]

**Initiation of Section 301 Investigation;
Hearing; and Request for Public
Comments: China's Acts, Policies, and
Practices Related to Targeting of the
Semiconductor Industry for
Dominance**

AGENCY: Office of the United States
Trade Representative (USTR).

ACTION: Notice of initiation of
investigation and a hearing, and a
request for comments.

SUMMARY: The U.S. Trade
Representative has initiated an
investigation, of China's acts, policies,
and practices related to targeting of the
semiconductor industry for dominance.
The inter-agency Section 301 Committee
is holding a public hearing and seeking
public comments in connection with
this investigation.

DATES:

December 23, 2024: The U.S. Trade
Representative initiated the
investigation.

January 6, 2025: USTR will open
dockets for submission of written
comments and requests to appear at the
hearing.

February 5, 2025, at 11:59 p.m. EST:
To be assured of consideration, submit
written comments by this date.

February 24, 2025, at 11:59 p.m. EST:
To be assured of consideration, submit
requests to appear at the hearing, along
with a summary of the testimony, by
this date.

March 11–12, 2025: Public hearing.
*Seven calendar days after the last day
of the public hearing:* Due date for
submission of post-hearing rebuttal
comments.

ADDRESSES: Submit documents in
response to this notice, including
written comments, hearing appearance
requests, summaries of testimony, and
post-hearing rebuttal comments through
the online USTR portal: [https://
comments.ustr.gov/s/](https://comments.ustr.gov/s/).

FOR FURTHER INFORMATION CONTACT: For
procedural questions concerning
comments or participating in the public
hearing, contact the USTR Section
support line at 202.395.5725. Direct all
other questions regarding this notice to
Philip Butler and Megan Grimbail,
Chairs of the Section 301 Committee;
Brian Janovitz, Chief Counsel for Trade
Enforcement Strategy and
Competitiveness; or Erin Biel, Assistant
General Counsel at 202.395.5725.

SUPPLEMENTARY INFORMATION:**I. China's Acts, Policies, and Practices**

Evidence indicates that the People's
Republic of China (the PRC or China)
has adopted acts, policies, and practices
related to targeting of the semiconductor
industry for dominance. China
apparently seeks to dominate domestic
and global markets in the
semiconductor industry and undertakes
extensive anticompetitive and non-
market means, including setting and
pursuing market share targets, to
achieve indigenization and self-
sufficiency. The PRC's acts, policies,
and practices also appear to have and to
threaten detrimental impacts on the
United States and other economies,
undermining the competitiveness of
American industry and workers, critical
U.S. supply chains, and U.S. economic
security.

Evidence indicates that the PRC's
acts, policies, and practices have been
reflected in various economic and
industrial plans issued by the PRC. For
example, Made in China 2025 set
numerical targets for the PRC's domestic
semiconductor capacity and production
that reflect China's targeting of the
semiconductors sector for dominance.
Evidence further indicates that the PRC
pursues its targeting of the
semiconductor industry through an
extensive range of anticompetitive and
non-market means, including through
Chinese Communist Party guidance,
directives, and control within state and
private enterprises; activities of state-
owned or state-controlled enterprises;
market access restrictions; opaque
regulatory preferences and
discrimination; wage-suppressing labor
practices; massive and persistent state
financial support of industry, including
government guidance funds; and forced
technology transfer, including state-
directed cyber intrusions and cybertheft
of intellectual property.

Evidence indicates that the PRC's
targeting of the semiconductor industry
for dominance is leading to significant
capacity expansion, artificially and
unsustainably lower domestic and
global prices, a protected domestic
market, and emerging overconcentration
of production capacity in the PRC.
Evidence indicates that in just six years,
China has nearly doubled its global
share of foundational logic
semiconductors production capacity.
Based on announced new fabrication
plants (fabs), China's share is projected
to reach approximately half of the
world's capacity by 2029. In addition,
projections show that China will lead in
production capacity for other types of
legacy semiconductors, such as power
chips. Evidence further suggests that the

PRC's non-market-oriented expansion of
capacity is already discouraging
investment by market-oriented actors.

**II. Initiation of Section 301
Investigation**

Section 302(b)(1)(A) of the Trade Act
of 1974, as amended (Trade Act),
authorizes the U.S. Trade
Representative to initiate an
investigation to determine whether an
act, policy, or practice of a foreign
country is actionable under section 301
of the Trade Act. Actionable matters
under section 301 include acts, policies,
and practices of a foreign country that
are unreasonable or discriminatory and
burden or restrict U.S. commerce. An
act, policy, or practice is unreasonable
if, while not necessarily in violation of,
or inconsistent with, the international
legal rights of the United States, it is
otherwise unfair and inequitable.

On December 23, 2024, the U.S. Trade
Representative initiated a section 301
investigation of China's acts, policies,
and practices related to targeting of the
semiconductor industry for dominance.
Pursuant to section 302(b)(1)(B) of the
Trade Act, USTR has consulted with
appropriate advisory committees and
the inter-agency Section 301 Committee.
Pursuant to section 303(a) of the Trade
Act, USTR is requesting consultations
with the Government of China.

Pursuant to section 304 of the Trade
Act, USTR must determine whether the
act, policy, or practice under
investigation is actionable under section
301. If that determination is affirmative,
the U.S. Trade Representative must
determine whether action is
appropriate, and if so, what action to
take.

This investigation initially will focus
on PRC manufacturing of foundational
semiconductors (also known as legacy
or mature node semiconductors),
including to the extent that they are
incorporated as components into
downstream products for critical
industries like defense, automotive,
medical devices, aerospace,
telecommunications, and power
generation and the electrical grid. The
investigation also will initially assess
whether the impact of the PRC's acts,
policies, and practices on the
production of silicon carbide substrates
(or other wafers used as inputs into
semiconductor fabrication) contribute to
any unreasonableness or discrimination
or burden or restriction on U.S.
commerce. In addition, the investigation
will examine the relationship between
the PRC's acts, policies, and practices
and existing or threatened non-market
excess capacity or overconcentration of
semiconductor production in the PRC,

and resulting dependencies and vulnerabilities that create risks for certain critical downstream industries, as well as harm to U.S. semiconductor producers and foundries.

III. Request for Public Comments

You may submit written comments on any issue covered by the investigation. In particular, USTR invites comments regarding:

- China's acts, policies, and practices related to its targeting of the semiconductor industry for dominance.

- Anticompetitive and non-market means employed by the PRC in pursuit of its semiconductor industry targeting objectives, including political guidance, directives, and control within state and private enterprises, activities of state-owned or state-controlled enterprises, market access restrictions, opaque regulatory preferences and discrimination, wage-suppressing labor practices, massive state support of industry (including government guidance funds), and forced technology transfer (including state-directed cyber intrusions and cybertheft of intellectual property).

- Whether China's acts, policies, and practices are unreasonable or discriminatory.

- Whether China's acts, policies, and practices burden or restrict U.S. commerce, and if so, the nature and level of the burden or restriction. This would include economic assessments of the burden or restriction on semiconductors, semiconductor manufacturing including foundries, silicon carbide substrates or other wafers, and downstream products, with a particular focus on critical industries, such as defense, automotive, medical devices, aerospace, telecommunications, and power generation and the electrical grid.

- Whether China's acts, policies, and practices are actionable under section 301(b) of the Trade Act, and what action, if any, should be taken, including tariff and non-tariff actions.

To be assured of consideration, USTR must receive written comments by 11:59 p.m. EST on February 5, 2025. Additional instructions on how to submit written comments are provided below in Part V.

IV. Hearing Participation

The Section 301 Committee will convene a public hearing on March 11, 2025, and if needed, the hearing will continue on March 12, 2025. To testify at the hearing, you must submit a request to appear using the electronic portal at <https://comments.ustr.gov/s/>, following the instructions in Part V

below. Requests to appear must include a summary of testimony, and may be accompanied by a prehearing submission. Remarks at the hearing are limited to five minutes to allow for possible questions from the Section 301 Committee. All submissions must be in English. To be assured of consideration, USTR must receive your request to appear and summary of the testimony by February 24, 2025.

Post-hearing rebuttal comments, which should be limited to rebutting or supplementing testimony presented at the hearing, may be submitted within seven calendar days after the last day of the public hearing. Rebuttal comments must be submitted using the electronic portal at <https://comments.ustr.gov/s/>, following the instructions in Part V below.

V. Submissions Instructions

Interested persons must submit written comments, requests to appear at the hearing, summaries of testimony, and post-hearing rebuttal comments using the appropriate docket on the portal at <https://comments.ustr.gov/s/>. To make a submission, use the docket on the portal entitled 'Request for Comments on the Section 301 Investigation of China's Acts, Policies, and Practices Related to Targeting of the Semiconductor Industry for Dominance,' docket number USTR–2024–0024. Interested persons wishing to provide testimony at the hearing must submit a notification of intent and summary of testimony using the docket entitled 'Request to Appear at the Hearing on the Section 301 Investigation of China's Acts, Policies, and Practices Related to Targeting of the Semiconductor Industry for Dominance,' docket number USTR–2024–0025.

You do not need to establish an account to submit comments or a notification of intent to testify. The first screen allows you to enter identification and contact information. Third party organizations such as law firms, trade associations, or customs brokers should identify the full legal name of the organization they represent and identify the primary point of contact for the submission. Information fields are optional. However, USTR may not consider your comment or request if insufficient information is provided. Fields with a gray Business Confidential Information (BCI) notation are for BCI information that will not be made publicly available. Fields with a green (Public) notation will be viewable by the public. After entering the identification and contact information, you can complete the remainder of the comment,

or any portion of it, by clicking 'Next.' You may upload documents at the end of the form and indicate whether USTR should treat the documents as business confidential or public information. Any page containing BCI must be clearly marked 'BUSINESS CONFIDENTIAL' on the top of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is BCI. If you request business confidential treatment, you must certify in writing that the information would not customarily be released to the public. Parties uploading attachments containing BCI also must submit a public version of their comments. If these procedures are not sufficient to protect BCI or otherwise protect business interests, please contact the USTR section 301 support line at 202.395.5725 to discuss whether alternative arrangements are possible. USTR will post attachments uploaded to the docket for public inspection, except for properly designated BCI. You can view submissions on USTR's electronic portal at <https://comments.ustr.gov/s/>.

Juan Millan,

Acting General Counsel, Office of the United States Trade Representative.

[FR Doc. 2024–31306 Filed 12–27–24; 8:45 am]

BILLING CODE 3390–F4–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2024–2728; Summary Notice No. –2024–46]

Petition for Exemption; Summary of Petition Received; Hermeus Corp.

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before January 21, 2025.

ADDRESSES: Send comments identified by docket number [FAA–2024–2728] using any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- **Mail:** Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

- **Hand Delivery or Courier:** Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- **Fax:** Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jake Troutman, (202) 267–2928, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

Dan A. Ngo,

Manager, Part 11 Petitions Branch, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2024–2728.

Petitioner: Hermeus Corp.

Section(s) of 14 CFR Affected: 91.7(a); 91.151(a)(1); 91.403(b); 91.405(a); 91.407(a)(1); 91.409(a)(1) and (2); 91.417(a); 91.417(b).

Description of Relief Sought: Hermeus Corp. seeks relief to operate Hermeus Quarterhorse Mark 1 (QH Mk 1) unmanned aircraft system (UAS) to conduct developmental flight testing. The QH Mk 1 is a subsonic, fixed-wing, remotely-piloted aircraft with a

maximum takeoff weight (MTOW) of 9,500 pounds (lbs.) that will be used to demonstrate high-speed takeoff and landings. The QH Mk 1 is test vehicle that will inform the future development of a Hermeus hypersonic-capable aircraft. The flight testing will occur at Edwards Air Force Base (AFB), California in restricted airspace (R–2515) and over U.S. Department of Defense (DoD) controlled property.

[FR Doc. 2024–30968 Filed 12–27–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2024–2754]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Aviation Insurance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves obtaining information from air carriers to establish legally binding aviation war risk insurance policies with the FAA. The information to be collected is necessary to determine whether applicants are eligible for insurance and the amount of coverage necessary; populate insurance policies with business information; and meet conditions of coverage required by each insurance policy.

DATES: Written comments should be submitted by February 28, 2025.

ADDRESSES: Please send written comments:

By Electronic Docket:

www.regulations.gov (Enter docket number into search field).

By mail: Stacy Ditto, 4848 Lambs Knoll Road, Boonsboro, MD 21713.

By fax: 301–432–7901.

FOR FURTHER INFORMATION CONTACT:

Stacy Ditto by email at: stacy.m.ditto@faa.gov; phone: 301–432–3046.

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: 2120–0514.

Title: Aviation Insurance.

Form Numbers: Not applicable.

Type of Review: Renewal of an information collection.

Background: The FAA Aviation Insurance Program derives its authority from Title 49, United States Code, chapter 443 to issue aviation war risk insurance to air carriers with and without premium. FAA coverage is issued in support of mission objectives and operations when insurance is not available commercially on reasonable terms and conditions. Air carriers never insured must submit an application before the FAA can provide coverage. Applicants provide business information, aircraft to be covered by the policy, and information about commercial insurance policies. As a condition of FAA coverage, air carriers must submit any changes to the initial application information as necessary. Air carriers must also provide a copy of their current commercial insurance policy on an ongoing basis, as well as information for any new aircraft the air carrier would like to add to the FAA policy. This information is provided electronically to the FAA through a web-based system. The information is used to form the insurance policy between the FAA and the air carrier.

Respondents: Air carriers applying for aviation insurance and updating required information.

Frequency: Initial one-time application and updates to application information 1–2 times per year.

Estimated Average Burden per

Response: Initial application—4 hours; commercial policy submission—10 minutes; business information update—5 minutes; and aircraft schedule update—2 minutes per aircraft.

Estimated Total Annual Burden: 10 minutes to 4 hours per respondent. Cumulative total 158 hours (maximum).

Issued in Boonsboro, MD, on December 20, 2024.

Stacy Ditto,

Program Manager, Aviation Insurance, Command and Control Communications (C3) Division (AXE–400), Office of National Security Programs and Incident Response, Federal Aviation Administration.

[FR Doc. 2024–30955 Filed 12–27–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****[Docket No. FHWA–2024–0086]****Agency Information Collection****Activities: Request for Comments for a New Information Collection****AGENCY:** Federal Highway Administration (FHWA), DOT.**ACTION:** Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) to approve a new information collection. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by January 29, 2025.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 0086 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to <http://www.regulations.gov>.

Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Kasandre Reeves, (564) 544–0350, Office of Highway Policy Information, Highway Funding and Motor Fuels division (HPPI–10) Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: We published a **Federal Register** Notice with a 60-day public comment period on this information collection on September 20, 2024, at [89 FR 77222]. There were 3 comments received and FHWA's responses are below:

One comment received was a test. The second comment received was voicing support of this product by the Bureau of Economic Analysis. The third comment

was a duplicate comment submitted of this support by the Bureau of Economic Analysis.

Title: 500-Series Reporting Guidebook.

Background: A 500-Series Data Reporting Guidebook provides for the collection of information by describing policies and procedures for assembling highway related data from the existing files of State agencies. The data includes motor-vehicle registration and fees, motor-fuel use and taxation, driver licensing, and highway taxation and finance. Federal, State, and local governments use the data for transportation policy discussions and decisions. Motor-fuel data are used in attributing receipts to the Highway Trust Fund and subsequently in the apportionment formula that are used to distribute Federal-Aid Highway Funds. The data are published annually in the FHWA's Highway Statistics.

Information from Highway Statistics is used in the joint FHWA and Federal Transit Administration required biennial report to Congress, Status of the Nation's Highways, Bridges, and Transit: Conditions and Performance, which contrasts present status to future investment needs.

Respondents: State and local governments of the 50 States, the District of Columbia and the Commonwealth of Puerto Rico share this burden.

Frequency: Annually.

Estimated Average Burden per Response: The burden for each form varies from 4 hours to 380 hours. The estimated average reporting burden per response for the annual collection and processing of the data is 2,462 hours for each of the States (including local governments), the District of Columbia, the Commonwealth of Puerto Rico.

Estimated Total Annual Burden Hours: The estimated total annual burden for all respondents is 29,574 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on: December 23, 2024.

Jazmyne Lewis,

Information Collection Officer.

[FR Doc. 2024–31277 Filed 12–27–24; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****[Docket No. FHWA–2024–0084]****Agency Information Collection****Activities: Request for Comments for a New Information Collection****AGENCY:** Federal Highway Administration (FHWA), DOT.**ACTION:** Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) to approve a new information collection. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by January 29, 2025.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 0084 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to <https://www.regulations.gov>. Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Bronwen Keiner, (202) 493–0280 or, Edward Starks (202) 366–5407, Office of Planning, Environment, and Realty, Federal Highway Administration, Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590. Office hours are from 7 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: We published a **Federal Register** Notice

with a 60-day public comment period on this information collection on October 21, 2024, at 89 FR 84240. There were no comments received.

Title: National Scenic Byway Program (NSBP).

Background: The Federal Highway Administration (FHWA) administers the NSBP. It was established by the Intermodal Surface Transportation Efficiency Act of 1991 in section 162 of title 23, United States Code (U.S.C.), and reauthorized and expanded significantly in 1998 under the Transportation Equity Act for the 21st Century and again under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users in 2005. The NSBP is a grass-roots collaborative effort established to help recognize, preserve, and enhance selected roads throughout the United States. Before 2019, Congress last authorized discretionary NSBP funds in 2012 under the Surface Transportation Extension Act of 2012. Between 1992 and 2012, FHWA awarded over \$505 million in NSBP grants. In 2022, FHWA awarded approximately \$21.8 million in grants to 33 projects.

Respondents: The Notice of Funding Opportunity (NOFO), announcing up to \$26.95 million of Fiscal Year (FY) 2023 and 2024 funding for the National Scenic Byways Program (NSBP) discretionary grants is now available for State DOTs and federally recognized Indian Tribes on [grants.gov](https://www.grants.gov). FHWA is expecting roughly 200 applicants to apply for NSBP grant funding.

Frequency: NOFOs and grant solicitations will be published annually by FHWA but, are subject to the availability of funds in appropriations or, any legislation signed into law authorizing funds.

Estimated Average Burden per Response: 3 hours per respondent per applicant.

Estimated Total Annual Burden Hours: It is expected that the respondents will complete approximately 200 applications for an estimated total of 600 annual burden hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or

include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on: December 23, 2024.

Jazmyne Lewis,

Information Collection Officer.

[FR Doc. 2024-31252 Filed 12-27-24; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2024-0289]

Commercial Driver's License: State of Hawaii; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that the State of Hawaii has applied for an exemption from specified portions of the commercial driver's license (CDL) skills test and entry-level driver training (EDLT) curriculum requirements. The State of Hawaii currently has a two-year exemption that expires on February 20, 2026, under which it may waive portions of the CDL skills test for CDL applicants who take the skills test on the islands of Lanai and Molokai and grant restricted CDLs to successful applicants. The State of Hawaii now requests a five-year exemption of these provisions, with the addition of an exemption from certain portions of the ELDT curriculum requirements for providers of behind-the-wheel (BTW) public road training on the islands of Lanai and Molokai. FMCSA requests public comment on the applicant's request for an exemption and whether the Agency should withdraw Hawaii's current exemption that expires on February 20, 2026, and grant a new five-year exemption from both the CDL skills test and the ELDT requirements.

DATES: Comments must be received on or before January 29, 2025.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA-2024-0289 by any of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. See the Public Participation and Request for Comments section below for further information.

- **Mail:** Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590-0001.

- **Hand Delivery or Courier:** West Building, Ground Floor, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

- **Fax:** (202) 493-2251.

Each submission must include the Agency name and the docket number (FMCSA-2024-0289) for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: If you do not have access to the internet, you may view the docket by visiting Docket Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

Privacy Act: In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its 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 FDMS, which can be reviewed under the "Department Wide System of Records Notices" at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices>. The comments are posted without edit and are searchable by the name of the submitter.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA; (202) 366-2722; or richard.clemente@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2024-0289), indicate

the specific section of this document to which the comment applies, and provide a reason for your suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov and put the docket number “FMCSA–2024–0289” in the “Keyword” box, and click “Search.” When the new screen appears, click on the “Comment” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. 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 notice contain commercial or financial information that is customarily treated as private, and that you actually treat as private, and that is relevant or responsive to the notice, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as “PROPIN” to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the notice. Submissions containing CBI should be sent to Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 or via email at brian.g.dahlin@dot.gov. At this time, you need not send a duplicate hardcopy of your electronic CBI submissions to FMCSA headquarters. Any comments FMCSA receives not specifically designated as

CBI will be placed in the public docket for this notice.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including the applicant’s safety analyses. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely maintain a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305(a)). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)). If granted, the notice will identify the regulatory provision(s) from which the applicant will be exempt, the effective period, and all terms and conditions of the exemption (49 CFR 381.315(c)(1)). If the exemption is denied, the notice will explain the reasons for the denial (49 CFR 381.315(c)(2)). The exemption may be renewed (49 CFR 381.300(b)).

III. Applicant’s Request

The State of Hawaii seeks a five-year exemption from the requirements in 49 CFR 383.113(c) that an applicant for a CDL must demonstrate the ability to signal appropriately when changing direction in traffic and the ability to choose a safe gap for changing lanes, passing other vehicles, and crossing or entering traffic (49 CFR 383.113(c)(2) and (4)). The Agency granted this same relief to Hawaii on February 20, 2024, until February 20, 2026 (89 FR 12940). Hawaii maintains that the islands of Lanai and Molokai do not have at least two miles of a straight section of urban business street and at least two miles of an expressway or highway section with multiple lanes going in each direction to allow the ability to legally change lanes. The applicant states that there are no plans to change the infrastructure to include sections of roadway meeting these parameters prior to the expiration date of the current exemption.

The applicant further requests regulatory relief for any provider of ELDT BTW public road training on these islands from full compliance with the ELDT requirements in 49 CFR part 380, appendix A and B. Specifically, the applicant requests relief from Unit A3.1

of the class A CDL training curriculum, and Unit B3.1 of the Class B CDL training curriculum. Both units are titled, “Vehicle Controls Including: Left Turns, Right Turns, Lane Changes, Curves at Highway Speeds, and Entry and Exit on the Interstate or Controlled Access Highway.”

A copy of the State of Hawaii’s application for exemption is available for review in the docket for this notice.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on the State of Hawaii’s application for an exemption. FMCSA specifically requests comment on whether the Agency should withdraw the applicant’s existing exemption that expires on February 20, 2026 (89 FR 12940) and grant a new five-year exemption from the same requirements in 49 CFR 383.113(c) and the requested regulatory relief to providers of ELDT BTW public road training on the islands of Lanai and Molokai. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024–31267 Filed 12–27–24; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2009–0072]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on October 8, 2024, Tri-County Metropolitan Transportation District of Oregon (TriMet) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at

49 CFR part 222 (Use of Locomotive Horns at Public Highway-Rail Grade Crossings). The relevant Docket Number is FRA–2009–0072.

Specifically, TriMet seeks an extension of relief from §§ 222.21(a) and 222.21(b)(2), which require locomotive horns to be sounded when approaching public highway-rail grade crossings, using the “long-long-short-long” pattern that begins 15 to 20 seconds before the locomotive reaches the crossing, but no further than ¼ mile from the crossing. The current waiver permits TriMet to use a 60 dB(A) locomotive bell in lieu of the locomotive horn at three crossings on the Lombard segment of TriMet’s Westside Express Service (WES) in Beaverton, Oregon.

In support of its petition, TriMet stated that the three crossings are equipped with flashing lights, bells, and either traffic signals or crossing gates. Further, TriMet stated that “WES train speeds are positively enforced at a maximum of 10 [miles per hour] along the Lombard segment,” which includes the three crossings. TriMet additionally noted that the waiver relief “has not been the cause of any accidents, nor has it created any safety hazards at or near the specified crossings.”

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at www.regulations.gov. Follow the online instructions for submitting comments.

Communications received by February 28, 2025 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of the U.S. Department of Transportation’s (DOT) dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT

solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacy-notice> for the privacy notice of www.regulations.gov.

Issued in Washington, DC.

John Karl Alexy,

*Associate Administrator for Railroad Safety,
Chief Safety Officer.*

[FR Doc. 2024–31055 Filed 12–27–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2007–28340]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on October 14, 2024, and December 13, 2024, Union Pacific Railroad Company (UP) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR parts 215 (Railroad Freight Car Safety Standards) and 232 (Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-of-Train Devices). The relevant Docket Number is FRA–2007–28340.

Specifically, UP seeks an extension of relief from part 215 and § 232.205(a)(1), *Class I brake test—initial terminal inspection*, to move freight cars received in interchange from Kansas City Southern de Mexico at the West Rail International Bridge, located west of Brownsville, Texas, to Olmito, Texas. The required inspections are conducted at the Olmito yard, which is 5.65 miles north of the bridge.

In support of its petition, UP stated that the movement “expedit[es] any delays caused by port of entry inspections and allow[s] a more efficient use of the bridge window.” UP added that completing inspections and testing of equipment at Olmito is “safer/more secure than attempting it on the bridge precisely at the US border line,” as the “Olmito facility infrastructure supports inspections, and repair associated activities, including switching out bad

orders.” Finally, UP noted that the relief avoids “unnecessary public disruptions within the city of Brownsville, [Texas], including, but not limited to, excessively blocked crossings” as well as “alleviates undue additional locomotive emissions from excessive idling times.”

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at www.regulations.gov. Follow the online instructions for submitting comments.

Communications received by February 28, 2025 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of the U.S. Department of Transportation’s (DOT) dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See also <https://www.regulations.gov/privacy-notice> for the privacy notice of www.regulations.gov.

Issued in Washington, DC.

John Karl Alexy,

*Associate Administrator for Railroad Safety,
Chief Safety Officer.*

[FR Doc. 2024–31042 Filed 12–27–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION**Federal Transit Administration****[FTA Docket No. FTA 2024–0019]****Agency Information Collection Activity Under OMB Review: Transit COVID–19 Response Program****AGENCY:** Federal Transit Administration, Department of Transportation (DOT).**ACTION:** Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describe the nature of the information collection and their expected burdens.

DATES: Comments must be submitted on or before January 29, 2025.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function.

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department’s estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Tia Swain, Office of Administration, Management Planning Division, 1200 New Jersey Avenue SE, Mail Stop TAD–10, Washington, DC 20590 (202) 366–0354 or tia.swain@dot.gov.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on

information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On October 24, 2024, FTA published a 60-day notice (89 FR 85000) in the **Federal Register** soliciting comments on the ICR that the agency was seeking OMB approval. FTA received (1) comment after issuing this 60-day notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The requirements are being submitted for clearance by OMB as required by the PRA.

Title: Transit COVID–19 Response Program.

OMB Control Number: 2132–0581.

Background: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Federal Transit Administration (FTA) is requesting a three-year approval without change of an existing information collection from the Office of Management and Budget (OMB). Although the Public Health Emergency for the COVID–19 pandemic ended in May 2023 and the FTA discontinued COVID–19 reporting requirements in September 2022, the FTA is seeking to renew this information collection to ensure that an existing framework can be readily updated to address future health emergencies. This renewal would allow the FTA to respond more swiftly to future public health emergencies by gathering data on their impact on the transit industry.

FTA began collecting monthly data in April 2021 related to impacts from the

coronavirus disease 2019 (COVID–19) on public transportation agencies, including transit workforce counts; transit service levels; counts of COVID–19 positives, fatalities, recoveries, and unvaccinated employees; whether or not a transit agency has implemented the U.S. Centers for Disease Control and Prevention (CDC) Order and Transportation Security Administration (TSA) Security Directive requiring workers and passengers to wear masks; and whether or not the agency used FTA funds to support vaccine access services. FTA used this data to inform FTA’s COVID–19 response and recovery actions, including monitoring of safety measures and impacts, development of technical assistance and safety advisories, monitoring use of FTA grant funds to address COVID–19 considerations, and monitoring compliance with Federal requirements.

Current Action: Extension without change of a currently approved collection.

Respondents: Recipients and sub-recipients of FTA funds under the Urbanized Area Formula Funding program or the Formula Grants for Rural Areas program that operate transit systems or pass-through funds to sub-recipients that operate transit systems. Recipients of FTA funds under the Enhanced Mobility of Seniors and Individuals with Disabilities program were requested to provide this information on a voluntary basis.

Estimated Total Annual Respondents: 2,390.

Estimated Annual Total Responses: 28,680.

Estimated Annual Burden Hours on Respondents: 10,356.

Frequency: As needed.

Kusum Dhyani,

Director, Office of Management Planning.

[FR Doc. 2024–31194 Filed 12–27–24; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION**Federal Transit Administration****[Docket No. FTA–2024–0020]****Notice of Proposed Policy Statement Regarding the Applicability of FTA’s Drug and Alcohol Testing Program to Transportation Network Companies**

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice; request for comments.

SUMMARY: This notice proposes to clarify FTA’s policy on the applicability of

FTA's drug and alcohol testing program to transportation network companies. FTA proposes to update the Shared Mobility frequently asked questions, published in 2016 on FTA's website, to correct an error that has resulted in the misapplication of what is commonly known as the taxicab exception and clarify when the exception applies. FTA seeks comment from all interested parties. After review and consideration of the comments, FTA will issue a final notice announcing the policy statement and the revised FAQs.

DATES: Comments must be received by February 13, 2025. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Please submit all comments electronically to the Federal eRulemaking Portal. Go to <https://www.regulations.gov> and follow the instructions for submitting comments. **Instructions:** All submissions must refer to the Federal Transit Administration and the docket number of this notice. Note that all submissions received, including any personal information provided, will be posted without change and will be available to the public on <https://www.regulations.gov>. You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000 (65 FR 19477), or at <https://www.transportation.gov/privacy>.

FOR FURTHER INFORMATION CONTACT: For legal questions, Emily Jessup, Attorney-Advisor, (202) 366-8907, or Emily.Jessup@dot.gov. For program questions, Iyon Rosario, Sr. Drug and Alcohol Program Manager, (202) 366-2010, or Iyon.Rosario@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

As transit agencies increasingly partner with transportation network companies (TNCs) to provide service, FTA is responding regularly to inquiries regarding whether and when FTA's Drug and Alcohol rule applies.

As required by Federal transit law at 49 U.S.C. 5331 and FTA's Drug and Alcohol rule at 49 CFR part 655, recipients of funding under FTA's Urbanized Area Formula Program, Capital Investment Grants Program, and Rural Areas Formula Program (49 U.S.C. 5307, 5309, and 5311, respectively) must establish and implement drug and alcohol testing programs for employees and contractors that are designed to help prevent accidents, injuries, and fatalities resulting from the misuse of alcohol and use of prohibited drugs by personnel who perform safety-sensitive functions, including vehicle operators.

These testing requirements apply to contractors who perform a safety-sensitive function for an FTA recipient, even if the service the contractor provides is not federally funded. This includes drivers of taxicabs and transportation network companies (TNCs) who perform the safety-sensitive function of operating a revenue service vehicle under contract with transit agencies.

Specifically, 49 U.S.C. 5331 provides, in relevant part:

(b) Testing Program for Public Transportation Employees.—

(1)(A) In the interest of public transportation safety, the Secretary shall prescribe regulations that establish a program requiring public transportation operations that receive financial assistance under section 5307, 5309, or 5311 of this title to conduct preemployment, reasonable suspicion, random, and post-accident testing of public transportation employees responsible for safety-sensitive functions (as decided by the Secretary) for the use of a controlled substance in violation of law or a United States Government regulation, and to conduct reasonable suspicion, random, and post-accident testing of such employees for the use of drugs and alcohol in violation of law or a United States Government regulation. The regulations shall permit such operations to conduct preemployment testing of such employees for the use of drugs and alcohol.

This language has remained substantively unchanged since 1991. FTA applies the statute to all services of recipients of sections 5307, 5309, and 5311, including their subrecipients and contractors.

FTA's Drug and Alcohol rule, 49 CFR part 655, provides in relevant part:

§ 655.3 Applicability.

(a) Except as specifically excluded in paragraphs (b) [FRA], and (c) [USCG] of this section, this part applies to:

(1) Each recipient and subrecipient receiving Federal assistance under 49 U.S.C. 5307, 5309, or 5311; and (2) Any contractor of a recipient or subrecipient of Federal assistance under 49 U.S.C. 5307, 5309, 5311.

§ 655.4 Definitions.

Contractor means a person or organization that provides a safety-sensitive service for a recipient, subrecipient, employer, or operator consistent with a specific understanding or arrangement. The understanding can be a written contract or an informal arrangement that reflects an ongoing relationship between the parties.

Covered employee means a person, including an applicant or transferee, who performs or will perform a safety-sensitive function for an entity subject to this part.

Employer means a recipient or other entity that provides public transportation service or which performs a safety sensitive function for such recipient or other entity. This term includes subrecipients, operators, and contractors.

Safety-sensitive function means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:

(1) Operating a revenue service vehicle, including when not in revenue service[.]
* * *

As transit-TNC service partnerships have become more prominent, questions have arisen over the applicability of what is generally known as the "taxicab exception." Further, as explained in detail in Section III of this notice, an error in one of FTA's current Shared Mobility FAQs has contributed to the exception being implemented in a way inconsistent with the original intent of the taxicab exception. FTA is proposing this update and clarification to the FAQs in response to these inquiries, as well as to correct the error, to ensure recipients and TNCs have a better understanding of when the Drug and Alcohol rule applies and when it does not.

The taxicab exception is based on a lack of contractual or informal arrangement between the transit agency and taxicab company and who controls the selection of the company/driver providing the trip. In 1994, when the exception was issued, many taxicab drivers were independent operators, providing service to any individual who hailed them from the curb. The selection was random and non-predictable, with the rider flagging down the next taxicab that appeared. Because of this randomness, it would have been impractical for the transit agency to require all the local taxicab drivers to take a "pre-employment" test or be part of its random testing pool if there was even a slight possibility that a rider might hail them using transit-agency issued scrip or vouchers. However, if the transit agency contracted with a taxicab company, or if there were only one or two taxicab companies providing service in the area, then the transit agency could establish a known pool of participating drivers and include the drivers in the agency's testing program.

A rider-initiated vehicle selection via a rider-controlled app, such as for first mile-last mile service with TNCs, is today's functional equivalent of a street-corner or curbside flag-down of a taxicab. A TNC driver providing service to the general public has no expectation they will be selected for a transit agency subsidized trip when they are selected by the app, and where there are two or more providers, the transit agency has little or no control over the rider's selection of a company/driver. In contrast, in situations where the rider contacts a transit agency to schedule a

ride, and the agency has either pre-approved one or more providers or created a pool of designated drivers, such as for ADA paratransit trips where an agency uses taxicabs or TNCs, the transit agency has a demonstrable measure of control over the selection of the company/driver and therefore has the ability to include those drivers within its testing program in the interest of public safety.

II. Background

Subsequent to passage of the Omnibus Transportation Employee Testing Act of 1991 (Pub. L. 102–143, codified at 49 U.S.C. 5331), FTA issued its first round of drug and alcohol abuse prevention rules on February 15, 1994.¹ In the preambles, the final rules said this about taxicabs providing service for or on behalf of transit agencies:

User-side subsidies. A user-side subsidy refers to the practice of providing passengers publicly subsidized scrip or vouchers, which the passenger then uses to pay for transportation from a private carrier such as a taxicab company. In essence, a recipient provides transportation services indirectly through such subsidies. The regulation applies to certain recipients of FTA funding, and to transit operators providing service under contract or other arrangements with those recipients. To the extent that a taxi operator does not provide service under an arrangement with an FTA recipient but is chosen at random by the passenger, it would not be subject to the rule. If, however, the taxicab company or private operator does provide service under an arrangement with an FTA recipient, it is covered by the rule as a contractor, as defined by the rule. In such cases, the taxi company may wish to designate only certain drivers to provide such service, in which case only those designated drivers would be subject to the rule's drug and alcohol testing program.²

The distinction between contracting with a taxi company to provide service as opposed to merely providing vouchers without any sort of contract or arrangement arises, at least in part, from the legislative history of the Omnibus Transportation Employee Testing Act, which includes the following floor statement:

Drug and alcohol-testing requirements must not be circumvented through contracting out of work. Safety-sensitive employees of recipients of the Federal transit grant money identified in the bill, and those safety-sensitive employees working for contractors of such recipients must be covered exactly to the same extent and in the same fashion. I know that I speak for all conferees when I say that we will not tolerate a situation where employees performing substantially the same safety-sensitive

function are covered or not covered depending on whether they work directly for a public authority or an outside contractor. 137 Cong Rec. S14766 (daily ed. Oct. 16, 1991). (Statement of Sen. D'Amato).

This statement demonstrates congressional intent to include in the testing program contractors who are performing the same work as a transit agency employee.

Since the issuance of those first drug and alcohol rules, FTA has consistently, as a matter of policy, indicated that the drug and alcohol rules do not apply when the transit agency has no contractual or informal arrangement with local taxicab companies, the transit agency provides user-side subsidies in the form of scrip or vouchers, and the passenger chooses among more than two taxicab companies to provide a trip. The 2016 FAQs changed this to “two or more” for added flexibility. Prior to the availability of TNCs, such arrangements were for incidental use that supports public transportation, such as guaranteed ride home programs.

Thus, the exception is based on who controls the selection of the company/driver providing each trip; only when there is no contract or informal arrangement for service between the transit agency and the taxicab company or TNC, *and* the passenger selects the provider for each trip, does the Drug and Alcohol rule not apply.

In the preamble to the 2001 Drug and Alcohol final rule, FTA stated,

FTA policy continues to recognize the practical difficulty of administering a drug and alcohol testing program to taxi companies that only incidentally provide transit service. Therefore, the drug and alcohol testing rules apply when the transit provider enters into a contract with one or more entities to provide taxi service. The rules do not apply when the patron (using subsidized vouchers) selects the taxi company that provides the transit service. This guidance reflects the FTA Master Agreement, which requires recipients to include appropriate clauses in third party contracts requiring contractors to comply with applicable Federal requirements. It also recognizes the practical difficulty of administering a drug and alcohol testing program to entities that only incidentally provide taxi service on behalf of a transportation service provider.³

III. Current Implementation

As stated above, a rider-initiated vehicle selection via a rider-controlled app, such as for first mile-last mile service with TNCs, is today's functional equivalent of a street-corner or curbside flag-down of a taxicab. In such instances, when the rider selects the provider and the transit agency has no

control over the selection, the Drug and Alcohol rule does not apply. However, the use of TNCs has gone beyond “incidental” support of public transportation with first mile-last mile and guaranteed ride home programs to regularly supplementing or replacing public transportation service. For example, many transit agencies are contracting with TNCs to provide same-day ADA paratransit trips and are not including TNC drivers in an FTA/DOT-approved testing program. Other agencies are canceling late-night fixed route service and contracting with TNCs for demand-responsive service or adding new demand-responsive service provided by taxicabs or TNCs and not including those drivers in the agency's testing program. This exclusion means passengers are exposed to drivers who are not subject to drug and alcohol testing, raising safety concerns. Because in these situations, the taxicabs/TNCs are supplementing or replacing transit service and have some sort of contractual or informal arrangement with the transit agency, the taxicab companies or TNCs should be identifying an established group of drivers for these arrangements, and the drivers should be included in the transit agency's drug and alcohol testing program, or an FTA/DOT-compliant testing program conducted by the taxicab company or TNC.

In 2016, FTA published Shared Mobility Frequently Asked Questions (FAQs) on the applicability of the Drug and Alcohol rule to TNCs. One of those questions included an erroneous answer that has resulted in numerous transit agencies incorrectly concluding that the Drug and Alcohol rule does not apply under various scenarios where there is a contractual relationship between the transit agency and one or more TNCs.

While the transportation industry has evolved beyond hailing taxicabs on the corner, the basis for the inapplicability of the Drug and Alcohol rule to some taxicab and TNC operations that provide transit agency-subsidized trips remains the same: a lack of a contractual or informal arrangement between the transit agency and the TNC or taxicab operator, and the randomness of the customer choosing the provider for each trip.

1. Lack of Contractual Relationship

In 2016, TNCs were starting up and partnering with transit agencies to provide first mile-last mile and same-day ADA paratransit service. Many transit agencies using TNCs for same-day ADA paratransit or other on-demand service entered into contracts

¹ 59 FR 7531; 49 CFR parts 653 and 654, replaced with part 655 in 2001 (66 FR 41996).

² 59 FR 7531 at 7542 and 7582, Feb. 15, 1994.

³ 66 FR 41996, Aug. 9, 2001.

or informal arrangements with TNCs to provide the service.

FTA developed FAQs related to the eligibility of such services, requirements related to the ADA, and FTA's controlled substance and alcohol testing requirements.⁴

One of the FAQs included an erroneous answer:

Question: Does the taxicab exception apply to ridesourcing companies?

Answer: It depends. The rationale for the taxicab exception is the same for ridesourcing companies when a public transit agency has a contractual or informal arrangement with two or more ridesourcing companies or taxicab companies to provide a specific service or type of service, and the public transit passenger chooses among the providers. In this case, the public transit agency would have to contract with at least two ridesourcing companies and/or taxicab companies to ensure the passenger has a choice of which provider to contact for a ride.

There may be some situations in which a public transit agency contracts with two or more ridesourcing companies as well as one or more taxicab companies in order to ensure the service is available for all passengers. For example, the taxicab company may be the only contractor with accessible vehicles, or may be the only contractor able to schedule trips over the phone or accept cash payment from passengers. While some passengers may have only one choice, this does not change the fact that many passengers will have more than one choice, and so the taxicab exception will apply to all of the providers.

The answer should read, "a public transit agency does not have a contractual or informal arrangement . . ." but instead reads, "a public transit agency has a contractual or informal arrangement . . ." The error in the answer to this question has led to a situation in which the regulation is applied in a manner inconsistent with its original intent. The statement, "is the same for ridesourcing companies when a public transit agency has a contractual or other arrangement with two or more ridesourcing companies or taxicab companies" is erroneous as the Drug and Alcohol rule does not apply when there is a lack of a contractual or other arrangement. This answer is inconsistent with FTA's long-standing policy related to the applicability of the rule to taxicabs, and also is inconsistent with other FAQs which indicate the Drug and Alcohol rule applies when there is a contract or other arrangement, and has caused confusion in the industry. As explained above, when a transit agency enters into a contract or informal arrangement with another

entity to provide service, the contractor's employees must be part of an FTA/DOT-compliant drug and alcohol testing program. See 49 CFR 655.3(a)(2). Today's proposed policy statement and updated FAQs would amend the FAQs to be consistent with the original intent of the inapplicability of the Drug and Alcohol rule to taxicabs providing a safety-sensitive function for transit agencies in certain situations.

2. Customer Choice Every Ride

An additional condition that must be met for the Drug and Alcohol rule to not apply is that customers must choose their provider for every trip, as they would if they were hailing a cab or using a TNC app. Some transit agencies are challenged by the "customer choice" component and have sought additional guidance from FTA. FTA has consistently expressed that for the rule not to apply, the customer must choose the TNC or taxicab provider for each trip. Some agencies have developed apps where the passenger makes a provider selection when signing up for the app but is not offered a choice of provider for each ride. In this case, because the passenger is not making a provider choice for each ride, the Drug and Alcohol rule applies. This interpretation is consistent with the original rationale for the inapplicability of the rule in that rider selection of a provider for each ride is random and non-predictable.

Some transit agencies have argued this customer choice requirement is burdensome and if the passenger is given the option to select their provider from two or more companies when they first sign up for service, the Drug and Alcohol rule should not apply. This argument is inconsistent with the reasoning behind the original rationale for inapplicability of the rule, which is that when a transit agency provides a voucher to a passenger for use with any TNC or taxicab provider in the area, the transit agency does not know and/or cannot control which provider a passenger contacts for service, and thus it would be impracticable to include the drivers of those providers in a testing program. When the transit agency knows which entity will provide the trip, it exercises control, and the drivers must be part of an FTA/DOT-compliant testing program.

Some agencies have expressed concern regarding passenger choice and how the transit agency can keep track of usage. Transit agencies need to know who is using the TNC or taxi service and whether the trip is within the service area in order for the TNC to be reimbursed for the trip and to ensure

only eligible trips are reimbursed. Notably, user-side subsidies or vouchers can be electronic, such as providing a unique code to each passenger who uses the app to request a ride from a TNC or taxi provider. This set-up enables the transit agency to monitor usage while maintaining the user choice element for each ride.

IV. Policy Statement

a. Background

The availability of TNCs to provide same-day ADA paratransit, late night on-demand, first mile-last mile, and other services has been valuable to transit agencies as they strive to provide exceptional public transportation service. Over time, this use of TNCs to supplement public transit has moved from incidental to regular, with TNCs providing millions of trips per year to public transit passengers. Transit agencies have sometimes found FTA's TNC FAQs difficult to interpret, and this has led to findings during FTA drug and alcohol audits. By this proposed update to the FAQs, FTA intends to remove ambiguities and ensure transit agencies and TNCs are clear about the applicability of FTA's Drug and Alcohol rule to TNCs.

As with everything we do at FTA, safety is paramount. The Drug and Alcohol program combats prohibited drug use and alcohol misuse by drivers engaged in the provision of public transit. When a taxicab or TNC provides service on behalf of a public transit agency, the passenger can reasonably expect the driver of that vehicle to be subject to the same requirements as a bus or train operator.

If a transit agency has a contract or arrangement in place with TNCs or taxicabs to transport passengers, it is critical that drivers are not impaired while performing this safety-sensitive duty. This is especially important when TNCs or taxicabs are providing service for seniors, persons with disabilities, or youth, who may not have the ability to depart a vehicle being operated by an impaired driver, especially if the passenger needs assistance to exit the vehicle, or it is late at night, in inclement weather, or in an unfamiliar neighborhood. This leaves the passenger in the difficult situation of having to complete the ride, knowing their safety is at risk. Parity in the application of regulations intended to address drug and alcohol use and abuse will ensure all passengers are afforded the same protections.

For those TNCs operating service under contract or informal arrangement with a transit agency, it is likely not

⁴ See <https://www.transit.dot.gov/regulations-and-guidance/shared-mobility-faqs-controlled-substance-and-alcohol-testing-requirements>.

necessary to include every driver in a drug and alcohol testing program. TNCs are welcome to identify a subset of drivers that serve the transit agency contract. TNCs may wish to require all new drivers joining their platforms participate in the drug and alcohol testing program as a means of building the number of drivers eligible to drive for the public transit agency contract. TNCs may not have to create a separate random testing pool; the identified subset of drivers may be placed into the transit agency's random testing pool at the discretion of the transit agency and the TNC. If the TNC creates its own testing program, the testing program must meet FTA/DOT requirements. In either case, drivers will be subject to all testing requirements of 49 CFR parts 40 and 655.

b. Proposed Policy

FTA proposes modifying its Shared Mobility Controlled Substance and Alcohol Testing Requirements FAQs to clarify when the exception applies and to fix the existing error. FTA proposes the relevant set of FAQs would read as follows:

Shared Mobility Controlled Substance and Alcohol Testing Requirements

Under Federal transit law (49 U.S.C. 5331), public transportation recipients that receive financial assistance under the FTA's Urbanized Area, Capital Investment Grant, and Rural Area programs must conduct controlled substance and alcohol testing of public transportation employees responsible for safety-sensitive functions, including operating, dispatching, and maintaining revenue service vehicles. These FAQs describe the extent to which ridesourcing companies are subject to the drug and alcohol testing requirements. For questions, contact Iyon Rosario (iyon.rosario@dot.gov), FTA's Senior Drug and Alcohol Program Manager.

When does the Drug and Alcohol rule apply?

The Federal Transit Administration (FTA) Drug and Alcohol rule (49 CFR part 655) provides that the rule applies to recipients and subrecipients of Urbanized Area (section 5307), Capital Investment Grant (section 5309), and Rural Area (section 5311) funds, as well as their contractors and subcontractors. A ridesourcing company may be a contractor. Under the rule, a contractor is any entity providing a safety-sensitive function for a recipient or subrecipient. The contract may be a written contract or an informal arrangement "that

reflects an ongoing relationship between the parties."

The intent of the Drug and Alcohol rule is to cover only those situations in which a transit operator has a contract or arrangement with taxicab or TNC operators. In these instances, the public knows that to take advantage of services funded in part by a transit agency, it must deal with a particular taxicab or TNC. On the other hand, where there is no contract or informal arrangement and a passenger randomly chooses among a variety of different taxi and/or TNC companies, these FAQs recognize the practical difficulties of trying to administer a drug and alcohol testing program in connection with all of those companies; accordingly, FTA's rule on drug and alcohol testing would not cover such services.

Does the testing requirement apply to employees and independent drivers of contractors not otherwise providing public transportation?

Yes. The Drug and Alcohol rule (49 CFR part 655) extends the controlled substance and alcohol testing requirement to employees of contractors performing a safety-sensitive function. This includes the independent drivers of a ridesourcing company contracting with a public transportation agency. FTA has consistently interpreted the regulation (49 CFR part 655) to include contractors who do not directly engage in public transportation operations, including taxicab operators and TNCs unless there is no contractual or informal arrangement, the transit agency merely provides user-side vouchers, and the passenger chooses the provider for each trip.

Are private companies like ridesourcing companies required to comply with DOT drug and alcohol testing requirements?

Recipients of Urbanized Area (section 5307), Capital Investment Grant (section 5309), and Rural Area (section 5311) funds must conduct drug and alcohol testing of all employees or contractors performing safety-sensitive functions. Ridesourcing companies are subject to the testing requirement to the extent they are a contractor of a recipient and perform a safety-sensitive function. However, as described below, in some situations, the Drug and Alcohol rule may not apply to ridesourcing companies.

Under what circumstances must TNC drivers be included in a drug and alcohol testing program?

TNC and taxicab drivers who provide or may provide transportation service

under a contract or informal arrangement with a transit agency must be included in an FTA/DOT compliant drug and alcohol testing program. Further, when a passenger does not choose the TNC or taxicab company providing the service for each trip, the TNC and taxicab drivers must be included in an FTA/DOT compliant drug and alcohol testing program. TNC and taxicab drivers may be added to a transit agency's existing testing pool or the TNC or taxicab company may establish its own FTA/DOT compliant testing program that includes drivers for the transit agency contract. For example, some transit agencies contract with TNCs, taxicab companies, and other entities to provide ADA paratransit service to eligible passengers. In those situations, the Drug and Alcohol rule applies to the TNC or taxicab company providing the service. Similarly, if a public transit agency provides vouchers to passengers to use with only one TNC or taxicab company, the passenger does not have a choice of which company to contact, so the Drug and Alcohol rule applies.

Under what circumstances does the Drug and Alcohol rule not apply to ridesourcing companies?

TNCs and taxicab companies are not required to include their drivers in an FTA/DOT compliant drug and alcohol testing program when all of the following apply:

- There are two or more providers available to provide the service, and
- There is no contractual or informal arrangement between the TNC or taxicab company and the FTA recipient to provide service and
- The passenger randomly selects a provider for each trip from two or more available providers.

If the transit agency does not contract or have an informal arrangement with the TNC or taxicab company but only provides user-side subsidies to the passenger and the passenger contacts the TNC or taxicab company directly for each ride and has a choice of two or more providers, the Drug and Alcohol rule will not apply. In this case, the public transit agency would have to inform its passengers of which TNCs or taxicab companies they may contact for a ride, and the passenger would schedule their own rides with their preferred provider for each trip. **NOTE:** A passenger who does not have a smartphone or other means to contact a provider directly may contact the transit agency to assist in scheduling the trip, even though the transit agency has no contractual relationship with any

provider. FTA expects this to be rare and to not occur where there is a provider that will schedule trips over the phone.

There may be some situations in which a public transit agency permits passengers to schedule trips with a choice of two or more ridesourcing companies as well as one or more taxicab companies in order to ensure the service is available for all passengers. In some cases, the taxicab company may be the only provider able to schedule trips over the phone or accept cash payment from passengers without a smart phone or credit card. As long as there is no contract or informal arrangement, the Drug and Alcohol rule does not apply to situations where there are multiple providers but only one provider that accepts phone reservations and/or accepts cash. While some passengers may have only one choice, this does not change the fact that many passengers will have more than one choice, so the Drug and Alcohol rule will not apply to these providers.

May a transit agency develop an App for users to schedule rides with TNCs?

A transit agency may develop an app for passenger convenience to schedule unsubsidized rides with the TNCs and taxicab companies in its area. Such an app does not constitute a contractual or informal arrangement for purposes of the drug and alcohol testing requirement. A shared app, on its own, without a link to a transit-agency subsidized TNC or taxicab trip, is not a safety-sensitive function. However, if the transit agency is subsidizing trips (e.g., with vouchers) scheduled with the app, the Drug and Alcohol rule applies unless there are two or more providers available with the same app, with no contractual or informal arrangement for the transportation service, and passengers can choose the provider for each trip.

If my project is funded with Public Transportation Innovation (Section 5312) research funds, does the drug and alcohol testing requirement apply?

No. If the project is funded with research dollars, the law permits the Secretary to prescribe terms and conditions for the grant award. FTA has determined the Drug and Alcohol rule does not apply to these funds, even if the recipient of Public Transportation Innovation (Section 5312) research funds is also a recipient of Urbanized Area (Section 5307), Capital Investment Grant (Section 5309) or Rural Area (Section 5311) funds.

Does the Drug and Alcohol rule apply to pilot programs that do not use any FTA funds?

Yes. If a transit agency receiving FTA funds under 49 U.S.C. 5307, 5309, or 5311 subsidizes ridesourcing services under a pilot program that does not use FTA funds, the transit agency must incorporate the ridesourcing company drivers into an FTA/DOT compliant drug and alcohol testing program, unless there are two or more providers, there is no contractual or informal arrangement for the transportation service, and passengers can choose the provider for each trip. Drivers may be included in a transit agency's testing pool or a TNC's or taxicab company's testing pool, as long as the testing program complies with FTA's drug and alcohol testing regulation.

FTA seeks comment from all interested parties. After consideration of the comments, FTA will issue a second **Federal Register** notice with a final set of Frequently Asked Questions.

Veronica Vanterpool,

Deputy Administrator.

[FR Doc. 2024–30966 Filed 12–27–24; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2019–0093]

Deepwater Port License Application: Texas GulfLink LLC (GulfLink)— Special Notice

AGENCY: Maritime Administration,
Department of Transportation.

ACTION: Notice.

SUMMARY: The Maritime Administration (MARAD) is providing notice to the public of the delay in issuing the Record of Decision for the proposed Texas GulfLink Deepwater Port, as the agency continues to process and consider public submissions on the proposed project.

FOR FURTHER INFORMATION CONTACT:

Brian Barton, Office of Deepwater Ports and Port Conveyance, MARAD, telephone: 202–366–4610, email: Deepwater.Ports@dot.gov.

SUPPLEMENTARY INFORMATION: Under section 5(k) of the Deepwater Port Act of 1974 (DWPA) (33 U.S.C. 1504(k)), MARAD is required to publish a written statement in the **Federal Register** regarding delays in the processing of applications for oil or natural gas terminals licensed under the DWPA. On May 30, 2019, MARAD and the U.S.

Coast Guard (USCG) received a license application from GulfLink for all Federal authorizations required for a license to construct, own, and operate a deepwater port for the export of oil in the Gulf of Mexico off the coast of Brazoria County, TX. A Notice of Application summarizing and providing further information regarding the GulfLink Deepwater Port License application was published in the **Federal Register** on June 26, 2019 (84 FR 30298). After extensive public and interagency review, a Final Environmental Impact Statement (FEIS) was published on July 5, 2024, and the final public hearing was held on September 13, 2024. Over 44,000 public submissions on the FEIS and final public hearing were received in the TGL docket number MARAD–2019–0093 at [Regulations.gov](https://www.regulations.gov). MARAD is still reviewing and considering the comments received and issuance of a Record of Decision is therefore delayed. The applicable deadline for issuance of the Record of Decision is set forth in DWPA section 5(i)(1) (33 U.S.C. 1504(i)(1)). This ongoing review will ensure that all substantive public comments are considered and that the information, data, and viewpoints received during this phase of the project review are fully assessed and evaluated before MARAD renders a final decision.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, visit www.transportation.gov/privacy.

(Authority: DWPA, Pub. L. 93–627 (33 U.S.C. 1501 *et seq.*); 49 CFR 1.93(h))

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–30974 Filed 12–27–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2021–0035; Notice 2]

Michelin North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic
Safety Administration (NHTSA),
Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Michelin North America, Inc. (MNA), has determined that certain Michelin Primacy Tour A/S replacement passenger car tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles*. MNA filed an original noncompliance report dated March 25, 2021, and subsequently, MNA petitioned NHTSA on April 7, 2021, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces the grant of MNA's petition.

FOR FURTHER INFORMATION CONTACT:

Jayton Lindley, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (325) 655-0547, email Jayton.Lindley@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Overview

MNA has determined that certain Michelin Primacy Tour A/S replacement passenger car tires do not fully comply with the requirements of paragraph S5.5.1(b) of FMVSS No. 139, *New Pneumatic Radial Tires for Light Vehicles* (49 CFR 571.139). MNA filed a noncompliance report dated March 25, 2021, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. MNA subsequently petitioned NHTSA on April 7, 2021, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

Notice of receipt of MNA's petition was published with a 30-day public comment period, on November 18, 2021, in the **Federal Register** (86 FR 64595). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2021-0035."

II. Tires Involved

Approximately 1,196 Michelin Primacy Tour A/S replacement passenger car tires, size 235/65R18 106H, manufactured between January 3, 2021, and January 23, 2021, were identified by MNA as being potentially involved, however, MNA clarified that

1,139 tires were captured and retained in MNA's inventory. Any decision on this petition will only apply to the approximately 57 tires that MNA no longer controlled at the time it determined that the noncompliance existed.

III. Noncompliance

MNA explains that the noncompliance is due to a mold error in which the subject tires contain a tire identification number (TIN) with an inverted plant code and, therefore, do not comply with the requirements specified in paragraph S5.5.1(b) of FMVSS No. 139.

IV. Rule Requirements

Paragraph S5.5.1(b) of FMVSS No. 139 includes the requirements relevant to this petition.

- For tires manufactured on or after September 1, 2009, each tire must be labeled with the tire identification number required by 49 CFR part 574 on the intended outboard sidewall of the tire.
- Except for retreaded tires, if a tire does not have an intended outboard sidewall, the tire must be labeled with the tire identification number required by 49 CFR part 574 on one sidewall and with either the tire identification number or a partial tire identification number, containing all characters in the tire identification number except for the date code and, at the discretion of the manufacturer, any optional code, on the other sidewall.

V. Summary of MNA's Petition

The following views and arguments presented in this section, "V. Summary of MNA's Petition," are the views and arguments provided by MNA and do not reflect the views of the Agency. MNA describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, MNA submitted the following reasoning:

1. The TIN marking noncompliance does not create any operational safety risk for the vehicle. The tires comply with applicable FMVSS and all other applicable regulations.
2. The incorrect orientation of the TIN plant code has no bearing on tire performance.
3. The subject tires are marked with all other markings required under FMVSS No. 139, such as S5.5(c) maximum permissible inflation pressure and S5.5(d) maximum load rating. The necessary information is available on the sidewall of the tire to ensure proper application and usage.

4. The subject tires contain the DOT symbol on both sidewalls, thus, indicating conformance to applicable FMVSS.

5. The plant code on the intended outboard side of the tires contain all the information required by 49 CFR 574.5 for the TIN (plant code + size code + option code + date code), however the 3-digit plant code is inverted. The text should read "DOT 1M3" and instead reads "DOT vWL."

6. The plant code orientation discrepancy only exists on the intended inboard sidewall of the tire. The intended inboard sidewall has the correct sequence of DOT + plant code + size code + option code + manufacturing date, with all characters oriented in the proper direction.

7. For identification and traceability purposes the key information of plant code and manufacturing date is present on the tire.

8. In the event that dealer/owner notifications are required, either the intended marking (DOT 1M3) or the actual marking (DOT inverted "1M3") would serve as an identifier of the tire.

9. Upon identification of the mismarking, Michelin instituted a block on the affected tires and initiated a sorting of inventories. A total of 1,139 of the 1,196 tires produced with the incorrect marking were captured and retained in Michelin inventory.

10. The plant code plate in the affected mold has been restored to its correct orientation.

11. The mismarking has been communicated to Michelin Customer Care representatives in order to effectively handle any inquiries from dealers or owners regarding the subject tires.

12. MNA contends that NHTSA has concluded in other petitions related to similar TIN marking errors that this type of noncompliance is inconsequential to safety. Most notably, Cooper Tire & Rubber Company, 81 FR 43708 (July 5, 2016) petitioned for tires produced with an inverted date code. MNA states that NHTSA concluded that the inverted marking did not affect the consumers' ability to identify the tire and other examples exist where TIN information was incorrect, missing, or molded in the wrong sequence and NHTSA granted the petition.

MNA concludes its petition by stating that the subject noncompliance is inconsequential as it relates to motor vehicle safety and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the

noncompliance, as required by 49 U.S.C. 30120, should be granted.¹

VII. NHTSA's Analysis: In determining inconsequentiality of a noncompliance, NHTSA focuses on the safety risk to individuals who experience the type of event against which a recall would otherwise protect.² In general, NHTSA does not consider the absence of complaints or injuries when determining if a noncompliance is inconsequential to safety. The absence of complaints does not mean vehicle occupants have not experienced a safety issue, nor does it mean that there will not be safety issues in the future.³ Further, because each inconsequential noncompliance petition must be evaluated on its own facts and determinations are highly fact-dependent, NHTSA does not consider prior determinations as binding precedent. Petitioners are reminded that they have the burden of persuading NHTSA that the noncompliance is inconsequential to safety.

NHTSA has evaluated the merits of the petition submitted by MNA and is granting MNA's request for relief from notification and remedy based on the following:

1. Based on its review of the information MNA submitted, NHTSA has no basis to believe that tires do not meet the performance and labeling requirements of FMVSS 139, with the exception of the inverted plant code.

2. NHTSA believes that manufacturers and consumers will be able to identify the affected tires in the event of a recall for the following reasons:

a. The oval surrounding the plant code portion of the TIN visually groups the 3 characters from the rest of the TIN.

This helps the reader to understand that the mold plate for the plant code portion of the TIN was put in place inverted.

b. The font style is such that it is evident that the characters are inverted, however the inverted plant code could possibly be read as "EWI," "EWL," or "EW1." None of these are currently assigned to an active tire plant registered with NHTSA, and EWI in particular would not be assigned because "I" is not a permitted symbol.

c. The inboard sidewall of the tire has the plant code molded in the correct orientation.

3. NHTSA believes that the manufacturer has taken sufficient steps to ensure that the affected tires are included in any future recalls by:

a. Ensuring that the affected tires may be registered with either the correct TIN or any of the possible interpretations of the inverted characters.

b. Ensuring that any future safety-related recalls for the affected tires will include TIN numbers with all the possible interpretations of the inverted characters.

c. Coordinating with customer care representatives to handle inquiries related to the inverted plant code characters.

VII. NHTSA's Decision: In consideration of the foregoing, NHTSA finds that MNA has met its burden of persuasion that the subject FMVSS No. 139 noncompliance in the affected tires is inconsequential to motor vehicle safety. Accordingly, MNA's petition is hereby granted, and MNA is consequently exempted from the obligation of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject tires that MNA no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve tire distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after MNA notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8)

Eileen Sullivan,

Associate Administrator for Enforcement.

[FR Doc. 2024-30950 Filed 12-27-24; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2021-0096; Notice 3]

Hercules Tire & Rubber Company, Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Hercules Tire & Rubber Company, (Hercules), has determined that certain Hercules Power ST2 radial trailer tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of More Than 4,536 Kilograms (10,000 Pounds), Specialty Tires, and Tires for Motorcycles*. Hercules filed an original noncompliance report dated December 9, 2021, and amended the report on December 14, 2021, and March 9, 2022. Hercules petitioned NHTSA on December 16, 2021, and amended the petition on March 9, 2022, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the grant of Hercules's petition.

FOR FURTHER INFORMATION CONTACT: Jayton Lindley, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (325) 655-0547.

SUPPLEMENTARY INFORMATION:

I. Overview: Hercules determined that certain Hercules Power ST2 radial trailer tires do not fully comply with the requirements of paragraph S6.5(b) of FMVSS No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of More Than 4,536 Kilograms (10,000 Pounds), Specialty Tires, and Tires for Motorcycles* (49 CFR 571.119).

Hercules filed an original noncompliance report dated December 9, 2021, and amended the report on December 14, 2021, and March 9, 2022, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Hercules petitioned NHTSA on December 16, 2021, and amended its petition on March 9, 2022, for an

¹ NHTSA requested that Michelin provide compliance test data for the subject tires while processing this request. Michelin provided this data but requested confidential treatment under 49 CFR part 512. This is reflected in a memo placed in the docket.

² See *Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

³ See *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21666 (Apr. 12, 2016); see also *United States v. Gen. Motors Corp.*, 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it "results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future").

exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

Notice of receipt of Hercules's petition was published with a 30-day public comment period, on August 10, 2022, in the **Federal Register** (87 FR 48760). A correction to the notice of receipt of Hercules's petition was published on December 30, 2022, in the **Federal Register** (87 FR 80257) and extended the public comment period. No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2021-0096."

II. Tires Involved: Approximately 67 Hercules Power ST2 size ST205/75R15 radial trailer tires, manufactured between November 23, 2020, and November 29, 2020, were reported by the manufacturer.

III. Noncompliance: Hercules explains that the noncompliance is due to a mold error in which the subject tires contain a tire identification number (TIN) with the second and third numerical symbols in the date code transposed and therefore, do not meet the requirements of paragraph S6.5(b) of FMVSS No. 119. Specifically, the TIN on the subject tires incorrectly states the date code as "4280," when it should state "4820."

IV. Rule Requirements: Paragraph S6.5(b) of FMVSS No. 119 and part 574.5(b)(3) include the requirements relevant to this petition. FMVSS No. 119 states the TIN must meet the requirements set forth in part 574. Part 574.5(b)(3), states that the date code portion of the TIN must identify the week and year of manufacture. The first and second symbols of the date code must identify the week of the year by using "01" for the first full calendar week in each year, "02" for the second full calendar week, and so on. The third and fourth symbols of the date code must identify the last two digits of the year of manufacture.

V. Summary of Hercules's Petition: The following views and arguments presented in this section, "V. Summary of Hercules's Petition," are the views and arguments provided by Hercules. They do not reflect the views of the Agency. Hercules describes the subject noncompliance and contends that the

noncompliance is inconsequential as it relates to motor vehicle safety.

Hercules explains that the subject noncompliance does not result in an increased risk to safety because the incorrect date code ("4280") indicates that the subject tires were manufactured in the 42nd week of either 1980 or 2080. According to Hercules, "[t]he only years that a year code of 80 could potentially relate to are 1980, over 40 years ago, or 2080, which is so far into the future to be implausible." Hercules claims the subject noncompliance would not cause a consumer to use the tire beyond its recommended maximum service life because a "consumer would not simply assume that the year code listed on the tire is in fact the correct date and be misled." Hercules says that if a consumer did follow the date code listed on the subject tires, "the guidance provided on NHTSA's website," informs consumers that "tires should be replaced within six to 10 years regardless of treadwear." In addition, because the year the date code indicates is implausible if a dealer were to store the subject tires for multiple years before selling them, Hercules believes "there is no risk of misleading the consumer about the age of the tire."

Hercules says that while the second and third symbols in the date code were transposed in the TIN, "all other content within the TIN is accurate and the tires otherwise conform to the performance requirements applicable to specialty trailer tires." Hercules states that the subject noncompliance "affects only the single week of tire production and the condition has been corrected in production."

Hercules states that granting its petition would be consistent with similar decisions that NHTSA has previously granted for inconsequentiality. Hercules cited the following prior petitions that NHTSA has granted, and that Hercules believes support the granting of its petition:

- Bridgestone Firestone North America Tire, LLC, Grant of Petition for Decision of Inconsequential Noncompliance, 71 FR 4396 (January 26, 2006);

- Bridgestone/Firestone, Inc., Grant of Application for Decision That Noncompliance Is Inconsequential to Motor Vehicle Safety, 66 FR 45076 (August 27, 2001).

Hercules believes that NHTSA's primary concern related to mislabeled or inaccurate TINs is the potential for adverse safety consequences due to consumers using aged tires that are beyond the manufacturer's recommended service life and regardless of the service condition of the

tire. *See Cooper Tire & Rubber Company*, 86 FR 47726 (August 26, 2021).

In the event of a recall, Hercules says that it has taken steps to ensure that it would be able to identify the subject tires and notify consumers successfully. Hercules says they have ensured that consumers will be able to register the tires with the noncompliant TIN (date code "4280") and that their database will identify the tire "as having been produced in calendar week 48, calendar year 2020" (correct date code "4820"). If a recall were necessary, Hercules says it would be able to contact consumers whose tires were registered and would include the TIN "as it is listed on the tire sidewall so that consumers could check the recall notification against the tire sidewall for verification purposes." Hercules believes that this further supports the granting of its petition because it says NHTSA has stated in prior grants of inconsequentiality petitions that the purpose of a date code is to identify the tire so that, if necessary, the appropriate action can be taken in the interest of public safety—such as a safety recall notice.

Hercules concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VI. NHTSA's Analysis: In determining inconsequentiality of a noncompliance, NHTSA focuses on the safety risk to individuals who experience the type of event against which a recall would otherwise protect.¹ In general, NHTSA does not consider the absence of complaints or injuries when determining if a noncompliance is inconsequential to safety. The absence of complaints does not mean vehicle occupants have not experienced a safety issue, nor does it mean that there will not be safety issues in the future.²

¹ See *Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

² See *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21666 (Apr. 12, 2016); see also *United States v. Gen. Motors Corp.*, 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect

Further, because each inconsequential noncompliance petition must be evaluated on its own facts and determinations are highly fact-dependent, NHTSA does not consider prior determinations as binding precedent. Petitioners are reminded that they have the burden of persuading NHTSA that the noncompliance is inconsequential to safety.

In response to the petitioner's statement that subject tires that have remained in dealer inventory for an extended period would not lead to confusion on the part of a consumer, NHTSA notes that noncompliant tires may not be offered for sale, sold, or introduced into interstate commerce. Thus, entities should be aware that selling noncompliant tires could result in civil penalties, regardless if the petition is granted or denied.

NHTSA has evaluated the merits of the petition submitted by Hercules and is granting Hercules' request for relief from notification and remedy based on the following:

1. Based on its review of the information Hercules submitted, NHTSA has no basis for to believe that the tires do not meet the performance and labeling requirements of FMVSS No. 119, except for the incorrect date code.

2. While NHTSA recognizes that TIN labeling errors might prevent consumers from successfully registering their tires and this would impact safety, in the subject petition the noncompliance would not prevent tire registration. One purpose of the TIN is to provide a means of identifying tires, and while the date code portion of the TIN is useful to identifying tires, it also provides information to consumers about the age of their tires which could be safety related. In this specific instance, where the numbers two and eight were interchanged in the date code, the agency believes that consumers will recognize that the code is an error. It is unlikely that a reasonable person will believe that the tires were manufactured in 1980. Therefore, NHTSA does not believe the incorrect date code will cause consumers to use the tire beyond its recommended service life, but rather recognize that there is an error in the date code portion of the TIN.

3. NHTSA believes that the manufacturer has taken sufficient steps to ensure that the affected tires are included in future recalls by:

poses an unreasonable risk when it "results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future").

a. Verifying that the tires having the incorrect date code may be registered using their tire registration system.

b. Ensuring that their registration database will correctly identify the tires as having been produced in week 48 of 2020, when the date code 4280 is entered.

VII. NHTSA's Decision: In consideration of the foregoing, NHTSA finds that Hercules has met its burden of persuasion that the subject FMVSS No. 119 noncompliance in the affected tires is inconsequential to motor vehicle safety. Accordingly, Hercules's petition is hereby granted and Hercules is consequently exempted from the obligation of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject tires that Hercules no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve tire distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after they were notified that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8)

Eileen Sullivan,

Associate Administrator for Enforcement.

[FR Doc. 2024-30951 Filed 12-27-24; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2024-0056]

Agency Information Collection Activities; Notice and Request for Comment; Female Occupant Anthropometry and Seating

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments on a request for approval of a new information collection.

SUMMARY: NHTSA invites public comments about our intention to request approval from the Office of Management and Budget (OMB) for a new information collection. Before a Federal agency can collect certain information from the public, it must receive approval from OMB. Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes a collection of information for which NHTSA intends to seek OMB approval on Occupant Anthropometry and Seating.

DATES: Comments must be submitted on or before February 28, 2025.

ADDRESSES: You may submit comments identified by the Docket No. NHTSA-2024-0056 through any of the following methods:

- *Electronic submissions:* Go to the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* (202) 493-2251.
- *Mail or Hand Delivery:* Docket Management, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. To be sure someone is there to help you, please call (202) 366-9322 before coming.

Instructions: All submissions must include the agency name and docket number for this notice. 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 heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <https://www.transportation.gov/privacy>.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or the street address listed above. Follow the online

instructions for accessing the dockets via internet.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Elizabeth Lafferty, Office of Vehicle Safety Research, Human Injury Research Division NSR-220, West Building, W46-311, 1200 New Jersey Ave. SE, Washington, DC 20590; Email: Elizabeth.lafferty@dot.gov; Phone: 202-366-6222.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following: (a) 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) 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; (c) how to enhance the quality, utility, and clarity of the information to be collected; and (d) how to minimize the burden of the collection of information on those who are to respond, including 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. In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information for which the agency is seeking approval from OMB.

Title: Occupant Anthropometry and Seating.

OMB Control Number: New.

Form Number(s): NHTSA Form 1824, NHTSA Form 1825, NHTSA Form 1826, NHTSA Form 1827, NHTSA Form 1828, and NHTSA Form 1848.

Type of Request: New information collection.

Type of Review Requested: Regular.

Requested Expiration Date of

Approval: 3 years from date of approval.

Summary of the Collection of Information:

NHTSA proposes to collect information from the public as part of a

study to collect detailed information on current body size and shape, posture, and motion of vehicle occupants. This research will support NHTSA in the development of tools used for occupant protection during crashes, particularly in the context of equity in crashworthiness. This research will add to the body of knowledge and is not immediately intended to inform regulations or policy.

The designs of anthropomorphic test devices (ATDs, commonly known as crash test dummies) are based on measurements of volunteers sitting in vehicle and laboratory seats. The current generation of ATDs is based on data gathered at University of Michigan Transportation Research Institute (UMTRI) in the 1980s. Since that time, the U.S. population has change substantially, most notably due to the large increase in body mass. Measurement technologies have also improved dramatically with the development of fast three-dimensional surface measurement systems. Seating configurations have also expanded from the traditional seat posture collected in the 1980s with increased recline angles in modern vehicles. This combination of a population size shift and more variable seat configurations presents a clear need for updated seated anthropometry to be collected with new advanced anthropometry measurement capabilities.

The data collections, approved by the Institutional Review Board at the University of Michigan, will be performed once to obtain the target number of valid test participants. Study participants will be male and female licensed adult drivers from the general public, and participation will be voluntary with monetary compensation provided. Participants are recruited using University of Michigan's Health Research portal, <https://umhealthresearch.org/>. The voluntary study would involve recruiting licensed drivers for two studies (in-lab and in-vehicle). For the in-lab study, the following information collections include: (1) an online screening questionnaire; (2) an eligibility phone call to confirm eligibility, interest, and schedule a time in the lab; (3) informed consent for the in-lab study and anthropometric measurement. A subset of the in-lab participants will be asked to participate in the in-vehicle study and the following information collections include: (1) a pre-drive questionnaire for the in-vehicle study; (5) informed consent and anthropometric measurements for the in-vehicle study; and (6) a post-drive questionnaire for the in-vehicle study.

In this study, 3D surface scan data quantifying body size and shape in a range of postures will be obtained. Posture, position, and belt fit in driver and passenger seating mockups that are adjusted to a wide range of vehicle configurations and using multiple seats will be measured. The participants will be selected to span a wide range of stature and weight, spanning the 5th percentile female to 95th percentile male values. Individuals with high body mass will be preferentially selected to address the current lack of data from that cohort. An in-vehicle study will be conducted using participants recruited from among those participating in the laboratory study. Participants will be provided an instrumented vehicle to drive in place of their own for a 7-to-10-day period. Given unknown budget appropriations the drive time may be reduced from 7-to-10-days to two hours. Independent of budget appropriations the burden to the public is two hours. The two hours will either be spent as more detailed check in/check out time for the 7-to-10-day plus questionnaire post-drive or as a 2-hr drive starting and ending at the lab. The goal of the in-vehicle study is to validate the driver postures measured in the laboratory and to obtain high-resolution 3D data on postures and movements during driving. A particular focus is on the lower extremities, where crash injury data have indicated a large difference in risk between male and female drivers. Body scans, measurements, and any video will be de-identified prior to submission to NHTSA. Statistical models will also be developed from de-identified data and made available to the public through a software tool.

This research study will gather a new database of information on adult body size, shape, posture, and motion to support advancement in these safety applications. This study will add to the body of the knowledge on motor vehicle anthropometry and will support female crash safety and equitable occupant protection through the development of human body models (HBMs) and anthropomorphic test devices (ATDs).

Description of the Need for the Information and Proposed Use of the Information:

Early ATDs, including the Hybrid-III family that was initially designed in the 1970s, were constructed using manually gathered anthropometric data, such as segment lengths and circumferences. Minimal 3D information was available, and seated postures were approximated. In 1980, NHTSA funded a large-scale study at UMTRI to develop anthropometric specifications for a new generation of ATDs. The Anthropometry

of Motor Vehicle Occupants (AMVO) study gathered data and developed detailed 3D body shapes for small female, midsize male, and large male occupants, using 5th percentile female, 50th percentile male, and 95th percentile male stature and body weight as the target reference values. Drawing packages were developed detailing landmark and joint locations, and physical 3D surface shells were constructed using landmark data and minimal 3D contour information. These data have formed the anthropometric basis for most adult ATDs developed since that time, including the THOR family.

AMVO had some limitations, however. Due to the limits of the technology available at the time, a small number of participants were measured (25 per size bin were used to create the final specifications), and no 3D surface information was collected. Moreover, the analysis was based on simple averaging per size bins, so no information was provided for other occupant sizes. Most importantly, the midsize female was dropped for cost reasons, so the only female data were gathered from very small individuals.

Over the past 20 years, HBMs have become an important addition to the biomechanics toolkit. Using the same logic that was applied to selecting body sizes for ATDs, the HBMs have typically been targeted to the same stature and body weight reference values as were used in AMVO. However, unlike the averaging process used in AMVO, most HBMs have developed using data primarily or entirely from a single individual. A consequence of this approach is that HBM development has not provided meaningful additions to the anthropometric data available to characterize vehicle occupants.

In the decades since AMVO, UMTRI has conducted a large number of studies of occupant posture and body shape and has developed advancements in both measurement and analysis methodology. Of particular importance, rather than averaging data to create a representation of a single body size, UMTRI has developed continuous statistical models that can generate accurate specifications for a wide range of sizes and shapes (for examples, see <http://HumanShape.org>). Simultaneously analyzing both landmark locations and 3D body shapes has enabled the development of parametric human body modeling, in which HBMs are morphed to represent people with widely varying size and shape.

Concurrent with the development of parametric HBMs, crash injury data

analyses have highlighted the potential benefits of these new tools. In particular, the field data indicate that female occupants experience higher risks of some injuries in certain types of crashes. Notably, lower-extremity injury risks are markedly higher for female drivers than for male drivers in frontal impacts. Detailed anthropometric and posture data for female drivers could help to elucidate the causes of this difference. Crash injury data also show that individuals with high body mass are at higher risks of some injuries, possibly due to differences in the interaction with the restraint systems. Minimal data are available to describe the seated postures and body shapes of this cohort, which is increasingly important in the U.S.

Affected Public:

Respondents will be licensed drivers, ages 18+, in the Ann Arbor, MI region and willing to travel to UMTRI. Study participants will be male and female licensed adult drivers from the general public, and participation will be voluntary with monetary compensation provided. Participants are recruited using University of Michigan's Health Research portal, <https://umhealthresearch.org/>. Prospective participants will respond to the U-M Health Research posting by completing a screening questionnaire on a Google Form. Eligible participants are those whose answers to the Google Form questions are consistent with the inclusion and exclusion criteria.

Eligibility requirements include the ability to read and speak English, ability to drive for two hours continuously, hold a current and unrestricted U.S. driver's license, have been a licensed driver for at least one year, drive a car daily for an average of at least 15 minutes, and comfortable driving on the highway and local roads. Exclusion criteria include individuals with musculoskeletal ailments impeding the ability to walk or sit comfortably or musculoskeletal deformities such as scoliosis or amputations.

Estimated Number of Respondents:

2000. We estimate that 2000 screening questionnaires will be filled out to obtain the needed number of subjects. The form has 23 questions, including name, address, and time slots available. We estimate that up to 600 individuals will need to be contacted to obtain the needed number of 300 subjects for the lab study. This considers that some people's schedules may not match up with lab openings or they may not show up for their scheduled appointment. A subset of the in-lab study participants will be asked to participate in the in-

vehicle study with the targeted 100 participants.

Frequency: Once.

This is a one-time collection of information with two studies: in-lab and in-vehicle. A subset of the in-lab participants will be asked to participate in the in-vehicle study. The initial pre-screening time is roughly 5 minutes and can be done at the respondents' convenience using a device of their choosing. The only requirement is an internet connection to access the online pre-screening. Not all who begin this pre-screening will complete the form in its entirety, and not everyone will meet study criteria. Those who meet study criteria could be contacted for an eligibility phone call prior to study enrollment.

Estimated Total Annual Burden Hours:

The annual estimated time burden to complete the collection of information is 347 hours and an annual opportunity cost of \$16,373.05 over the study period. To minimize the burden of the screening questionnaire and eligibility phone call, individuals for the in-vehicle study will be selected from the in-lab study pool. An estimate of up to 2000 individuals will initiate a response to the online screening questionnaire due to the broad range of inclusion criteria. Of the screened individuals we anticipate that up to 600 will need to be contacted for an eligibility phone call to obtain the needed number of 300 participants scheduled for the in-lab study. Scheduled participants that do not show up will be replaced from the remaining pool of screened participants and eligibility phone call to ensure 300 individuals arrive for in-lab measurements. After completion of the 2-hour process for informed consented and in-lab data collection, some participants will be asked if they are interested in the in-vehicle study. From the 300 in-lab participants, 100 will be scheduled to return to the lab for the in-vehicle study. The in-vehicle pre-drive and post-drive questionnaires will each take 5 mins, the informed consent, vehicle check-out, and vehicle check-in processes will take 110 min. totaling 2 hrs. for all of the in-vehicle study.

To calculate the opportunity cost associated with the forms and other relevant activities necessary for this collection of new information, NHTSA looked at average hourly earnings for employees across all occupations in the Ann Arbor, MI area. The Bureau of Labor Statistics (BLS) estimates that the average hourly wage for this group is \$33.43, thus serving as the opportunity cost per hour. The Bureau of Labor Statistics estimates that private industry

workers' wages represent 70.3% of total labor compensation costs. Therefore, NHTSA estimates the hourly labor costs to be \$47.55. NHTSA estimates the total opportunity cost associated with the

1033 burden hours to be \$49,119.15. Annual burden cost is estimated to be \$16,373.05, and annual burden hours is estimated to be 347. There may be a slight variation in the comparison of

total to annual burden over the three years due to rounding. The annual burden figures will be those represented in ROCIS.

TABLE 1—BURDEN ESTIMATES

NHSTA form No.	Information collection	Number of respondents total/annual	Time per response (min)	Cost per response	Frequency of response	Burden hours total/annual	Burden cost (dollars) total/annual
1824	Online Screening questionnaire	2000/667	5	\$3.96	1	167/56	\$7,940.85/\$2,646.95
1825	Eligibility Phone Call	600/200	5	3.96	1	50/17	2,377.50/792.50
1826	Informed Consent, In-Lab	300/100	120	95.10	1	600/200	28,530.00/9,510.00
1827	In-Vehicle Pre-Drive Questionnaire	100/34	5	3.96	1	8/3	380.40/126.80
1828	Informed Consent, In-Vehicle	100/34	120	95.10	1	200/68	9,510.00/3,170.00
1848	In-Vehicle Post-Drive Questionnaire	100/34	5	3.96	1	8/3	380.40/126.80
	Total Burden/Annual Burden					1033/347	49,119.15/16,373.05

Estimated Total Annual Burden Cost:

NHTSA estimates that the total travel costs to all respondents will be no more than \$10,720. The total estimated cost to the Government for this one-time information collection is \$49,119.15 plus \$10,720 totaling \$59,839.15 where the annual estimated cost is \$19,946.38.

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29A.

Cem Hatipoglu,

Associate Administrator, Vehicle Safety Research.

[FR Doc. 2024–30932 Filed 12–27–24; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2024–0005]

Pipeline Safety: Meeting of the Liquid and Gas Pipeline Advisory Committees.

AGENCY: Pipeline and Hazardous Materials Safety Administration

(PHMSA); Department of Transportation (DOT).

ACTION: Notice of advisory committee meeting.

SUMMARY: This notice announces a public meeting of the Technical Hazardous Liquid Pipeline Safety Standards Committee, also known as the Liquid Pipeline Advisory Committee (LPAC), and the Technical Pipeline Safety Standards Committee, also known as the Gas Pipeline Advisory Committee (GPAC), to discuss the notices of proposed rulemaking (NPRMs) titled “Periodic Standards Update II” and “Cost Recovery for Siting Reviews for LNG Facilities.”

DATES: PHMSA will hold a public meeting on Thursday, January 16, 2025. The LPAC and GPAC (Committees) will meet from 10:30 a.m. to 6:00 p.m. EST to discuss the NPRMs. However, the meeting may end early or late depending on when the Committees complete their review of the proposed rules. Members of the public who wish to attend are asked to register no later than January 2, 2025. PHMSA requests that individuals who require accommodations because of a disability notify Joe Berry by email at joseph.berry1@dot.gov at least five days prior to the meeting. Public comments on the proceedings of this meeting must be submitted by February 20, 2025.

ADDRESSES: The meeting will be held virtually. The agenda and any additional information, including information on how to participate in the meeting, will be published on the meeting website at *Liquid Pipeline Advisory Committee (LPAC) and Gas Pipeline Advisory Committee (GPAC) Meeting—PHMSA Public Meetings*. Presentations will be available on the meeting website and at <https://www.regulations.gov> in docket number PHMSA–2024–0005 no later than 30

days following the meeting. You may submit comments, identified by Docket No. PHMSA–2024–0005, by any of the following methods:

- **Web:** <https://www.regulations.gov>.

This site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the online instructions for submitting comments.

- **Fax:** 202–493–2251.

- **Mail:** Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building: Room W12–140, Washington, DC 20590–0001.

- **Hand Delivery:** U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building: Room W12–140, Washington, DC 20590–0001, between 9:00 a.m. and 5:00 p.m. EST, Monday through Friday, except federal holidays.

- **Instructions:** Identify Docket No. PHMSA–2024–0179 at the beginning of your comments. If you submit your comments by mail, submit two copies. Internet users may submit comments at <https://www.regulations.gov>. If you would like confirmation that PHMSA received your comments, please include a self-addressed stamped postcard labeled “Comments on PHMSA–2024–0005.” The docket clerk will date stamp the postcard prior to returning it to you via U.S. mail.

- **Note:** All comments received will be posted without edits to <https://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading for more information. Anyone can use the site to search all comments by the name of the submitting individual or, if the comment was submitted on behalf of an association, business, labor union, etc., the name of the signing individual. Therefore, please review the complete DOT Privacy Act Statement in the **Federal Register** at 65 FR 19477 or the

Privacy Notice at <https://www.regulations.gov> before submitting comments.

- **Privacy Act Statement:** DOT may solicit comments from the public regarding certain general notices. DOT posts these comments without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

- **Confidential Business Information:** Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments in response to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 CFR 190.343, you may ask PHMSA to provide confidential treatment to information you give to the Agency by taking the following steps: (1) mark each page of the original document submission containing CBI as "Confidential;" (2) send PHMSA a copy of the original document with the CBI deleted along with the original, unaltered document; and (3) explain why the information you are submitting is CBI. Submissions containing CBI should be sent to Joseph Berry, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Submissions containing CBI can also be emailed to Joseph Berry by encrypted email at joseph.berry1@dot.gov. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket.

- **Docket:** For access to the docket or to read background documents or comments, go to <https://www.regulations.gov>. Follow the online instructions for accessing the dockets. Alternatively, this information is available by visiting DOT at 1200 New Jersey Avenue SE, West Building: Room W12-140, Washington, DC 20590-0001, between 9:00 a.m. and 5:00 p.m. EST, Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Joe Berry, Office of Pipeline Safety, by phone at 202-366-3593 or by email at joseph.berry1@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Meeting Agenda

The Committees will meet virtually on Thursday, January 16, 2025, to discuss the "Periodic Standards Update II" NPRM that PHMSA published in the **Federal Register** on August 29, 2022, (87 FR 52713),¹ and the "Cost Recovery for Siting Reviews for LNG Facilities" NPRM that PHMSA published in the **Federal Register** on August 19, 2024, (89 FR 67040).² The Committees will review the NPRMs and their associated regulatory analyses, including, but not limited to, the preamble discussions of the proposals within each NPRM; regulatory impact analyses; environmental assessments; and other materials pertaining to the NPRMs provided in the respective public dockets. The committees will discuss the Cost Recovery for Siting Reviews for LNG facilities NPRM first. While the meeting is scheduled from 10:30 a.m. to 6:00 p.m. EST, the Committees may complete their review of the proposed rules before or after 6:00 p.m. EST. PHMSA will post additional details on the meeting website in advance of the meeting as they become available.

In the "Periodic Standards Update II" NPRM, PHMSA proposes amendments that would incorporate by reference all or parts of updated editions of some of those standards. The NPRM also proposes non-substantive edits and clarifications to certain other provisions of the federal pipeline safety regulations.

In the "Cost Recovery for Siting Reviews for LNG Facilities" NPRM, PHMSA proposes a new fee for cost recovery for siting reviews of liquefied natural gas (LNG) facility project applications where the design and construction costs total \$2.5 billion or more. This proposed rule is necessary to implement section 103 of the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020 (PIPES Act of 2020), and to help provide adequate resources for siting reviews to promote PHMSA's public safety and environmental protection objectives. This proposed rule also revises current regulations authorizing PHMSA's cost recovery for design safety reviews of gas, hazardous liquid, and carbon dioxide pipeline facilities to improve the clarity of the regulations and reduce unnecessary administrative burdens.

Following the LPAC and GPAC meeting, PHMSA will evaluate the

¹ The public docket for the Periodic Standards Update II NPRM can be found at <https://www.regulations.gov> in Docket No. PHMSA-2020-0013.

² The public docket for the Cost Recovery for Siting Reviews for LNG Facilities Notice can be found at <https://www.regulations.gov> in Docket No. PHMSA-2022-0118.

Committees' recommendations and publish final rules that address the comments received and relevant information from the meeting report.

II. Background

The Committees are statutorily mandated advisory committees that provide PHMSA and the Secretary of Transportation with recommendations on proposed standards for the transportation of hazardous liquid and gas by pipelines. The Committees were established in accordance with 49 U.S.C. 60115 and the Federal Advisory Committee Act (FACA) (5 U.S.C. Ch. 10) to review PHMSA's regulatory initiatives and determine their technical feasibility, reasonableness, cost-effectiveness, and practicability. Each committee consists of 15 members, with membership evenly divided among federal and state governments, regulated industry, and the general public.

III. Public Participation

The meeting will be open to the public. Members of the public who wish to attend must register on the meeting website and include their names and affiliations. PHMSA will provide members of the public reasonable opportunity to make a statement during this meeting. Additionally, PHMSA will record the meeting and post a record to the public docket. PHMSA is committed to providing all participants with equal access to this meeting. Public comments on the proceedings of the LPAC and GPAC meeting must be submitted by February 20, 2025.

PHMSA is not always able to publish a notice in the **Federal Register** quickly enough to provide timely notice regarding last-minute issues that impact a previously announced advisory committee meeting. Therefore, individuals should check the meeting website or contact Joe Berry regarding any possible changes.

Issued in Washington, DC, on December 20, 2024, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2024-30981 Filed 12-27-24; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons and vessels that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them. The vessels placed on the SDN List have been identified as property in which a blocked person has an interest. OFAC is also updating the entry on the SDN List for one person.

DATES: This action was issued on December 19, 2024. See **SUPPLEMENTARY INFORMATION** for relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, 202–622–2420; Assistant Director for Licensing, 202–622–2480; Assistant Director for Sanctions Compliance, 202–622–2490; or <https://ofac.treasury.gov/contact-ofac>.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website: <https://ofac.treasury.gov>.

Notice of OFAC Action

On December 19, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individuals

1. ABD–AL–WADUD, Wail Muhammad Said (a.k.a. ABDULWADOD, Wail Mohammed Saeed), Yemen; DOB 10 Feb 1994; POB Hodaidah, Yemen; nationality Yemen; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport 07872046 (Yemen) expires 25

Jul 2028 (individual) [SDGT] (Linked To: ANSARALLAH).

Designated pursuant to section 1(a)(iii)(A) of Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism," 66 FR 49079, as amended by Executive Order 13886 of September 9, 2019, "Modernizing Sanctions To Combat Terrorism," 84 FR 48041 (E.O. 13224, as amended), for having acted or purported to act for or on behalf of, directly or indirectly, ANSARALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. HAJJ, Umar Ahmad Umar Ahmad (a.k.a. HAG, Omar Ahmed Omar Ahmed), Yemen; DOB 03 Feb 1994; POB Hodaidah, Yemen; nationality Yemen; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport 06138572 (Yemen) expires 26 Mar 2030 (individual) [SDGT] (Linked To: ANSARALLAH).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for having acted or purported to act for or on behalf of, directly or indirectly, ANSARALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

3. AL–MADANI, Hashem Ismail Ali Ahmed (a.k.a. "ESMAIL ALI AHMED, Hashem"), Yemen; DOB 01 Jan 1984; nationality Yemen; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport 06120128 (Yemen) expires 19 Feb 2026 (individual) [SDGT] (Linked To: ANSARALLAH).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for having acted or purported to act for or on behalf of, directly or indirectly, ANSARALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

4. AL–HADI, Ahmad Muhammad Muhammad Hasan (a.k.a. AL HADI,

Ahmad), Yemen; DOB 02 Apr 1970; nationality Yemen; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886 (individual) [SDGT] (Linked To: ANSARALLAH).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ANSARALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

5. VENAYAGAMOORTHY, Puvaneswaran, Kuala Lumpur, Malaysia; DOB 27 Feb 1984; nationality Malaysia; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport A23472357 (Malaysia); National ID No. 840227145143 (Malaysia) (individual) [SDGT] (Linked To: MERKUR ENERGY PORT SERVICES SDN BHD).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13224, as amended, for owning or controlling, directly or indirectly, MERKUR ENERGY PORT SERVICES SDN BHD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

6. KANNIAPPAN, JR, Ezekial, Kuala Lumpur, Malaysia; DOB 10 Jul 1980; nationality Malaysia; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport A36564463 (Malaysia) (individual) [SDGT] (Linked To: MERKUR ENERGY PORT SERVICES SDN BHD).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for having acted or purported to act for or on behalf of, directly or indirectly, MERKUR ENERGY PORT SERVICES SDN BHD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Entities

BILLING CODE 4810–AL–P

1. MASTER JOINT CO., LIMITED, Flat/Rm a 12/F ZJ 300, 300 Lockhart Road, Hong Kong, China; Organization Established Date 11 Nov 2022; C.R. No. 3207669 (Hong Kong); Trade License No. 74597457 (Hong Kong) [IRAN-EO13902].

Designated pursuant to section 1(a)(i) of Executive Order 13902 of January 10, 2020, "Imposing Sanctions With Respect to Additional Sectors of Iran," 85 FR 2003, 3 CFR, 2020 Comp., p. 299 (E.O. 13902), for operating in the petroleum and petrochemical sectors of the Iranian economy.

2. JOURNEY INVESTMENT COMPANY (a.k.a. JOURNEY INVESTMENT CO.), Trust Company Complex, Ajeltake Road, Majuro, Ajeltake Island 96960, Marshall Islands; Organization Established Date 03 Jun 2022; Identification Number IMO 6339931; Registration Number 114762 [IRAN-EO13902].

Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the petroleum sector of the Iranian economy.

3. PASSADA MARITIME LIMITED, Trust Company Complex, Ajeltake Road, Majuro, Ajeltake Island, Marshall Islands; Organization Established Date 18 Aug 2022; Identification Number IMO 6346637; Registration Number 115822 [IRAN-EO13902].

Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the petroleum sector of the Iranian economy.

4. ROSE SHIPPING LIMITED (a.k.a. ROSE SHIPPING LTD; a.k.a. ROSE SHIPPING LTD-LIB), 80 Broad Street, Monrovia, Liberia; 2, Plastira Street, 166 73, Voula, Greece; Website www.rose-shipping.gr; Organization Established Date 29 May 1995; alt. Organization Established Date 2003; V.A.T. Number 098093215 (Greece); Identification Number IMO 5379292 [IRAN-EO13902].

Designated pursuant to section 1(a)(i) of E.O. 13902 for operating in the petroleum sector of the Iranian economy.

5. SAFWAN AL-DUBAI COMPANY OF SHIPPING AND TRADE (a.k.a. SAFWAN FOR SHIPPING AND TRADE), Nasr Street, Sanaa, Yemen; Street 75, Shiqiao Building, 3rd Floor, Door 4, Yiwu, Zhejiang, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 2015 [SDGT] (Linked To: ANSARALLAH).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ANSARALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

6. AL HAZMI EXCHANGE KHALED AL HAZMI AND BROTHER COMPANY GENERAL PARTNERSHIP (a.k.a. AL HAZMI EXCHANGE; a.k.a. AL-HAZMI COMPANY FOR EXCHANGE; a.k.a. "AL-HAZMI EXCHANGE COMPANY" (Arabic: "شركة الحزمي للصرافة")), Sana'a, Yemen; Website www.alhazmiex.com; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date circa 1998; Organization Type: Other financial service activities, except insurance and pension funding activities, n.e.c. [SDGT] (Linked To: AL-JAMAL, Sa'id Ahmad Muhammad).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, SA'ID AHMAD MUHAMMAD AL-JAMAL, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

7. MOHAMMED ALI AL THAWR EXCHANGE (Arabic: محمد علي الثور للصرافة) (a.k.a. AL THAWR EXCHANGE), Hodeidah, Yemen; Sana'a, Yemen; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Type: Other financial service activities, except insurance and pension funding activities, n.e.c. [SDGT] (Linked To: AL-JAMAL, Sa'id Ahmad Muhammad).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, SA'ID AHMAD MUHAMMAD AL-JAMAL, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

8. BLU SHIPPING M SDN. BHD., Unit 11-02, 11th Floor, Menara TJB, No. 9, Jalan Syed Mohd Mufti, Johor Bahru 80000, Malaysia; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 24 Sep 2019; Commercial Registry Number 1343697-K (Malaysia); Registration Number 201901034367 (Malaysia) [SDGT] (Linked To: AL-JAMAL, Sa'id Ahmad Muhammad).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, SA'ID AHMAD MUHAMMAD AL-JAMAL, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

9. MERKUR ENERGY PORT SERVICES SDN BHD (a.k.a. MERKUR ENERGY PORT SERVICES; a.k.a. MERKUR ENERGY PORTSERVICES SDN BHD), Unit 21-01, Level 21, Mercu Aspire KL Eco City, No 3 Jalan Bangsar, Kuala Lumpur 59200, Malaysia; Suite A09-10 Block A Plaza Tarragon Kelana Jalan Ss6/6 Kelana Jaya, Petaling Jaya 47301, Malaysia; Website merkurenergyports.com; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 2017; Commercial Registry Number 1233720K (Malaysia); Registration

Number 201701019555 (Malaysia) [SDGT] (Linked To: AL-JAMAL, Sa'id Ahmad Muhammad).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, SA'ID AHMAD MUHAMMAD AL-JAMAL, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

10. TEFCAS MARINE SDN. BHD., Unit 11-02, 11th Floor, Menara TJB, No. 9, Jalan Syed Mohd Mufti, Johor Bahru 80000, Malaysia; 11-01, Jalan Balau 3, Taman Rinting, Masai, Johar Bahru 81750, Malaysia; Website tefcas.com.my; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 2012; Commercial Registry Number 1027592-D (Malaysia); Registration Number 201201043116 (Malaysia) [SDGT] (Linked To: AL-JAMAL, Sa'id Ahmad Muhammad).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, SA'ID AHMAD MUHAMMAD AL-JAMAL, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

BILLING CODE 4810-AL-C

On December 19, 2024, OFAC also identified the following vessels as property in which a blocked person has an interest under the relevant sanctions authority listed below.

Vessels

1. MS ENOLA (a.k.a. KOHO I) (J2GJ) Crude Oil Tanker Djibouti flag; Vessel Registration Identification IMO 9251951; MMSI 621819078 (vessel) [IRAN-EO13902] (Linked To: JOURNEY INVESTMENT COMPANY).

Identified as property in which JOURNEY INVESTMENT COMPANY, a person whose property and interests in

property are blocked pursuant to E.O. 13902, has an interest.

2. MS ANGIA (a.k.a. GATHER VIEW) (T7Ax8) Crude Oil Tanker San Marino flag; Vessel Registration Identification IMO 9246281; MMSI 268241201 (vessel) [IRAN-EO13902] (Linked To: ROSE SHIPPING LIMITED).

Identified as property in which ROSE SHIPPING LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

3. MS MELENIA (3FSO7) Crude Oil Tanker Panama flag; Other Vessel Flag Djibouti; Vessel Registration

Identification IMO 9302023; MMSI 374128000 (vessel) [IRAN-EO13902] (Linked To: ROSE SHIPPING LIMITED).

Identified as property in which ROSE SHIPPING LIMITED, a person whose property and interests in property are blocked pursuant to E.O. 13902, has an interest.

On December 19, 2024, OFAC updated the entry on the SDN List for the following person, whose property and interests in property subject to U.S. jurisdiction continue to be blocked under the relevant sanctions authority listed below.

Individual

1. AL-JAMAL, Sa'id Ahmad Muhammad (a.k.a. AL GAMAL, Saeed Ahmed Mohammed; a.k.a. RAMI, Abu-Ahmad; a.k.a. SAEIDI, Ahmad; a.k.a. SA'IDI, Ahmad; a.k.a. "ABU-'ALI"; a.k.a. "AHMAD, Abu"; a.k.a. "CAIHONG" (Chinese Simplified: "彩虹"); a.k.a. "HISHAM"), Iran; DOB 01 Jan 1979; alt. DOB 28 Jul 1978; nationality Yemen; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport 04716186 (Yemen); alt. Passport U63475649 (Iran) expires 24 Jun 2028; alt. Passport E49297849 (Iran) expires 24 Aug 2024 (individual) [SDGT] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

-to-

AL-JAMAL, Sa'id Ahmad Muhammad (a.k.a. AL GAMAL, Saeed Ahmed Mohammed; a.k.a. RAMI, Abu-Ahmad; a.k.a. SAEIDI, Ahmad; a.k.a. SA'IDI, Ahmad; a.k.a. "ABU-'ALI"; a.k.a. "AHMAD, Abu"; a.k.a. "CAIHONG" (Chinese Simplified: "彩虹"); a.k.a. "HISHAM"; a.k.a. "KHRPI"), Iran; DOB 01 Jan 1979; alt. DOB 28 Jul 1978; nationality Yemen; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Digital Currency Address - USDT TLNRT524dzL5FF1nJHDhYEMFpeWjLjRbz1; alt. Digital Currency Address - USDT THh5woR8qfmDsNknQ3agPYzQSiRtMnKsTh; alt. Digital Currency Address - USDT TV5ZTpKDsZLTf6XcMnPongS33pwBgF91by; alt. Digital Currency Address - USDT TTAHMDqoom4f2VTWniroPWQHcTRZ4caoH4; alt. Digital Currency Address - USDT TFFvv7NAWmbcVfA7QN81mMvUC25TWj1WJx; Passport 04716186 (Yemen); alt. Passport U63475649 (Iran) expires 24 Jun 2028; alt. Passport E49297849 (Iran) expires 24 Aug 2024 (individual) [SDGT] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the ISLAMIC REVOLUTIONARY GUARD CORPS-QODS FORCE, a person whose property and interests in property are blocked pursuant to E.O. 13224.

The Secretary of State has identified the following person in a list submitted to the appropriate congressional committees pursuant to section 106(a) of the Countering America's Adversaries Through Sanctions Act (CAATSA). The Secretary of State has determined that such person, on or after the date of enactment of CAATSA, is responsible for extrajudicial killings, torture, or other gross violations of internationally recognized human rights committed against individuals in Iran who seek: (a) to expose illegal activity carried out by officials of the Government of Iran; or (b) to obtain, exercise, defend, or promote internationally recognized human rights and freedoms, such as the freedoms of religion, expression, association, and assembly, and the rights to a fair trial and democratic

elections. On December 19, 2024, OFAC, acting pursuant to delegated authority, has taken the action described below to impose the sanctions set forth in section 106(b)(1) of CAATSA with respect to the person listed below.

Entity

1. GHEZEL HESAR PRISON (a.k.a. GHEZEL HESAR PENITENTIARY; a.k.a. QEZEL HESAR PENITENTIARY), Payam Rd, Mehrshahr, Karaj, Alborz Province, Iran; Additional Sanctions Information—Subject to Secondary Sanctions [CAATSA—IRAN].

Pursuant to section 106(b) of CAATSA, OFAC has blocked all transactions in all property and interests in property that are in the United States, come within the United States, or come within the possession or control of any United States person, of the above

person. This person has been added to the SDN List and includes the identifying tag "CAATSA—IRAN."

Lisa M. Palluconi,
Acting Director, Office of Foreign Assets Control.

[FR Doc. 2024–30861 Filed 12–27–24; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets

Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: This action was issued on December 19, 2024. See Supplementary Information for relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, 202–622–2420; Assistant Director for Sanctions Compliance, 202–622–2490; or <https://ofac.treasury.gov/contact-ofac>.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website: <https://ofac.treasury.gov>.

Notice of OFAC Actions

On December 19, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. GOMELAURI, Vakhtang, Varketili 3, 1 Micro Distr, Tbilisi, Georgia; DOB 24 Dec 1975; POB Tbilisi, Georgia; nationality Georgia; Gender Male; Passport 10DP02703 (Georgia) issued 05 Feb 2018 expires 05 Feb 2023; National ID No. 01013018848 (Georgia) (individual) [GLOMAG].

Designated pursuant to section 1(a)(ii)(C)(1) of Executive Order 13818 of December 20, 2017, "Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption," (E.O. 13818), 82 FR 60839 (Dec. 26, 2017), for being a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in, serious human rights abuse relating to the leader's or official's tenure.

2. KEZEVADZE, Mirza, Tbilisi, Georgia; DOB 23 May 1980; POB Terjola, Georgia; nationality Georgia; Gender Male (individual) [GLOMAG].

Designated pursuant to section 1(a)(ii)(C)(1) of E.O. 13818 of December 20, 2017, "Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption," (E.O. 13818), 82 FR 60839 (Dec. 26, 2017), for being a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged

in, serious human rights abuse relating to the leader's or official's tenure.

Lisa M. Palluconi,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2024–30799 Filed 12–27–24; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Alcohol and Tobacco Tax and Trade Bureau Information Collection Requests

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before January 29, 2025 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Copies of the submissions may be obtained from Spencer W. Clark by emailing PHA@treasury.gov, calling (202) 927–5331, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

Alcohol and Tobacco Tax and Trade Bureau (TTB)

1. *Title:* Drawback on Distilled Spirits Exported.

OMB Control Number: 1513–0042.

Type of Request: Extension without change of a currently approved collection.

Description: Under the Internal Revenue Code (IRC) at 26 U.S.C. 5062, persons who export tax-paid or tax-determined distilled spirits may claim drawback (refund) of the Federal

alcohol excise tax paid on those spirits, as the Secretary of the Treasury prescribes by regulation. Under the TTB regulations in 27 CFR part 28, distilled spirits exporters use TTB F 5110.30 to submit such claims to TTB. The form collects information regarding the claimant, the identity and amount of the distilled spirits exported, and the amount of drawback claimed. This collection is necessary to protect the revenue as TTB uses the information on TTB F 5110.30 and its attached documents to verify distilled spirits export drawback claims, prevent fraudulent or mistaken drawback payments, and identify unusual activities, errors, or omissions regarding such claims.

Form: TTB F 5110.30.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 20.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 360.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 720.

2. *Title:* Application and Permit to Ship Puerto Rican Spirits to the United States Without Payment of Tax.

OMB Control Number: 1513–0043.

Type of Request: Extension without change of a currently approved collection.

Description: The Internal Revenue Code (IRC) at 26 U.S.C. 7652 imposes on Puerto Rican distilled spirits shipped to the United States for consumption or sale a tax equal to the internal revenue (excise) tax imposed in the United States on distilled spirits of domestic manufacture. However, the IRC at 26 U.S.C. 5232 provides that distilled spirits imported or brought into the United States in bulk containers may, under regulations prescribed by the Secretary, be withdrawn from Customs custody and transferred to the bonded premises of a domestic distilled spirits plant without payment of the internal revenue tax imposed on such spirits. The IRC at 26 U.S.C. 5314 also states that spirits may be withdrawn from the bonded premises of a distilled spirits plant in Puerto Rico pursuant to an authorization issued under the laws of Puerto Rico. Under those IRC authorities, TTB has issued regulations in 27 CFR part 26, Liquors and Articles from Puerto Rico and the Virgin Islands, which require respondents to use form TTB F 5110.31 to apply for and receive permission to ship Puerto Rican distilled spirits to the United States without payment of Federal excise tax.

The form identifies the specific spirits to be shipped, the amount of spirits shipped and received, and the shipper's consignee in Puerto Rico and consignee in the United States. The collected information is necessary to protect the revenue.

Form: TTB F 5110.31.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents:

10.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 600.

Estimated Time per Response: 45 minutes.

Estimated Total Annual Burden Hours: 450.

3. *Title:* Distilled Spirits Production Records (TTB REC 5110/01), and Monthly Report of Production Operations.

OMB Control Number: 1513-0047.

Type of Request: Extension without change of a currently approved collection.

Description: The Internal Revenue Code (IRC) at 26 U.S.C. 5001 sets forth, in general, the Federal excise tax rates for distilled spirits produced in or imported into the United States. The IRC at 26 U.S.C. 5207 also requires distilled spirit plant (DSP) proprietors to maintain records of production, storage, denaturation, and processing activities and to render reports covering those operations, as the Secretary of Treasury prescribes by regulation. The TTB regulations in 27 CFR part 19 require DSP proprietors to keep records regarding the materials used to produce distilled spirits, the amount of spirits produced, the withdrawal of spirits from the production account, and the production of spirits byproducts, which must be maintained for at least 3 years. Based on those records, the part 19 regulations also require DSP proprietors to submit monthly reports of production operations using TTB F 5110.40. This collection is necessary to protect the revenue as TTB uses the collected information to account for the amount of distilled spirits produced at a DSP, and to determine the proprietor's resulting excise tax liability and the amount of bond coverage needed, if such coverage is required.

Form: TTB F 5110.40.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 4,800.

Frequency of Response: Monthly.

Estimated Total Number of Annual Responses: 57,600.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 115,200.

4. *Title:* Wholesale Dealers Records of Receipt of Alcoholic Beverages, Disposition of Distilled Spirits, and Monthly Summary Report, TTB REC 5170/2.

OMB Control Number: 1513-0065.

Type of Request: Extension without change of a currently approved collection.

Description: The Internal Revenue Code (IRC) at 26 U.S.C. 5121 requires wholesale dealers in liquors to keep daily records of all distilled spirits received and disposed of, and, at the Secretary of the Treasury's discretion, to submit periodic summaries of those daily records. That IRC section also requires wholesale dealers in liquors and wholesale dealers in beer to keep daily records of all wine and beer received. Section 5121 also authorizes the Secretary to issue regulations regarding the keeping and submission of these records and summary reports by such wholesale dealers. In addition, the IRC at 26 U.S.C. 5123 sets forth retention and inspection requirements for the required wholesale dealer records and reports. Under these IRC authorities, TTB has issued regulations applicable to wholesale dealers, which are contained in 27 CFR part 31. Those regulations require wholesale dealers to keep usual and customary business records, such as consignment and purchase invoices, documenting their daily receipt and disposition of distilled spirits and their daily receipt of wine and beer. TTB, at its discretion, also may require a particular wholesale liquor dealer to submit monthly summary reports regarding all distilled spirits received and disposed of on a daily basis. In addition, the TTB regulations require that wholesaler dealers keep the required records and copies of any required monthly summary reports at their place of business, available for TTB inspection, for at least 3 years.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 36,500.

Frequency of Response: On occasion, Monthly.

Estimated Total Number of Annual Responses: 37,100.

Estimated Time per Response: 2 hours per monthly report for 50 wholesale dealers. No burden for recordkeeping as these are kept as part of usual and customary business practice.

Estimated Total Annual Burden Hours: 1,200.

5. *Title:* Alcohol, Tobacco, and Firearms Related Documents for Tax Returns and Claims (TTB REC 5000/24).

OMB Control Number: 1513-0088.

Type of Request: Extension without change of a currently approved collection.

Description: The Alcohol and Tobacco Tax and Trade Bureau (TTB) is responsible for the collection of Federal excise taxes on distilled spirits, wine, beer, tobacco products, cigarette papers and tubes, and firearms and ammunition, and the collection of special occupational taxes related to tobacco products and cigarette papers and tubes. The Internal Revenue Code (IRC, 26 U.S.C.) requires that such taxes be collected on the basis of a return, and it requires taxpayers to maintain records that document the information provided on such returns. The IRC also allows for the filing of claims for the abatement, credit, remission, or refund (drawback) of taxes under certain circumstances, and it requires claimants to maintain records to support such claims. TTB uses the collected information to determine the amount of excise and special occupational taxes rightly due, and to verify respondent computations on tax returns or the correctness of claims for refund or other adjustments to tax liabilities.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 67,000.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 536,000.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 536,000.

6. *Title:* Federal Firearms and Ammunition Quarterly Excise Tax Return.

OMB Control Number: 1513-0094.

Type of Request: Extension without change of a currently approved collection.

Description: The Internal Revenue Code (IRC) at 26 U.S.C. 4181 imposes a Federal excise tax on the sale of pistols, revolvers, other firearms, and shells and cartridges (ammunition) sold by manufacturers, producers, and importers of such articles. The IRC, at 26 U.S.C. 6001, 6011, and 6302, also authorizes the Secretary of the Treasury to issue regulations regarding IRC-based taxes, returns and records, including the mode and time for collecting taxes due. Under this authority, the TTB regulations in 27 CFR part 53 require respondents who have firearms and/or ammunition excise tax liability to submit a quarterly tax return using form

TTB F 5300.26. The information collected on this return is necessary to identify the taxpayer, the amount and type of taxes due, and the amount of payments made. TTB uses the return information to determine whether the taxpayer has paid the correct amount of tax and to take additional action, such as assessment or refund, as necessary.

Form: TTB F 5300.26.

Affected Public: Businesses or other for-profits, Individuals.

Estimated Number of Respondents: 635.

Frequency of Response: Quarterly.

Estimated Total Number of Annual Responses: 2,540.

Estimated Time per Response: 7 hours.

Estimated Total Annual Burden Hours: 17,780.

7. *Title:* Reports of Removal, Transfer, or Sale of Processed Tobacco.

OMB Control Number: 1513–0130.

Type of Request: Extension without change of a currently approved collection.

Description: The Internal Revenue Code (IRC) at 26 U.S.C. 5722 requires importers and manufacturers of tobacco products, processed tobacco, or cigarette papers and tubes to make reports containing such information, in such form, at such times, and for such periods as the Secretary of the Treasury prescribes by regulation. While processed tobacco is not subject to Federal excise tax under the IRC, tobacco products subject to such taxes may be manufactured using processed tobacco. To protect the revenue by preventing diversion of processed tobacco to illegal, unpermitted tobacco product manufacturers, TTB has issued regulations that require persons holding TTB permits as importers or manufacturers of processed tobacco or tobacco products to report all removals, transfers, or sales of processed tobacco made for export or for shipment to any domestic entity that does not hold a such a permit or a permit to operate as an export warehouse proprietor. In general, respondents must report each such shipment by the close of the next business day using form TTB F 5250.2. However, exporters may apply to TTB to report removals made for export using a monthly summary report. TTB F 5250.2 and the monthly summary report require information identifying the TTB permit holder making the processed tobacco shipment, the type and quantity of processed tobacco shipped, the person(s) purchasing (or receiving) and delivering the processed tobacco, and the destination address of the shipment.

Form: TTB F 5250.2.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 50.

Frequency of Response: Monthly, Daily.

Estimated Total Number of Annual Responses: 530.

Estimated Time per Response: 30 minutes for Form 5250.2, 2 hours for monthly summary report.

Estimated Total Annual Burden Hours: 460.

8. *Title:* Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 1513–0132.

Type of Request: Extension without change of a currently approved collection.

Description: The Alcohol and Tobacco Tax and Trade Bureau (TTB) uses the surveys, focus groups, usability tests, and other information collections approved under this generic clearance to gather timely feedback from its customers and stakeholders regarding its programs and services. TTB analyzes the collected information to help improve its programs and service delivery to ensure that regulated persons and others have effective, efficient, and satisfactory experiences when interacting with the agency.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 25,000.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 25,000.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 25,000.

9. *Title:* Specific and Continuing Export Bonds for Distilled Spirits or Wine.

OMB Control Number: 1513–0135.

Type of Request: Extension without change of a currently approved collection.

Description: The Internal Revenue Code (IRC) at 26 U.S.C. 5175, 5214, and 5362 authorizes exporters (other than proprietors of distilled spirits plants or bonded wine premises) to withdraw distilled spirits and wine, without payment of tax, for export, use on certain vessels or aircraft, transfer to a foreign trade zone, or transfer to a customs bonded warehouse pending exportation, subject to such regulations as the Secretary of the Treasury. Under that IRC authority, to protect the revenue and provide exporters with a degree of flexibility based on individual need, the TTB alcohol export regulations in 27 CFR part 28 allow

exporters to file either a specific bond using TTB F 5100.25 to cover a single export shipment or a continuing bond using TTB F 5100.30 to cover export shipments made from time to time.

Form: TTB F 5100.25, TTB F 5100.30.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 20.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 20.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 20.

Authority: 44 U.S.C. 3501 et seq.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2024–31097 Filed 12–27–24; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Agreement for a Social Impact Partnership Project

AGENCY: Department of the Treasury.

ACTION: Notice.

SUMMARY: In accordance with the Social Impact Partnerships to Pay for Results Act (“SIPRA”), the U.S. Department of the Treasury (“Treasury”) has entered into six agreements for social impact partnership projects (the “Project Grant Agreement”) with the following recipients; (1) City of Boise, ID (\$7.5 million), (2) City of Jacksonville, FL (\$5.8 million), (3) City of New York, NY (\$6.3 million), (4) School Board of Leon County, FL (\$4.6 million), (5) County of New Castle, DE (\$11 million), and (6) County of Spartanburg, SC (\$11.5 million) for a total award amount of \$46.9 million.

SUPPLEMENTARY INFORMATION:

The Project Grant Agreement for the City of Boise, ID (Boise) Contains the Following Features

1. The outcome goals of the social impact partnership project:

Boise expects to realize a reduction in healthcare expenditures covered by Medicaid, including emergency room visits, hospital overnight stays, ambulance rides, detox visits, and savings due to a reduction in arrests and cost associated with county correctional facilities. The project objective is to decrease these expenditures by 25 percent.

2. A description of each intervention in the project:

Boise and its partners (the Idaho Community Foundation (ICF), and Terry Reilly Health Services (TRHS)) propose

the Permanent Supportive Housing Pipeline Pay for Success project (the PSHP). The PSHP will provide Permanent Supportive Housing (PSH) and services using an Intensive Case Management (ICM) model including wrap-around services to 143 prioritized households who are experiencing long-term homelessness and have high service needs. These households are at increased risk for avoidable, high-cost service utilization paid through local, state, and federal outlays.

3. *The target population that will be served by the project:*

The target population is households with and without children experiencing long-term homelessness with at least one household member with at least one morbidity condition (chronic health condition, mental health condition, or substance use) in Ada County, Idaho. In Ada County, 765 households meet these criteria. Boise expects the project to reach 159 adults and 64 children.

4. *The expected social benefits to participants who receive the intervention and others who may be impacted:*

The primary expected social benefits from the project include:

- Reduced rate of homelessness among the most vulnerable populations;
- Reduced utilization of emergency medical services;
- Decreased criminal justice involvement; and
- Increased housing stability and retention.

5. *The detailed roles, responsibilities, and purposes of each Federal, State, or local government entity, intermediary, service provider, independent evaluator, investor, or other stakeholder:*

Role	Entity	Responsibilities
Government	City of Boise, ID	Repay investors with SIPPRA funds if performance benchmarks are met. Coordinate with the Treasury program team on administration of the program.
Intermediary	n/a	n/a.
Service Provider	Terry Reilly Health Services	Facilitate housing accesses with program enrollment into program using coordinated entry referrals. Provide intensive case management. Evaluate the project using a regression discontinuity design.
Independent Evaluator ...	Idaho Policy Institute (IPI), Boise State University.	
Investor	Idaho Community Foundation.	Provide the upfront capital for the program from the Supportive Housing Investment Fund (SHIF).

6. *The payment terms, the methodology used to calculate outcome payments, the payment schedule, and performance thresholds:*

Boise will be eligible for a payment from Treasury if there is a statistically significant difference between the treatment and the comparison group at the 80 percent level using the evaluation

design strategy defined below. Boise is eligible to be paid each year from June 2028 to June 2032 for a total of five eligible payments.

7. *The project budget:*

Project budget	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Total
TRHS (Family)	\$254,719	\$764,157	\$802,365	\$842,483	\$884,608	\$928,838	\$975,280	\$341,348	\$5,793,798
TRHS (Adult)		488,710	1,172,903	1,231,548	1,293,125	1,357,782	1,425,671	498,985	7,468,723
Total Project Costs	254,719	1,252,867	1,975,268	2,074,031	2,177,733	2,286,620	2,400,951	840,333	13,262,522

8. *The project timeline:*

There is a seventy-six month-intervention period for the project term to provide IPI with the maximum allowed period to evaluate the impact of this project on the SIPPRA outcome of reduced net federal, state, and local expenditures. The project will begin the

intervention in September 2025 and end in December 2031.

9. *The project eligibility criteria:*

Eligible households must have at least 12 points from the Length of Time and at least 3 points from the Tri-Morbidity sections of the PSHP Prioritization Formula outlined in Table 2. Those households that are both eligible for the

PSHP and score the highest on the prioritization formula will be referred for enrollment. Ties will be broken in through coordinated clinical discretion, driven by self-reported health and criminal data and corroborating system utilization data available at the time of referral.

PSHP prioritization formula	Factor 1	Factor 2	Factor 3
Length of Time Homeless: 22 points max	1 point every month up to 12 months	1 point for every year up to 10 years (10 max).	
FUSE Functionality: 10 points max	5 points max: number of emergency medical interactions.	5 points max: # criminal justice interactions.	
Tri-Morbidity: 9 points max	3 points: chronic illness	3 points: mental illness	3 points: substance use.
DV survivor: 6 points max	3 points: DV within last 6 mo	3 points: currently fleeing DV.	
Dependents: 6 points max	2 points: any dependents in household ...	1 point: kids 6–18	2 points: kids aged 0–5.
Age: 6 points max	2 points: 18–24 yrs	4 points: 55–61 yrs	6 point: 62+ yrs.
Unsheltered: 2 points max	1 point: HoH has been unsheltered more than 50% of last 6 months.	1 point: HoH facing persistent barriers in assessing emergency shelters.	
Income Level: 2 points max	1 point: household sustainable income is at 30% AMI.	2 points: household has zero sustainable income.	
Discrimination: 1 point	1 point: experienced discrimination based on protected class.		

10. The evaluation design:

To determine significance of impact, IPI will employ the following evaluative strategies: (1) a regression discontinuity, (2) Analysis of Variance (ANOVA) omnibus test, and (3) paired pairwise t-test. To determine the amount of any net reductions in local, state, and federal expenditures, IPI will facilitate collection of the utilization and costs data for 36 months prior to Participants entering the intervention (time 0) and annually thereafter. To determine the amount of any net reductions in expenditures, IPI will compare the associated utilization costs for enrolled Participants against those not enrolled using individual-level data.

11. The metrics that will be used in the evaluation to determine whether the outcomes have been achieved as a result of each intervention and how these metrics will be measured:

The metrics used will be:

- Reduction in costs related to arrests and jail.
- Reduction in costs related to the number of days in mental health and substance abuse treatment.
- Reduction in costs associated with paramedic calls, emergency department visits, and days in the hospital.

12. The estimate of the savings to the Federal, State, and local government, on a program-by-program basis and in the aggregate, if the agreement is entered into and implemented and the outcomes are achieved as a result of each intervention:

The estimated savings to the federal government are \$12,434,017.

The estimated savings to the State of Idaho are \$4,034,880.

The estimated savings to the City of Boise are \$1,133,396.

The Project Grant Agreement for the City of Jacksonville, FL (Jacksonville) Contains the Following Features**1. The outcome goals of the social impact partnership project:**

The anticipated outcome goals include substantial improvements in early literacy, parental engagement, and school readiness among preschool-aged children, and measurable reductions in healthcare utilization, especially for newborn ER visits and utilizations connected to maternal depression.

2. A description of each intervention in the project:

The READ JAX project includes two interventions, Family Connects and Reach Out and Read. Family Connects provides a universal nurse home visit

for new parents to reduce infant emergency medical care visits and maternal postpartum depression rates. Reach Out and Read is a universal early literacy initiative through which health care providers coach parents on reading to their children to improve early literacy, parental engagement, and school readiness among preschool-aged children.

3. The target population that will be served by the project:

The READ JAX is available to each newborn and their family within Jacksonville, FL.

4. The expected social benefits to participants who receive the intervention and others who may be impacted:

The primary expected social benefits from the project include:

- Family Connects
 - Lower emergency department visits
 - Reduced hospital readmissions for infants
- Read Out and Read
 - Reduction in maternal depression

5. The detailed roles, responsibilities, and purposes of each Federal, State, or local government entity, intermediary, service provider, independent evaluator, investor, or other stakeholder:

Role	Entity	Responsibilities
Government	City of Jacksonville, FL	Repay investors with SIPRA funds if performance benchmarks are met. Coordinate with the Treasury program team on administration of the program.
Intermediary	Kids Hope Alliance	Provide administrative and operational support.
Project Manager	Institute for Child Success ...	Provide project management services.
Service Provider	Reach Out and Read Florida. Children's Home Society of Florida.	Provide pediatric literacy support for new parents. Provide home visiting services to expectant and new mothers.
Independent Evaluator ...	Riley Institute	Evaluate the project using a quasi-experimental design supported by synthetic control methodology.
Investor	The Community Outcome Fund at Maycomb Capital Partners.	Provide the upfront capital.

6. The payment terms, the methodology used to calculate outcome payments, the payment schedule, and performance thresholds:

Jacksonville will be eligible for a payment from Treasury if there is a reduction in newborn emergency room visits and a reduction in treating

complications from postpartum depression.

7. The project budget:

Project budget							
Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Total project costs
\$4,500,000	\$4,500,000	\$4,500,000	\$4,500,000	\$4,500,000	\$4,500,000	\$4,500,000	\$31,500,000

8. The project timeline:

There is a seven-year intervention period. The project will begin the intervention in year two (2025) and end in year seven (2030).

9. The project eligibility criteria:

The project program is open to all young, low-income mothers residing within the City of Jacksonville, FL

10. The evaluation design:

Given the universal deployment of Reach Out and Read and Family

Connects across Jacksonville, traditional randomized trials are impractical. Therefore, a Synthetic Control Method (SCM) will be utilized, facilitating a rigorous comparison against control units drawn from similar demographic

and geographic locales without the intervention.

11. *The metrics that will be used in the evaluation to determine whether the outcomes have been achieved as a result of each intervention and how these metrics will be measured:*

The metric used will be the reduction in costs related to newborn ER visits and postpartum depression.

12. *The estimate of the savings to the Federal, State, and local government, on a program-by-program basis and in the aggregate, if the agreement is entered into and implemented and the outcomes are achieved as a result of each intervention:*

The estimated savings to the federal government is \$11,202,009.

The estimated savings to the State of Florida is \$4,876,774.

The Project Grant Agreement for the City of New York, NY (New York City) Contains the Following Features

1. *The outcome goals of the social impact partnership project:*

The expected outcome for this intervention is a 25-percentage point increase in the rate of stable housing or stable shelter (achieving 50% for the treatment group versus 25% of the comparison group) with stable housing defined as a permanent housing placement (e.g., permanent supportive housing, Long Term Nursing Care, family reunification) and stable shelter defined as a continuous stay in a low-barrier stabilization bed or other emergency housing setting that lasts at least 6 months.

2. *A description of each intervention in the project:*

The Coordinated Behavioral Task Force (CBHT)—3 Initiative by the New York City Department of Homeless Services (DHS) is a project to assist different segments of the unsheltered homeless population in New York City by providing homeless individuals with transitional housing and connecting them to services through intensive outreach, engagement, and care coordination. This project is focused on clients who are resistant to service engagement or entrenched in an unsheltered setting. The CBHT model coordinates representatives from State and local agencies and organizations to provide enhanced clinical and thorough case management services and to create service plans which will move the individual into supportive housing and connections to services through targeted interventions.

3. *The target population that will be served by the project:*

This program targets high acuity (e.g., severity of an illness or medical condition) individuals experiencing unsheltered homelessness. DHS expects to enroll about 400 individuals aged 18 or older experiencing unsheltered homelessness in New York City over 2-years, with services provided for up to a 39-month intervention period.

4. *The expected social benefits to participants who receive the intervention and others who may be impacted:*

New York City anticipates that this intervention will lead to improvements in quality of life associated with improved housing stability, increased access to healthcare, and decreased burden of disease. In addition, New York City expects that the improvements to the individual’s housing stability will lower government spending related to emergency room visits and criminal justice systems interactions. Reducing unsheltered homelessness among this vulnerable population is expected to have a wide range of broader social benefits as well, including improved conditions on public transit (especially increased cleanliness and perceived safety, which could lead to increased ridership), and improved conditions in other public spaces.

5. *The detailed roles, responsibilities, and purposes of each Federal, State, or local government entity, intermediary, service provider, independent evaluator, investor, or other stakeholder:*

Role	Entity	Responsibilities
Government	City of New York, NY—Department of Homeless Services.	Coordinate with the Treasury program team on administration of the program. Also serves as the investor of the program.
Intermediary	NYC Department of Health and Mental Hygiene (DOHMH), NYC Health and Hospitals (H+H).	Actively participate in CBHT meetings. Review eligibility of CBHT participants for key service interventions and facilitate enrollment as applicable (e.g., DOHMH: IMT, AOT, ACT Programs; H+H: CPEP, THU).
Service Provider	Bowery Residents Committee, Manhattan Outreach Consortium, Project Hospitality, Bronxworks, Breaking Ground Queens, and Breaking Ground Brooklyn.	Contracted outreach teams that will provide the services to the target population.
Independent Evaluator ...	TBD	Evaluate the project using a combination of propensity score matching and random assignment.

6. *The payment terms, the methodology used to calculate outcome payments, the payment schedule, and performance thresholds:*

New York City will be eligible for payments from Treasury if there is a statistically significant difference between the treatment and the comparison group at the 80 percent level using the evaluation design strategy defined below.

7. *The project budget:*

	2025	2026	2027	2028	2029	Total
Project costs	\$1,539,209	\$1,539,209	\$1,044,462	\$563,129	\$12,720	\$4,698,729

8. *The project timeline:*

This project has a five-year project timeline from January 1, 2025, through December 31, 2029. The project intervention period, defined as the period in which services will be delivered, will be 39 months, from July 1, 2025, through September 30, 2028.

9. *The project eligibility criteria:*

The CBHT–3 initiative will include 3 task forces serving high needs individuals experiencing unsheltered homelessness: High Needs Individuals—Subway System, High

Needs Individuals—Above Ground, and End of Line (EOL) High Service Utilizers. Eligibility criteria for the first two task forces were determined by DHS in collaboration with operational and social services partners. Based on recommendations from DHS's partners, it was determined that in order to be selected for inclusion in the Subway System or Above Ground CBHT, an individual would have to meet 4 of 10 criteria related to medical vulnerability, older age, long-term street homelessness, a history of hospitalizations, a history of involuntary removals, repeated service refusal, significant behavioral health diagnosis, heightened NYPD/MTA interactions, excessive belongings with them, and propensity for violence.

Eligibility criteria for the EOL High Utilizers Task Force were developed based on early outcomes from the DHS EOL initiative. The EOL initiative focuses on engaging individuals at “End of line” stations—that is, the first and last stations of a given subway line—and bringing individuals into transitional housing beds. A January 2024 study by the DSS Office of Evaluation and Research identified a small group of individuals that repeatedly cycled between transitional housing and EOL stations. While accounting for less than 6% of approximately 5,000 unique clients served by the EOL initiative during a 17-month study period, this group accounted for roughly *one-third* of all transitional housing placements made in that time. This population will serve as the target population for the EOL task force.

10. The evaluation design:

The evaluation will employ a quasi-experimental design to rigorously assess the CBHT–3 Initiative's effectiveness in achieving its goal of stably housing individuals with complex health and mental health needs and long histories of unsheltered homelessness. Specifically, the evaluation will assess whether the initiative meets the outcome target of a 25-percentage point increase in the rate of stable housing or stable shelter. The initiative expects to achieve this impact by transitioning 50% of the treatment group into stable housing as compared to a 25% rate among the comparison group, with stable housing defined as a permanent

housing placement and stable shelter defined a continuous stay in a low-barrier stabilization bed or other emergency housing setting that lasts at least 6 months. The evaluation will also measure any associated reductions in hospitalization (after an expected initial increase to stabilize health and mental health conditions), emergency room visits, transports to emergency housing, and arrests. An implementation evaluation will offer further insight into the initiative's activities and participants' experiences. Comparison groups for the Subway System and Above Ground task force clients will be identified using propensity score matching, drawing on a rich set of longitudinal case management data to ensure matched groups. A comparison group for the EOL task force will be identified using random assignment from among those repeatedly cycling through the EOL initiative.

11. The metrics that will be used in the evaluation to determine whether the outcomes have been achieved as a result of each intervention and how these metrics will be measured:

Whether New York City has successfully transitioned 50% of the treatment group into stable housing or stable shelter as compared to a 25% rate among the comparison group, with stable housing defined as a permanent housing placement and stable shelter defined as a continuous stay in a low-barrier stabilization bed or other emergency housing setting that lasts at least 6 months.

12. The estimate of the savings to the Federal, State, and local government, on a program-by-program basis and in the aggregate, if the agreement is entered into and implemented and the outcomes are achieved as a result of each intervention:

The estimated savings to the federal government are \$19,893,775.

The estimated savings to the State of New York are \$9,912,081.

There are not estimated savings to the City of New York.

The total net savings are \$23,822,017.

The Project Grant Agreement for the School Board of Leon County, FL (Leon County) Contains the Following Features

1. The outcome goals of the social impact partnership project:

Leon County will seek outcomes from two interventions, (1) Family Connects, a universal postpartum nurse home visiting program under which Leon County expects to see a significant reduction in newborn emergency room visits and (2), Reach Out and Read a literacy initiative working through pediatric care providers which seeks to reduce maternal depression.

2. A description of each intervention in the project:

As stated above, Leon County's project has two interventions. The first, Family Connects, is a universal nurse home visit for new parents to reduce infant emergency medical care visits and maternal postpartum depression rates. The second, Reach Out and Read, is a universal early literacy initiative through which health care providers coach parents on reading to their children to improve early literacy, parental engagement, and school readiness among preschool-aged children.

3. The target population that will be served by the project:

The program is designed with an inclusive, universal approach to serve all families with newborns and young children in Leon County, with a specific emphasis on ensuring that low-income families benefit from early interventions that are crucial for the health and development of their children.

4. The expected social benefits to participants who receive the intervention and others who may be impacted:

The primary expected social benefits from the project include:

- Family Connects
 - Lower number of emergency department visits
 - Reduced hospital readmissions for infants
- Reach Out and Read
 - Reduction in maternal depression

5. The detailed roles, responsibilities, and purposes of each Federal, State, or local government entity, intermediary, service provider, independent evaluator, investor, or other stakeholder:

Role	Entity	Responsibilities
Government	Leon County Public Schools, FL	Repay investors with SIPPRAs funds if performance benchmarks are met. Coordinate with the Treasury program team on administration of the program.
Intermediary	Institute for Child Success	Project Manager.

Role	Entity	Responsibilities
Service Provider	Capital Area Healthy Start Coalition	Provide community-based doulas to expecting mothers.
Independent Evaluator ...	Reach Out and Read	Provide pediatric literacy to new families.
Investor	Florida Center for Reading Research, Florida State University.	Evaluate the project using a quasi-experimental design supported by synthetic control methodology.
	Maycomb Capital Partners	Provide the upfront capital.

6. *The payment terms, the methodology used to calculate outcome payments, the payment schedule, and performance thresholds:*

Leon County will be eligible for a payment from Treasury if there is an expected decrease in infant emergency medical care usage rates through the

Family Connects program and a reduction in maternal depression.

7. *The project budget:*

Project budget							
Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Total project costs
	\$466,666.00	\$706,666.80	\$706,666.80	\$706,666.80	\$706,666.80	\$1,306,666.80	\$4,600,000.00

8. *The project timeline:*

There is a seven-year intervention period. The project will begin the intervention in year two (2025) and end in year seven (2030), allowing for sufficient time for the independent evaluator to compete their assessment.

9. *The project eligibility criteria:*

The project is providing universal access to every family with newborns and young children within Leon County.

10. *The evaluation design:*

The use of quasi-experimental design is particularly suitable given the non-randomizable nature of the interventions being assessed. The use of synthetic control methodology accommodates the study's needs by allowing the integration of multiple data points (encompassing both health and educational metrics) to create a holistic view of each participant group. This methodology not only supports the establishment of a strong causal linkage between the interventions and observed outcomes but also provides a detailed counterfactual analysis.

11. *The metrics that will be used in the evaluation to determine whether the outcomes have been achieved as a result of each intervention and how these metrics will be measured:*

The number of emergency room visits per newborn, the prevalence of depressive symptoms among mothers, assessed at regular intervals, and school readiness indicators such as school

entry assessments and teacher evaluations of readiness.

12. *The estimate of the savings to the Federal, State, and local government, on a program-by-program basis and in the aggregate, if the agreement is entered into and implemented and the outcomes are achieved as a result of each intervention:*

The estimated savings to the federal government is \$11,418,762.

The estimated savings to the State of Florida is \$5,132,751.

The Project Grant Agreement for the County of New Castle, DE (New Castle County) Contains the Following Features

1. *The outcome goals of the social impact partnership project:*

The expected outcomes include a 26.1% increase in permanent housing retention (proportion of families living in own rental home) and 29.7% decrease in avoidance of shelter stays (proportion of families with at least one night in emergency shelter).

2. *A description of each intervention in the project:*

The Family Housing Opportunities for Purposeful Empowerment Project (the Family HOPE Project)—a partnership between New Castle County and the Hope Center, an emergency shelter—will provide up to 90 days of temporary housing at the Hope Center, two years of rental assistance (disbursed as direct cash payments), and two years of case management and supportive services

(such as financial counseling) for 120 families over about four years.

3. *The target population that will be served by the project:*

The target population is homeless families who are not currently receiving a rental subsidy, housing voucher, or other form of public housing and have a household income less than 50% of the Area Median Income (AMI) in New Castle County.

4. *The expected social benefits to participants who receive the intervention and others who may be impacted:*

The program aims to reduce family homelessness by (1) improving permanent housing retention and (2) decreasing emergency shelter stays. Through permanent housing retention, the Recipient expects to reduce state and local expenditures on (a) the judicial and legal system cost of intimate partner violence, (b) police protection costs of intimate partner violence, (c) costs to child welfare agencies of out-of-home placements, and (d) reductions from eviction-related costs. The Recipient also expects that reducing shelter stays will lower federal, state, and local expenditures on emergency shelter stays, transitional housing stays, and public-school transportation.

5. *The detailed roles, responsibilities, and purposes of each Federal, State, or local government entity, intermediary, service provider, independent evaluator, investor, or other stakeholder:*

Role	Entity	Responsibilities
Government	County of New Castle, DE ..	Repay investors with SIPRA funds if performance benchmarks are met.
Intermediary	Social Finance	Coordinate with the Treasury program team on administration of the program.
		Serve as financial intermediary, leading project design and contracting activities.
		Provide performance management services and facilitate governance committees.
Service Provider	New Castle County Hope Center.	Lead service provisions through providing emergency shelter stay to eligible families, coordination of rental assistance, and ongoing case management.

Role	Entity	Responsibilities
Independent Evaluator ...	Tech Impact, Data Innovation Lab.	Lead outreach and enrollment of families. Report data and coordinate with the Evaluator and Intermediary, as needed. Evaluate the project using propensity score matching.
Investors	private and philanthropic investors.	Provide upfront funding to support service provision.

6. *The payment terms, the methodology used to calculate outcome payments, the payment schedule, and performance thresholds:*

New Castle County will be eligible for a payment from Treasury if there is a

statistically significant difference between the treatment and the comparison group at the 80 percent level using the evaluation design strategy defined below. Outcome payments will be generated from 2026

to 2031 for a total of six planned payments.

7. *The project budget:*

Project budget						
	2025	2026	2027	2028	2029	Total
Project costs	\$864,710	\$2,044,595	\$2,248,966	\$1,076,581	\$220,000	\$7,844,268

8. *The project timeline:*

This project has a 7.25-year project timeline from January 1, 2025, through March 31, 2032. The project intervention period, defined as the period in which services will be delivered, will be 66 months, from July 1, 2025, through December 31, 2031.

9. *The project eligibility criteria:*

Participants are eligible if they are a family who (1) have at least one adult, aged 19 and older, and one or more children, aged 15 and younger, upon enrollment (inclusive of pregnant caregivers), (2) have family household income under 50% of the Area Median Income (AMI) in New Castle County, and (3) are not currently receiving a rental subsidy, housing voucher, or other form of public housing. Sex offenders are not eligible for the Family HOPE Project.

10. *Evaluation design:*

The study is a quasi-experimental design that compares the housing security outcomes of two groups: (1) a program group who receives a 2-year 90% fair market rent (FMR) monthly cash assistance following a temporary maximum 90-day stay at the Hope Center (n=120) and (2) a household socio-demographic matched control group sourced from CMIS, which is composed of families on any waitlist for the Delaware State Housing Authority (DSHA)—or local-level housing authorities in New Castle County—Public Housing and Housing Choice Voucher Program as well as with start and exit dates to any housing program (e.g., emergency shelters, temporary housing, rapid re-housing) that match our study inclusion period (n=120). They will randomize controls at the family unit but will observe outcomes at

the individual participant family head of household level, potentially boosting the study's power. There are 2 independent matched groups of 60 in this overall study, totaling 120 controls and 120 families receiving cash rental assistance. Cohort 1 begins in Q3 of 2025, with cohort 2 following a year later, begins in Q3 of 2026. The design incorporates one-to-one propensity score matching.

11. *The metrics that will be used in the evaluation to determine whether the outcomes have been achieved as a result of each intervention and how these metrics will be measured:*

The following metrics will be used:

- *Permanent Housing Retention:* The proportion of families ultimately living in their own rental home
- *Avoidance of the Shelter Stay:* The proportion of families with at least 1 night in emergency shelter

12. *The estimate of the savings to the Federal, State, and local government, on a program-by-program basis and in the aggregate, if the agreement is entered into and implemented and the outcomes are achieved as a result of each intervention:*

The estimated savings to the federal government are \$269,257.

The estimated savings to the State of Delaware are \$12,843,519.

The estimated savings to the County of New Castle are \$361,404.

The Project Grant Agreement the County of Spartanburg, SC (County of Spartanburg) Contains the Following Features

1. *The outcome goals of the social impact partnership project:*

The Hello Family Spartanburg County Expansion seeks to address critical early

childhood and family development needs across Spartanburg County. Building on the Hello Family Initiative launched in the City of Spartanburg in 2021, this county-wide project seeks to enhance access to prenatal care, support healthy birth outcomes, incentivize breastfeeding, and reduce preventable medical interventions and child maltreatment through two different interventions: the BirthMatters Community Doula Program (BirthMatters) and Family Connects.

2. *A description of each intervention in the project:*

The County of Spartanburg will address critical early childhood and family development needs by expanding their *Hello Family* program county-wide. The *Hello Family* program has two different interventions: the BirthMatters Community Doula Program and Family Connects. BirthMatters enhances access to prenatal care through doula services until the infant is 12 months old. Family Connects' nurses are trained to assess newborns and mothers, provide immediate medical care when necessary, and recommend other supportive services as needed.

3. *The target population that will be served by the project:*

Family Connects is open to all mothers, and all young, low-income mothers are eligible for BirthMatters within Spartanburg County.

4. *The expected social benefits to participants who receive the intervention and others who may be impacted:*

The primary expected social benefits from the project include:

- BirthMatters
 - Reduced cesarean deliveries

- Increased breastfeeding rates
 - Improved maternal-infant bonding
 - Family Connects
 - Lower emergency department visits
- Reduced hospital readmissions for infants

5. The detailed roles, responsibilities, and purposes of each Federal, State, or
- local government entity, intermediary, service provider, independent evaluator, investor, or other stakeholder:

Role	Entity	Responsibilities
Government	County of Spartanburg, SC	Repay investors with SIPBRA funds if performance benchmarks are met. Coordinate with the Treasury program team on administration of the program.
Intermediary	Institute for Child Success	Fiscal and project manager.
Service Provider	BirthMatters	Provide community-based doulas to expecting mothers.
	Family Connects	Provide nurse-led home visits.
Independent Evaluator ...	Urban Institute	Evaluate the project using a quasi-experimental design supported by synthetic control methodology.
Independent Validator	Riley Institute	Ensure the integrity and accuracy of project data through validation.
Investor	Maycomb Capital Partners, Spartanburg Academic Movement.	Provide the upfront capital.

6. The payment terms, the methodology used to calculate outcome payments, the payment schedule, and performance thresholds:

County of Spartanburg will be eligible for a payment from Treasury if there is an expected decrease in low birthweight births through the BirthMatters program

and an expected reduction of infant emergency medical care usage rates through the Family Connects program.

7. The project budget:

Project budget							
Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Total project costs
\$1,400,000	1,400,000	\$1,400,000	\$1,400,000	\$1,400,000	\$1,400,000	\$1,500,000	\$9,900,000

8. The project timeline:

There is a seven-year intervention period. The project will begin the intervention in year two (2025) and end in year seven (2030), allowing for sufficient time for the independent evaluator to compete their assessment.

9. The project eligibility criteria:

The BirthMatters program is open to all young, low-income mothers residing in Spartanburg County. The Family Connects program is open to all mothers in Spartanburg County.

10. The evaluation design:

The choice of a Quasi-Experimental Design (QED), supported by Synthetic Control Methodology (SCM), is driven by the need for an assessment framework that allows for the control of confounding variables in non-randomized environments, especially given the prospect of bringing to scale models that are offered to all families. This evaluation seeks to quantify the effects of targeted interventions on key parameters such as Kindergarten Readiness and specific health outcomes indicative of infant and maternal health.

11. The metrics that will be used in the evaluation to determine whether the outcomes have been achieved as a result of each intervention and how these metrics will be measured:

The metrics used in the evaluation include costs associated with a reduction in newborn ER visits and a

reduction in costs associated with low birthweight.

12. The estimate of the savings to the Federal, State, and local government, on a program-by-program basis and in the aggregate, if the agreement is entered into and implemented and the outcomes are achieved as a result of each intervention:

The estimated savings to the federal government is \$11,2029.

The estimated savings to the State of South Carolina is \$4,876,774.

Eric Van Nostrand,
P.D.O. Assistant Secretary for Economic Policy Department of the Treasury.
[FR Doc. 2024–31222 Filed 12–27–24; 8:45 am]

BILLING CODE 4810-AK-P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Fiscal Service Information Collection Requests

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before January 29, 2025 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Spencer W. Clark by emailing PRA@treasury.gov, calling (202) 927–5331, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

Bureau of the Fiscal Service

1. Title: Claim Against the United States for the Proceeds of a Government Check.

OMB Control Number: 1530–0010.

Type of Request: Extension without change of a currently approved collection.

Description: The information in this collection is needed to process an individual's claim for non-receipt of proceeds from a U.S. Treasury check or electronic benefit payments. Once the information is analyzed, a determination is made, and a recommendation is submitted to the program agency to either settle or deny the claim.

Form: FS 1133.

Affected Public: Individuals and households.

Estimated Number of Respondents: 81,000.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 81,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 13,500.

2. *Title:* Disclaimer and Consent with Respect to United States Savings Bond/Notes.

OMB Control Number: 1530-0059.

Type of Request: Extension without change of a currently approved collection.

Description: Used to obtain a disclaimer and consent as the result of an error in registration or otherwise the payment, refund of the purchase price, or reissue as requested by one person would appear to affect the right, title or interest of some other person.

Form: FS 1849.

Affected Public: Individuals and households.

Estimated Number of Respondents: 450.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 450.

Estimated Time per Response: 6 minutes.

Estimated Total Annual Burden Hours: 45.

3. *Title:* Checklists of Filings for Certified Surety and/or Certified Reinsuring Companies and for Admitted Reinsurer Companies.

OMB Control Number: 1530-0061.

Type of Request: Extension without change of a currently approved collection.

Description: This information is collected from insurance companies to provide Treasury a basis to determine acceptability of companies applying for a Certificate of Authority to write or reinsure Federal surety bonds or as an Admitted Reinsurer (not on excess risks to U.S.).

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 30.

Frequency of Response: On occasion.
Estimated Total Number of Annual Responses: 30.

Estimated Time per Response: 5 hours.

Estimated Total Annual Burden Hours: 150.

4. *Title:* Subscription For Purchase and Issue of U.S. Treasury Securities—State and Local Government Series.

OMB Control Number: 1530-0065.

Type of Request: Extension without change of a currently approved collection.

Description: The information is necessary to establish and maintain the accounts for owners of securities of State and Local Government Series.

Form: FS Form 4144, FS Form 4144-1, FS Form 4144-2, FS Form 4144-5, FS Form 4144-6, FS Form 4144-7, FS Form 5237, FS Form 5238, FS Form 5377.

Affected Public: State, Local and Tribal Governments.

Estimated Number of Respondents: 7,105.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 7,105.

Estimated Time per Response: 23 minutes.

Estimated Total Annual Burden Hours: 2,706.

Authority: 44 U.S.C. 3501 *et seq.*

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2024-31068 Filed 12-27-24; 8:45 am]

BILLING CODE 4810-AS-P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Request for public comment.

SUMMARY: The United States Sentencing Commission intends to examine the criteria it considers in selecting guideline amendments that may be applied retroactively under the *Guidelines Manual*. As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, the Commission is publishing these issues for comment to inform the Commission's consideration of the issues related to this topic. The issues for comment are set forth in the Supplementary Information portion of this notice.

DATES: Public comment regarding the issues for comment set forth in this

notice should be received by the Commission not later than April 18, 2025. Any public comment received after the close of the comment period may not be considered.

ADDRESSES: There are two methods for submitting public comment.

Electronic Submission of Comments. Comments may be submitted electronically via the Commission's Public Comment Submission Portal at <https://comment.ussc.gov>. Follow the online instructions for submitting comments.

Submission of Comments by Mail. Comments may be submitted by mail to the following address: United States Sentencing Commission, One Columbus Circle NE, Suite 2-500, Washington, DC 20002-8002, Attention: Public Affairs—Retroactivity Criteria.

FOR FURTHER INFORMATION CONTACT: Jennifer Dukes, Senior Public Affairs Specialist, (202) 502-4597.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

The Background Commentary to § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) provides a non-exhaustive list of criteria the Commission typically considers in selecting the amendments to be included in § 1B1.10(d) for retroactive application: “the purpose of the amendment, the magnitude of the change in the guideline range made by the amendment, and the difficulty of applying the amendment retroactively to determine an amended guideline range under subsection (b)(1).” USSG § 1B1.10, comment. (backg’d). This non-exhaustive list of criteria has remained substantively unchanged since the Commission originally promulgated the policy statement at § 1B1.10 in 1989.

Issues for Comment:

1. The Commission seeks comment on whether it should provide further guidance on how the existing criteria for determining whether an amendment should apply retroactively are applied. If so, what should that guidance be? Should it revise or expand the criteria? Are there additional criteria that the

Commission should consider beyond those listed in the existing Background Commentary to § 1B1.10? Are there identifiable sources that the Commission should consult that highlight retroactivity criteria relied upon by other legislative or rulemaking bodies?

If the Commission continues to list criteria relevant to determining whether an amendment should apply retroactively, should it adopt any bright-line rules? Is there a different approach that the Commission should consider for these purposes?

2. The Commission seeks comment on whether any listed criteria are more appropriately addressed in the Commission's Rules of Practice and Procedure rather than the Background Commentary to § 1B1.10.

3. Rule 4.1A (Retroactive Application of Amendments) of the Commission's Rules of Practice and Procedure provides "[g]enerally, promulgated amendments will be given prospective application only." The Commission seeks comment on whether it should retain this provision. If so, how should the Commission ensure that any listed criteria reflect this provision?

Authority: 28 U.S.C. 994(a), (o), (p), (x); USSC Rules of Practice and Procedure 2.2, 4.3, 4.4.

Carlton W. Reeves,
Chair.

[FR Doc. 2024-31278 Filed 12-27-24; 8:45 am]

BILLING CODE 2210-40-P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease of Department of Veterans Affairs Real Property for the Development of Permanent Supportive Housing at the Charlie Norwood Uptown Veterans Affairs Medical Center, Augusta, Georgia Campus

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent to enter into an enhanced-use lease.

SUMMARY: The purpose of this **Federal Register** notice is to provide the public with notice that the Secretary of Veterans Affairs (VA) intends to enter into an Enhanced-Use Lease (EUL) of Buildings 19 and 20 on approximately 2.46 acres of underutilized land on the campus of the Charlie Norwood Uptown VA Medical Center.

FOR FURTHER INFORMATION CONTACT: C. Brett Simms, Executive Director, Office of Asset Enterprise Management, Office of Management, 810 Vermont Avenue NW, Washington, DC 20420, (202) 502-0262. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Pursuant to 38 U.S.C. 8161, *et seq.* as amended by Public Law 117-168, the Secretary of Veterans Affairs is authorized to enter into an EUL, for a term of up to 99 years, that (a) provides supportive housing for Veterans and their families, or (b) enhances the use of the leased property by directly or indirectly benefitting Veterans. In addition, the EUL must not be inconsistent with and not adversely affect VA's mission or the operation of VA's facilities, programs, and services in the area of the leased property. Consistent with this authority, the Secretary intends to enter into an EUL for the purpose of outleasing Buildings 19 and 20 on approximately 2.46 acres of underutilized land on the campus of the Charlie Norwood Uptown VA Medical Center, to develop approximately 77 units of permanent supportive housing for Veterans and their families. The competitively selected EUL lessee/developer, Freedom's Path Augusta III, LP will finance, design, develop, renovate, construct, manage, maintain, and operate housing for eligible homeless Veterans or Veterans at risk of homelessness on a priority placement basis. In addition, the lessee/developer will be required to provide supportive services that guide Veteran residents towards long-term independence and self-sufficiency.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on December 19, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2024-30961 Filed 12-27-24; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Request for Information on the Department of Veterans Affairs Rehabilitation Counselor Standard of Practice

AGENCY: Department of Veterans Affairs.

ACTION: Request for Information.

SUMMARY: The Department of Veterans Affairs is requesting information to assist in developing a national standard

of practice for VA Rehabilitation Counselors. VA seeks comments on various topics to help inform VA's development of this national standard of practice.

DATES: Comments must be received on or before February 28, 2025.

ADDRESSES: Comments must be submitted through <https://www.regulations.gov/> Except as provided below, comments received before the close of the comment period will be available at <https://www.regulations.gov/> for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: <https://www.regulations.gov/>. VA will not post on <https://www.regulations.gov/> public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm the individual. VA encourages individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date will not be considered.

FOR FURTHER INFORMATION CONTACT:

Ethan Kalett, Office of Regulations, Appeals and Policy (10BRAP), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, 202-461-0500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Authority

Chapters 73 and 74 of 38 U.S.C. and 38 U.S.C. 303 authorize the Secretary to regulate VA health care professions to make certain that VA's health care system provides safe and effective health care by qualified health care professionals to ensure the well-being of those Veterans who have borne the battle.

On November 12, 2020, VA published an interim final rule confirming that VA health care professionals may practice their health care profession consistent with the scope and requirements of their VA employment, notwithstanding any state license, registration, certification, or other requirements that unduly interfere with their practice. 38 CFR 17.419; 85 FR 71838. Specifically, this rulemaking confirmed VA's current practice of permitting VA health care professionals to deliver health care

services in a state other than the health care professional's state of licensure, registration, certification, or other requirement, thereby enhancing beneficiaries' access to critical VA health care services. The rulemaking also confirmed VA's authority to establish national standards of practice for its health care professionals, which would standardize a health care professional's practice in all VA medical facilities, regardless of conflicting state laws, rules, regulations, or other requirements.

The rulemaking explained that a national standard of practice describes the tasks and duties that a VA health care professional practicing in the health care profession may perform and may be permitted to undertake. Having a national standard of practice means that individuals from the same VA health care profession may perform the same type of tasks and duties regardless of the state where they are located or the state license, registration, certification, or other requirement they hold. We emphasized in the rulemaking and reiterate here that VA will determine, on an individual basis, that a health care professional has the proper education, training, and skills to perform the tasks and duties detailed in the national standard of practice, and that they will only be able to perform such tasks and duties after they have been incorporated into the individual's privileges, scope of practice, or functional statement. The rulemaking explicitly did not create any such national standards and directed that all national standards of practice would be subsequently created via policy.

Preemption of State Requirements

The national standard of practice will preempt any state laws, rules, regulations, or other requirements that both are and are not listed in the national standard as conflicting, but that do conflict with the tasks and duties as authorized in VA's national standard of practice. The term state as applied here means each of the several states, territories, possessions of the United States, and the district of Columbia, and the Commonwealth of Puerto Rico and is consistent with the definition in 38 U.S.C. 101(20). In the event that a state changes their requirements and places new limitations on the tasks and duties it permits in a manner that would be inconsistent with what is authorized under the national standard of practice, the national standard of practice will preempt such limitations and authorize the VA health care professional to continue to practice consistent with the

tasks and duties outlined in the national standard of practice.

In cases where a VA health care professional's license, registration, certification, or other requirement permits a practice that is not included in a national standard of practice, the individual may continue that practice so long as it is permissible under Federal law and VA policy, is not explicitly restricted by the national standard of practice, and is approved by the VA medical facility.

Need for National Standards of Practice

It is critical that VA, the Nation's largest integrated health care system, develops national standards of practice to ensure, first, that beneficiaries receive the same high-quality care regardless of where they enter the system and, second, that VA health care professionals can efficiently meet the needs of beneficiaries when practicing within the scope of their VA employment. National standards are designed to increase beneficiaries' access to safe and effective health care, thereby improving health outcomes. The importance of this initiative has been underscored by the coronavirus disease 2019 (COVID-19) pandemic. The increased need for mobility in VA's workforce, including through VA's Disaster Emergency Medical Personnel System, highlighted the importance of creating uniform national standards of practice to better support VA health care professionals who practice across state lines. Creating national standards of practice also promotes interoperability of medical data between VA and the Department of Defense (DoD), providing a complete picture of a Veteran's health information and improving VA's delivery of health care to the Nation's Veterans. DoD has historically standardized practice for certain health care professionals, and VA has closely partnered with DoD to learn from their experience.

Process To Develop National Standards of Practice

As authorized by 38 CFR 17.419, VA is developing national standards of practice via policy. There is one overarching directive to describe Veterans Health Administration (VHA) policy on national standards of practice, VHA Directive 1900(5), VA National Standards of Practice, August 30, 2023. The directive is accessible on VHA's publications website at <https://www.va.gov/vhapublications/>. As each individual national standard of practice is finalized, it is published as an appendix to the directive and accessible at the same website.

To develop these national standards, VA is using a robust, interactive process that adheres to the requirements of Executive Order (E.O.) 13132 to preempt conflicting state laws, rules, regulations, or other requirements. For each health care occupation, a workgroup comprised of VA health care professionals in the identified occupation conducts research to identify internal best practices that may not be authorized under every state license, certification, or registration, but would enhance the practice and efficiency of the profession throughout VA. If a best practice is identified that is not currently authorized by every state, the workgroup determines what education, training, and skills are required to perform such tasks and duties. The workgroup then drafts a proposed VA national standard of practice using the data gathered and any internal stakeholder feedback received. The workgroup may consult with internal or external stakeholders at any point throughout the process.

The process to develop VA national standards of practice includes listening sessions for members of the public, professional associations, and VA employees to provide comments on the variance between state practice acts for specific occupations and what should be included in the national standard of practice for that occupation. The listening session for Rehabilitation Counselors was held on September 21, 2023. No one provided comments on Rehabilitation Counselors standard of practice.

After the proposed standard is developed, it is first internally reviewed. This includes a review from an interdisciplinary VA workgroup consisting of representatives from Quality Management, VA medical facility Chief of Staff, Academic Affiliates, Veterans Integrated Services Network (VISN) Chief Nursing Officer, Ethics, Workforce Management and Consulting, Surgery, Credentialing and Privileging, VISN Chief Medical Officer, and Electronic Health Record Modernization.

After the internal review, VA provides the proposed national standard of practice to our DoD partners as an opportunity to flag inconsistencies with DoD standards. VA also engages with labor partners informally as part of a pre-decisional collaboration. Consistent with E.O. 13132, VA sends a letter to each state board and certifying organization or registration organization, as appropriate, which includes the proposed national standard and offers the recipient an opportunity to discuss the national standard with

VA. After the state boards, certifying organizations, or registration organizations have received notification, the proposed national standard of practice is posted in the **Federal Register** for 60 days to obtain feedback from the public, professional associations, and any other interested parties. At the same time, the proposed national standard is posted to an internal VA site to obtain feedback from VA employees. Responses received through all vehicles—from state boards, professional associations, unions, VA employees, and any other individual or organization who provides comments via the **Federal Register**—will be reviewed. VA will make appropriate revisions in light of the comments, including those that present evidence-based practice and alternatives that help VA meet our mission and goals. VA will publish a collective response to all comments at <https://www.va.gov/standardsofpractice/>.

The national standard of practice is then finalized, approved, and published in VHA policy. Any tasks or duties included in the national standard will be properly incorporated into individual VA health care professionals' privileges, scope of practice, or functional statement once it has been determined by their VA medical facility that the individual has the proper education, training, and skills to perform the task or duty. Implementation of the national standard of practice may be phased in across all VA medical facilities, with limited exemptions for health care professionals as needed.

Format for the Proposed National Standard for Rehabilitation Counselors

The format for the proposed national standards of practice when there is a national certification body is as follows. The first paragraph provides general information about the profession and what the health care professionals can do. For this national standard, Rehabilitation Counselors help patients with disabilities to achieve their personal career, independent living, social, and psychological goals. We reiterate that the proposed standard of practice does not contain an exhaustive list of every task and duty that each VA health care professional can perform. Rather, it is designed to highlight generally what tasks and duties the health care professionals perform and how they will be able to practice within VA.

The second paragraph references the education and certification needed to practice this profession at VA. Qualification standards for employment of health care professionals by VA are

available at: <https://www.va.gov/OHRM/QualificationStandards/>. VA follows the requirements outlined in the VA qualification standards even if the requirements conflict with or differ from a state requirement. National standards of practice do not affect those requirements. For Rehabilitation Counselors, VA qualification standards require an active, current, full, and unrestricted certification from the Commission on Rehabilitation Counselor Certification (CRCC). For Rehabilitation Counselors, VA qualification standards require an active, current, full, and unrestricted certification from the certification body: complete qualifications standards details for Rehabilitation Counselors are found: <https://www.va.gov/OHRM/QualificationStandards/HT38/0101-RehabilitationCounselor.pdf>.

The second paragraph also notes whether the national standard of practice explicitly excludes individuals who practice under "grandfathering" provisions. Qualification standards may include provisions to permit employees who met all requirements prior to revisions to the qualification standards to maintain employment at VA even if they no longer meet the new qualification standards. This practice is referred to as grandfathering. VA Rehabilitation Counselors have grandfathering provisions included within their qualification standards, and VA proposes to have those individuals not be authorized to follow the Rehabilitation Counselor national standard of practice. Instead, VA proposes its medical facilities will determine the tasks and duties for Rehabilitation Counselors who are grandfathered under the qualification standards. Such determinations are determined at the VA medical facility based on the Rehabilitation Counselor's education, training, and credentialing.

The third paragraph establishes what the national standard of practice will be for the occupation in VA. For this national standard, VA Rehabilitation Counselors follow the standard set by the CRCC, found at: <https://crcccertification.com/>, with the exception of, the listed task or duty VA proposes to restrict even though the certification otherwise permits the profession to perform those tasks or duties.

The final paragraph provides justification for VA's proposal to restrict the specified tasks and duties. It explains why VA is restricting those tasks or duties and the clinical basis for this proposed decision.

This national standard of practice does not address training because it will not authorize VA Rehabilitation

Counselors to perform any tasks and duties not already authorized under their national certification.

Following public and VA employee comments and revisions, each national standard of practice that is published in policy will also include the date for recertification of the standard of practice and a point of contact for questions or concerns.

Proposed National Standard of Practice for Rehabilitation Counselors

Note: All references herein to VA and VHA documents incorporate by reference subsequent VA and VHA documents on the same or similar subject matter.

1. Rehabilitation Counselors are professional counselors educated and trained at the graduate level who possess the specialized knowledge, skills, and attitudes to work collaboratively with patients with disabilities. Through a professional counseling process, Rehabilitation Counselors help patients with disabilities to achieve their personal career, independent living, social, and psychological goals.

2. Rehabilitation Counselors in the Department of Veterans Affairs (VA) possess the education and certification required by VA qualification standards, available at: <https://www.va.gov/OHRM/QualificationStandards/HT38/0101-RehabilitationCounselor.pdf>.

Note: This national standard of practice does not apply to Rehabilitation Counselors who were grandfathered into the position on July 21, 2020, the effective date for the VA qualification standards for Rehabilitation Counselors. Tasks and responsibilities for Rehabilitation Counselors who are grandfathered under the qualification standards are determined at the VA medical facility based on their education, training, and credentialing.

3. VA Rehabilitation Counselors practice in accordance with the Certified Rehabilitation Counselor scope of practice from the Commission on Rehabilitation Counselor Certification (CRCC), available at: <https://crcccertification.com/>, except as noted in paragraph 3.a. VA reviewed certification requirements for this occupation in October 2024 and confirmed that all Rehabilitation Counselors in VA followed this national certification.

a. VA Rehabilitation Counselors, practicing within scope of their VA employment and consistent with this standard, cannot diagnose mental health disorders (F Codes in the International Classification of Diseases 11th Revision) unless they have a license in a mental health discipline, in addition to their CRCC certification and qualify as licensed providers through the Medical

Staff Bylaws of their VA medical facility.

Note: VA Rehabilitation Counselors meet CRCC certification eligibility criteria of a master's degree in rehabilitation counseling or a qualifying related mental health field with additional graduate-level core rehabilitation coursework and supervised experience. All Rehabilitation Counselors with CRCC certification can diagnose "Other Conditions That May Be a Focus of Clinical Attention" as outlined in the *Diagnostic and Statistical Manual of Mental Disorders Fifth Edition (Z codes in the International Classification of Diseases 11th Revision)*.

4. Justification

a. VA Rehabilitation Counselors who only maintain a CRCC certification are restricted from diagnosing mental health disorders because VA has licensed mental health personnel with the specific education, training, and expertise that VA would rely on to diagnose. VA Rehabilitation Counselors who possess a CRCC certification, hold a state license in a mental health field (e.g., Licensed Professional Counselor, Licensed Clinical Professional Counselor, Licensed Clinical Social Worker, Licensed Independent Social Worker, Licensed Psychologist), and qualify as a licensed provider based on the medical facility bylaws will be permitted to diagnose mental health disorders because their education, training, and expertise provides the necessary competency to diagnose.

Request for Information

1. Is VA's assessment of what the state and CRCC certification permits, and prohibits, accurately represented?
2. Are there any other areas of variance of any state license, certification, registration or other requirement that VA should preempt that are not listed?
3. Is there anything else you would like to share with us about this VA national standard of practice?

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on December 6, 2024,

and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2024–31205 Filed 12–27–24; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0020]

Agency Information Collection Activity Under OMB Review: Designation of Beneficiary—Government Life Insurance and Supplemental Designation of Beneficiary—Government Life Insurance

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden, and it includes the actual data collection instrument.

DATES: Comments and recommendations for the proposed information collection should be sent by January 29, 2025.

ADDRESSES: To submit comments and recommendations for the proposed information collection, please type the following link into your browser: www.reginfo.gov/public/do/PRAMain, select "Currently under Review—Open for Public Comments", then search the

list for the information collection by Title or "OMB Control No. 2900–0020."

FOR FURTHER INFORMATION CONTACT: VA PRA information: Maribel Aponte, (202) 461–8900, vacopaperworkreduact@va.gov.

SUPPLEMENTARY INFORMATION:

Title: Designation of Beneficiary—Government Life Insurance and Supplemental Designation of Beneficiary—Government Life Insurance (VA Forms 29–336 and 29–336a).

OMB Control Number: 2900–0020
<https://www.reginfo.gov/public/do/PRASearch>.

Type of Review: Revision of a currently approved collection.

Abstract: These forms are used by the insured to designate beneficiaries and select an optional settlement to be used when the insurance matures by death. The information is required to determine the claimant's eligibility to receive the proceeds. The information on the form is required by law, 38 U.S.C. 1917, 1949 and 1952.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 89 FR 85009, October 24, 2024.

Affected Public: Individuals or Households.

Estimated Annual Burden: 13,917 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.
Estimated Number of Respondents: 83,500.

Authority: 44 U.S.C. 3501 *et seq.*

Dorothy Glasgow,
VA PRA Clearance Officer, (Alt).

Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–31327 Filed 12–27–24; 8:45 am]

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Part II

Consumer Financial Protection Bureau

12 CFR Parts 1005 and 1026

Overdraft Lending: Very Large Financial Institutions; Final Rule

CONSUMER FINANCIAL PROTECTION BUREAU**12 CFR Parts 1005 and 1026****[Docket No. CFPB–2024–0002]****RIN 3170–AA42****Overdraft Lending: Very Large Financial Institutions****AGENCY:** Consumer Financial Protection Bureau.**ACTION:** Final rule; official interpretation.

SUMMARY: The Consumer Financial Protection Bureau (CFPB) amends Regulations E and Z to update regulatory exceptions for overdraft credit provided by very large financial institutions, thereby ensuring that these extensions of overdraft credit adhere to consumer protections required of similarly situated products, unless the overdraft fee is a small amount that only recovers estimated costs and losses. The rule allows consumers to better comparison shop across credit products and provides substantive protections that apply to other consumer credit.

DATES: *Effective date:* October 1, 2025.**FOR FURTHER INFORMATION CONTACT:**

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

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I. Overview**A. Summary**

The CFPB is updating non-statutory exceptions in Regulations Z and E that have allowed very large financial institutions to avoid statutory consumer credit protection requirements when extending certain overdraft credit.¹

Consumer credit is subject to Regulation Z if the creditor imposes a finance charge, which generally includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit.² However, when the Board of Governors of the Federal Reserve System (Board) first adopted Regulation Z in 1969,³ it excepted from Regulation Z's definition of finance charge any charges for honoring checks that overdraw a checking account unless the payment of the check and imposition of the fee were previously agreed upon in writing. The Board subsequently made "minor editorial changes" to this exception, *e.g.*, to reflect "items that are similar to checks,

such as negotiable orders of withdrawal."⁴ This exception is unique to credit extended to pay account overdrafts; other consumer credit products with similar features, such as short term repayment, are subject to Regulation Z.

This exception was evidently intended to allow banks to continue providing limited overdraft services as a courtesy to consumers who inadvertently overdrew their account, without the banks complying with Regulation Z. In the early years of the regulation, decisions to pay an item that overdraws an account instead of returning it unpaid were made as a relatively infrequent part of administering asset accounts. At the time, consumers typically withdrew funds from their bank accounts through in-person withdrawals or by writing checks. If a consumer mistimed when funds from a check deposit would be available for withdrawal⁵ and inadvertently overdrew their account and the overdrawing check were returned unpaid, the bank would typically charge the consumer a nonsufficient funds (NSF) fee and the consumer could be subject to additional fees imposed by the payee and other negative consequences from bounced checks. If, instead of returning the check, the financial institution paid it notwithstanding the unavailable or insufficient funds in the account, such courtesy payment could provide a benefit to the consumer, who would avoid the negative consequences of a bounced check without being charged any additional fees beyond an amount that did not exceed the amount charged for nonsufficient funds.

Over the last 30 years, in conjunction with widespread financial institution adoption of information technology systems as well as the expansion of debit card transactions that can overdraw an account, overdraft credit products provided under the exception have morphed from an occasional courtesy provided to consumers into frequently used and promoted products that increase costs to consumers (in certain instances) and generate a substantial portion of the direct fee revenue that financial institutions make from checking accounts (and much of the total revenue that financial

¹ When amending commentary, the Office of the Federal Register requires reprinting of certain subsections being amended in their entirety rather than providing more targeted amendatory instructions. The sections of regulatory text and commentary included in this document show the language of those sections. In addition, the CFPB is releasing an unofficial, informal redline to assist industry and other stakeholders in reviewing the changes to the regulatory text and commentary of Regulation E and Regulation Z. This redline may be found on the CFPB's website. If any conflicts exist between the redline and the text of Regulation E or Regulation Z, its commentary, or this rule, the documents published in the **Federal Register** are the controlling documents.

² Consumer credit is also subject to Regulation Z in other circumstances. *See, e.g.*, 12 CFR 1026.1(c).

³ 34 FR 2002 (Feb. 11, 1969).

⁴ 46 FR 20848, 20855 (Apr. 7, 1981).

⁵ In 1987, Congress enacted the Expedited Funds Availability Act (12 U.S.C. 4001 *et seq.*) to provide depositors of checks with prompt funds availability and to foster improvements in the check collection and return processes. *See* 82 FR 27552, 27552 (June 15, 2017). Section 229.2(d) of Regulation CC (12 CFR 229), which implements that act, defines "available for withdrawal."

institutions make from low-balance accounts). The volume of overdrawing transactions and related revenue rose drastically over the years, including on transactions where the consumer may have otherwise suffered no negative consequences if the transaction were declined. Since the CFPB focused substantial enforcement and supervision attention on overdraft fees in 2021, overdraft fee revenue has contracted somewhat. However, it is still a source of billions of dollars in profits every year, and most very large financial institutions continue to charge \$35 per overdraft transaction today. Financial institutions today generally make pay/no-pay decisions in advance—for example, by setting overdraft limits that the consumer may not be aware of and using information technology systems to make automated pay/no-pay decisions. They sometimes calibrate these systems with the goal of generating fee revenue. Because of these market changes, which increase the risk that a consumer will unwittingly incur high overdraft fees, helping consumers make informed decisions about overdraft credit has become a much more serious concern.

Key Changes

Given these changes over the past 30 years and consistent with TILA's purpose of promoting the informed use of credit, the CFPB is updating several non-statutory exceptions in Regulation Z to extend consumer credit protections that generally apply to other forms of consumer credit to certain overdraft credit provided by very large financial institutions. These changes will allow consumers to better compare certain overdraft credit to other types of credit and will provide consumers with several substantive protections that already apply to other consumer credit.

These amendments apply only to very large financial institutions—i.e., insured depository institutions and credit unions with more than \$10 billion in assets. The rule does not change the regulatory framework for overdraft services offered by financial institutions with assets of \$10 billion or less. The CFPB plans to monitor the market's response to this rule before determining whether to alter the regulatory framework for financial institutions with assets less than or equal to \$10 billion.

Under this final rule, Regulation Z will generally apply to overdraft credit provided by very large institutions unless it is provided at or below costs and losses as a true courtesy to consumers. The final rule accomplishes this result by updating two regulatory exceptions from the statutory definition

of finance charge. First, the final rule updates an exception that currently provides that a charge for overdraft is not a finance charge if the financial institution has not previously agreed in writing to pay items that overdraw an account.⁶ The rule narrows this exception to no longer apply to “above breakeven overdraft credit” offered by a very large financial institution, which generally means that profit-generating overdraft fees charged by very large financial institutions would no longer be excepted from TILA. The final rule gives financial institutions the ability to determine whether an overdraft charge is considered above breakeven overdraft credit by either: (1) calculating its own costs and losses using a standard set forth in the rule; or (2) relying on a benchmark fee of \$5. Second, the final rule updates a related exception that provides that a charge imposed on an asset account in connection with an overdraft credit feature is not a finance charge if the charge does not exceed the charge for a similar transaction account without a credit feature.⁷ The updates clarify what is and is not a comparable charge in light of changes finalized in this rule.

In the proposal, the CFPB presented four alternatives for the benchmark fee described above—\$3, \$6, \$7, and \$14—to solicit public comment on what data the CFPB should consider when calculating the fee. In the final rule, the CFPB will apply the same approach used to derive the proposed \$3 benchmark fee. However, the final rule increases the \$3 benchmark fee to \$5 to account for additional costs noted by commenters, such as costs relating to overdraft notices, branch servicing, collection, core providers/vendors, compliance, and technology. As a result of this final rule, above breakeven overdraft credit that is not currently subject to Regulation Z will become subject to Regulation Z, including provisions in subpart B that govern open-end credit (e.g., annual percentage rate disclosures, other account opening disclosures, periodic statements, and advertising rules), on the effective date of this rule. For ease of reference, this final rule generally refers to overdraft credit that is not subject to Regulation Z as non-covered overdraft credit and overdraft credit that is subject to Regulation Z as covered overdraft credit. Above breakeven overdraft credit is currently a type of non-covered overdraft credit, but it will become covered overdraft credit when this final

rule becomes effective on October 1, 2025.

The final rule also requires covered overdraft credit offered by very large financial institutions to be put in a credit account separate from the asset account, and it updates exceptions relating to credit cards. Among other changes, it applies the portions of Regulation Z that implement the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act)⁸ to covered overdraft credit that can be accessed by a hybrid debit-credit card, such as a debit card or other single credit device (including certain account numbers) that a consumer may use from time to time to obtain covered overdraft credit from a very large financial institution. Provisions of the CARD Act that will apply to such overdraft credit include, but are not limited to, ability to pay underwriting requirements, limitations on penalty fees including certain fees on transactions that are declined due to nonsufficient funds, and various requirements related to rate changes.

The final rule will also prohibit compulsory use of preauthorized electronic fund transfers (EFTs) for repayment of covered overdraft credit provided by very large financial institutions. This change will ensure that consumers using those products have a choice of at least one alternative method of repayment. As a result of this change, covered overdraft credit offered by very large financial institutions cannot be conditioned on consumers agreeing to automatic debits from their checking account. Consumers could still opt into automatic payments on a periodic basis if offered by their financial institution, but they will have the right to repay this overdraft credit manually if they prefer.

The final rule will take effect on October 1, 2025. This effective date is more than six months after the date the rule is published in the **Federal Register**, consistent with 15 U.S.C. 1604(d).

B. Market Background

1. Overview of Overdraft Credit

An overdraft occurs when consumers do not have a sufficient balance in their asset account to pay a transaction, but the financial institution pays the transaction anyway. Typically, the financial institution pays an overdraft transaction by either transferring the consumer's own funds from another asset account held by the financial institution, such as a savings account, or

⁶ 12 CFR 1026.4(c)(3).

⁷ 12 CFR 1026.4(b)(2).

⁸ Public Law 111–24; 123 Stat. 1734 (2009).

by extending overdraft credit (*i.e.*, using the financial institution's own funds and requiring the consumer to repay).

Currently, not all overdraft credit is subject to Regulation Z. For example, when the Board first adopted Regulation Z in 1969,⁹ it excepted from Regulation Z's coverage charges for honoring checks that overdraw a checking account unless the payment of the check and imposition of the fee were previously agreed upon in writing. A Board official interpretation stated that this exception for ad hoc credit decisions applies only to "regular demand deposit accounts which carry no credit features and in which a bank may occasionally, as an accommodation to its customer, honor a check which inadvertently overdraws that account."¹⁰ The Board subsequently adopted commentary excluding debit cards with no credit agreement from Regulation Z's definition of "credit card."¹¹ While the Board did not explain this exception, it appears it was intended to exclude discretionary overdraft services from being subject to Regulation Z when they are accessed by a debit card, consistent with the exclusion for overdraft charges from the definition of finance charge.¹²

Some overdraft credit is previously agreed upon in writing and is currently covered by Regulation Z. Such covered overdraft credit enables consumers to link a checking account to a credit account, like an overdraft line of credit or a credit card, from which funds are transferred automatically to pay transactions when the checking account balance is insufficient to pay them. Some financial institutions charge a fee, often referred to as an overdraft protection transfer fee, for these transfers.¹³ Financial institutions may

assess such a fee once per day that a transfer is made, once to transfer a round dollar value increment (*e.g.*, a fee for \$100 transferred to cover any overdraft(s) less than \$100), or, less commonly, once per overdraft transaction;¹⁴ however, since late 2021, in the wake of substantial CFPB enforcement and supervising attention on overdraft fees, a number of financial institutions have voluntarily eliminated such fees.¹⁵ Credit accounts used to cover overdrafts also carry an interest rate applied to the outstanding balance. Repayment of the overdrawn amount and interest is typically made periodically according to a payment schedule. The ability to obtain and use covered overdraft credit is typically limited to consumers whose credit history allows them to qualify for an overdraft line of credit or who have available credit on a credit card.

Financial institutions may also pay overdrafts through currently non-covered overdraft credit, where the financial institution typically pays overdrafts up to certain limits but does not agree in advance to pay the overdrawn transactions, reserving discretion to decline any given overdraft transaction. This type of overdraft credit is currently non-covered overdraft credit because it is currently not subject to Regulation Z. This final rule may also refer to currently non-covered overdraft credit as an overdraft service, overdraft services, or an overdraft program. With certain exceptions provided for by internal policies, the financial institution typically assesses a flat fee for each overdraft transaction the financial institution pays. In addition, some financial institutions charge an additional fee or fees, known as extended or sustained overdraft fees, if the consumer does not bring the account back to a positive balance within a specified period. To collect repayment of the funds advanced to cover overdraft transactions as well as payment of the fees assessed, the financial institution typically deducts those amounts as a lump sum from the consumer's next incoming deposit(s), usually within three days after the account became overdrawn.¹⁶

¹⁴ *Id.*

¹⁵ Between December 2022 and July 2023, CFPB reviewed publicly available information describing the overdraft-related practices of very large financial institutions (CFPB Market Monitoring of Publicly Available Overdraft Practices, Dec. 2022–July 2023).

¹⁶ Trevor Bakker et al., CFPB, *Data Point: Checking account overdraft*, at 5, 22 (July 2014), https://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf (CFPB 2014 Data Point).

Financial institutions typically provide non-covered overdraft credit for certain transaction types—primarily checks, automated clearinghouse (ACH) transactions, and recurring debit card transactions—as a default, up to certain coverage limits. For one-time (non-recurring) debit card and ATM transactions, financial institutions cannot assess overdraft fees for paying such transactions without first obtaining the consumer's opt-in following the process required by Regulation E 12 CFR 1005.17(b).

Financial institutions employ a number of different practices and policies when making pay/return decisions in connection with non-covered overdraft.¹⁷ While, as noted above, overdraft credit must technically be discretionary to be excepted from Regulation Z, in practice, financial institutions typically assign each account an overdraft coverage limit representing the maximum amount of overdraft coverage the financial institution will extend on the account. Once an account reaches its overdraft coverage limit, the financial institution will no longer pay transactions into overdraft and will return those transactions unpaid. Overdraft coverage limits may be static (*i.e.*, the financial institution assigns an unchanging limit to each customer) or dynamic (*i.e.*, the financial institution changes the limit for each account periodically based on account usage patterns, market conditions, or account and accountholder characteristics in an attempt to manage more precisely credit risk, overdraft program revenues, and customer retention).¹⁸ Financial institutions that use static limits sometimes communicate those limits to account holders, while financial institutions that use dynamic limits generally do not communicate those limits to account holders.

Historically, financial institutions have charged an NSF fee when they reject, rather than pay, transactions initiated by check or ACH or other electronic payments; in contrast, financial institutions have rarely if ever charged an NSF fee when declining a one-time debit card purchase or an ATM withdrawal.¹⁹ Financial institutions typically have charged the same amount

¹⁷ CFPB 2013 White Paper at 48–52.

¹⁸ Common account and account holder characteristics include account tenure, average balance, overdraft history, and deposit patterns, as well as other relationships the accountholder may have with the institution.

¹⁹ The CFPB is aware that some prepaid card providers charge NSF fees on one-time purchase transactions, based on fees disclosed in the CFPB's publicly-available prepaid account agreement database.

⁹ 34 FR 2002 (Feb. 11, 1969).

¹⁰ 42 FR 22360, 22362 (May 3, 1977).

¹¹ 46 FR 50288, 50293 (Oct. 9, 1981) (providing that a "credit card" does not include "[a] check-guarantee or debit card with no credit feature or agreement, even if the creditor occasionally honors an inadvertent overdraft"); *see also* Regulation Z comment 2(a)(15)–2.ii.A.

¹² Under Regulation Z, an issuer of a credit card can be a creditor regardless of whether the credit is subject to a finance charge. 12 CFR 1026.2(a)(17)(iii); *see also* 12 CFR 1026.2(a)(7) (defining "card issuer"). Thus, without the 1981 exception, a financial institution that extends overdrafts could be a "creditor" for purposes of subpart B of TILA even with an exemption of overdraft fees from the finance charge.

¹³ Consumer Fin. Prot. Bureau (CFPB), *CFPB Study of Overdraft Programs: A white paper of initial data findings*, at 55 (June 2013), https://files.consumerfinance.gov/f/201306_cfpb_whitepaper_overdraft-practices.pdf (CFPB 2013 White Paper) (noting 28 of a sample of 33 large institutions charged a transfer fee in 2012, ranging from \$3 to \$20 per transfer, with a median of \$10, while smaller institutions charged a median of \$5).

for an NSF fee as for a non-covered overdraft fee.²⁰ As noted in part I.B.3, many financial institutions have eliminated NSF fees over the past three years.

2. Evolution and Growth of Non-Covered Overdraft

Non-covered overdraft credit started as a courtesy that individuals within financial institutions provided when they would decide on an ad hoc basis to pay particular check transactions into overdraft rather than returning those checks unpaid.²¹ This courtesy would help consumers avoid NSF fees, merchant fees, and other negative consequences from bounced checks. Over time, non-covered overdraft credit began to move away from that historical model, as financial institutions shifted to a system involving heavy reliance on automated programs to process transactions and to make overdraft decisions.²² Financial institutions also began to extend overdraft credit to debit card transactions, even though a declined debit card transaction did not pose the same risk to consumers of an NSF fee, a merchant fee, or certain other consequences associated with a bounced check.²³ Over time, debit card

transactions became more numerous than checks, increasing the number of transactions that could generate overdrafts, with typical debit card transactions involving smaller amounts than typical check transactions.²⁴ Even as transaction processing and overdraft decisioning became more automated and overdraft transactions increased in frequency and decreased in size, financial institutions increased the size of overdraft fees. In 1976, when the process was typically manual and included only checks, one survey of banks in Washington, DC, and the New York metro area found that the median fee was \$5, while some banks charged zero.²⁵ By 1994, concern had risen about the increase in the average fee to over \$15 (\$5.77 in 1976 dollars);²⁶ by 2000, the average had surpassed \$20 (\$6.61 in 1976 dollars) and continued to increase thereafter.²⁷

Hearing before the House Subcomm. on Financial Institutions and Consumer Credit, House Comm. on Financial Services, 110th Cong., at 72 (2007)) (“noting that as recently as 2004, 80 percent of banks still declined ATM and debit card transactions without charging a fee when account holders did not have sufficient funds in their account”).

²⁴ Federal Reserve Payments Studies from 2004 to 2013 (exhibit 1 in each study) show that from 2000 to 2012, annual debit card transactions increased from 8.3 billion to 47 billion, while annual check transactions decreased from 41.9 billion to billion to 18.3 billion. By 2008, debit card transactions exceeded the number of checks. See Bd. of Governors of the Fed. Rsr. Sys. (FRS), *Federal Reserve Payments Study (FRPS)—Previous Studies*, https://www.federalreserve.gov/paymentsystems/frps_previous.htm (last updated Nov. 13, 2024); see also FRS, *The 2013 Federal Reserve Payments Study*, at 9 ex.2 (Dec. 2013), <https://www.frb-services.org/binaries/content/assets/crsocms/news/research/2013-fed-res-paymt-study-summary-rpt.pdf> (showing the average debit card transaction ranged from \$37 to \$40 from 2003–2012, while the average check transaction ranged from \$1,103 to \$1,410). The CFPB has found that the median transaction amount that leads to an overdraft fee in the case of debit card transactions is \$24, while the median check and ACH transactions that lead to overdraft fees are \$100 and \$90, respectively. See CFPB 2014 Data Point at 5; see also Fin. Health Network (FHN), *Responding to Reform: Overdraft in 2023* (Oct. 8, 2024), <https://finhealthnetwork.org/research/responding-to-reform-overdraft-in-2023/> (FHN Brief 2024) (finding almost half (45 percent) of overdrafters reported that their most recent overdraft occurred on a transaction of \$50 or less).

²⁵ Senate Staff Report at 10–11.

²⁶ See *Bank Fees Associated with Maintaining Depository, Checking, and Credit Card Accounts*, Hearing Before the Subcomm. on Consumer Credit and Ins., Comm. on Banking, Finance and Urban Affairs, 103rd Cong. 73 tbl.3 (1993) (Testimony by Susan M. Phillips, Member, FRS) (showing average overdraft fee of over \$15 in 1993); see also *id.* at 95–96, 101–102 (Statement of Chris Lewis, Dir. of Banking and Hous. Pol’y, Consumer Fed’n of Am.) (noting concerns about the rise in the size of “bounced check fees”, a term the organization used to describe the fee assessed when funds were insufficient, whether the transaction was returned unpaid or paid into overdraft).

²⁷ Gov’t Accountability Off., *Bank Fees: Federal Banking Regulators Could Better Ensure That*

As a result of these market shifts and operational changes, fee revenue from non-covered overdraft credit began to significantly influence the overall business model for many asset accounts. Financial institutions became less likely to charge consumers upfront monthly checking account fees, which consumers could more easily compare across the market, and instead began to rely heavily on overdraft fees.²⁸ In essence, the provision of non-covered overdraft credit moved away from its original purpose—paying occasional or inadvertent overdrafts as a courtesy—and became the dominant component of a back-end pricing business model. By 2004, marketwide overdraft revenue was estimated at approximately \$10 billion and, by 2009, had increased to an estimated \$25 billion.²⁹

3. Non-Covered Overdraft Credit Today

Marketwide overdraft revenue declined following the 2010 implementation of the Board’s “opt-in” rule under Regulation E to an estimated \$12 billion in 2011, before beginning to increase again.³⁰ In the several years preceding the COVID–19 pandemic, marketwide overdraft revenue was persistent, climbing from an estimated \$11.8 billion in 2015 to \$12.6 billion in 2019.³¹ With the onset of the pandemic

Consumers Have Required Disclosure Documents Prior to Opening Checking or Savings Accounts, at 14 (Jan. 2008), <https://www.gao.gov/assets/gao-08-281.pdf>; see also FDIC 2008 Study (by 2007, among primarily financial institutions with less than \$5 billion in assets, the average fee was \$27); CFPB 2013 White Paper at 52 (by 2012, among the nation’s largest financial institutions, the average fee was \$34).

²⁸ CFPB 2013 White Paper at 16–17.

²⁹ CFPB’s estimates of marketwide overdraft revenue, before banks with over \$1 billion in assets began reporting overdraft/NSF revenue on call reports in 2015, are based on the estimated share of aggregated fee revenue that banks and credit unions reported on call reports that was attributable to overdraft fees. For more details on methodology, see Jacqueline Duby et al., Ctr. for Responsible Lending (CRL), *High Cost & Hidden From View: The \$10 Billion Overdraft Loan Market* (May 26, 2005), <https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/ip009-High-Cost-Overdraft-0505.pdf>; see also Leslie Parrish, CRL, *Overdraft Explosion: Bank fees for overdrafts increase 35% in two years*, at 4 (Oct. 6, 2009), <https://www.responsiblelending.org/research-publication/overdraft-explosion-bank-fees-overdrafts-increase-35-two-years>.

³⁰ *Id.*

³¹ CFPB’s estimates of marketwide overdraft revenue for 2015 to 2022 extrapolate total overdraft/NSF revenue reported on call reports by banks with over \$1 billion in assets to banks with less than \$1 billion in assets and to credit unions in order to reach a total marketwide estimate of overdraft/NSF revenue, and then estimate the portion of that combined overdraft/NSF revenue that is attributable to overdraft revenue alone. To extrapolate reported overdraft/NSF revenue to banks with less than \$1 billion in assets and to credit unions, the CFPB uses

Continued

²⁰ See *Consumers Guide to Banking: Staff Report on Commercial Bank Charges in the New York and Washington, DC Metropolitan Area*, S. Comm. on Banking, Hous. and Urban Affairs, 94th Cong. 10–11 tbl.3 (1976) (Senate Staff Report); see also 70 FR 8428, 8429 (Feb. 18, 2005) (“Regardless of whether the overdraft is paid, institutions typically charge the NSF fee when an overdraft occurs.”); 74 FR 59033, 59035 (Nov. 17, 2009) (“Second, a consumer will generally be charged the same fee by the financial institution whether or not a check is paid; yet, if the institution covers an overdrawn check, the consumer may avoid other adverse consequences, such as the imposition of additional merchant returned item fees.”); Fed. Deposit Ins. Corp. (FDIC), *2008 FDIC Study of Bank Overdraft Programs*, at 16 n.18 (Nov. 2008), https://www.fdic.gov/bank/analytical/overdraft/FDIC138_Report_Final_v508.pdf (FDIC 2008 Study) (“For most of the survey population operating automated programs, the per-item fee charged when items were paid under automated overdraft programs was the same as the fee charged by the bank on NSF items that it did not pay. These two fees were equal to each other for 98.1 percent of 451 institutions reporting the two fee items.”).

²¹ See 42 FR 22360, 22362 (May 3, 1977) (describing the exception from Regulation Z as applying when overdraft is provided “as an accommodation . . . honoring a check which inadvertently overdraws that account.”); see also *Federal Reserve Board Staff Opinion Letter No. 948* (Nov. 17, 1975) (explaining that the exception “relates only to regular demand deposit accounts which carry no credit feature and in which a bank may occasionally, as an accommodation to its customer, honor a check which inadvertently overdraws that account”).

²² See 74 FR 59033, 59033 n.1 (Nov. 17, 2009) (citing *FDIC’s Study of Bank Overdraft Programs* (Nov. 2008), which found that nearly 70 percent of banks surveyed implemented their automated overdraft program after 2001).

²³ See *id.* at 59035; see also *id.* at 59034 n.6 (citing *Overdraft Protection: Fair Practices for Consumers:*

in March 2020, overdraft revenue dropped significantly. The drop was likely primarily due to pandemic-related stimulus payments pushing up average checking account balances, as well as temporarily decreased use of debit cards.³² In addition, Federal regulators encouraged, and some State regulators encouraged or mandated, financial institutions to offer leniency around imposition of overdraft fees in light of the pandemic.³³ Notwithstanding the trend downward during the pandemic, estimated market wide overdraft revenue exceeded \$9 billion in 2020 and 2021.³⁴

Beginning in late 2021, a number of large banks began announcing and implementing changes to their overdraft policies.³⁵ Some banks eliminated overdraft fees altogether or reduced them to \$10 or \$15 per transaction.³⁶

data collected from core processors for the number of accounts by asset size and the overdraft/NSF revenue per account, and from 2014 call report data for distribution of institutions by asset size, and then assumes that overdraft/NSF revenue at small institutions saw the same growth from 2014 to 2019 as at large banks to arrive at the 2019 estimate. These extrapolations result in estimates where banks with over \$1 billion in assets comprise 77.4 percent of marketwide overdraft/NSF revenue, banks with less than \$1 billion in assets comprise 7.3 percent of such revenue, and credit unions comprise 15.3 percent of such revenue. See Éva Nagypál, Ph.D., CFPB, *Data Point: Overdraft/NSF Fee Reliance Since 2015—Evidence from Bank Call Reports*, at 7 (Dec. 2021), https://files.consumerfinance.gov/f/documents/cfpb_overdraft-call_report_2021-12.pdf (CFPB 2021 Data Point). For the 2022 estimate, the CFPB assumes that banks with assets over \$1 billion, banks with assets below \$1 billion, and all credit unions represent the same relative portions of total marketwide overdraft/NSF revenue in 2022 as they did in 2019.

³² CFPB 2021 Data Point at 22–24.

³³ See Press Release, FRS, FDIC & Off. of the Comptroller of the Currency (OCC), *Joint Statement on CRA Consideration for Activities in Response to COVID-19* (Mar. 19, 2020), <https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-19a.pdf>; Press Release, CFPB, *Consumer Financial Protection Bureau Encourages Financial Institutions and Debt Collectors to Allow Stimulus Payments to Reach Consumers* (Mar. 17, 2021), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-encourages-financial-institutions-and-debt-collectors-to-allow-stimulus-payments-to-reach-consumers/>; see also, e.g., State of Cal. Bus., Consumer Servs. & Hous. Agency, *Guidance to Financial Institutions During the COVID-19 Pandemic* (Mar. 22, 2020), https://www.bcsb.ca.gov/coronavirus19/dbo_banks.pdf; Press Release, N.Y. State Dep't of Fin. Servs., *DFS Issues New Emergency Regulation Requiring New York Regulated Financial Institutions To Provide Financial Relief To New Yorkers Demonstrating Financial Hardship From COVID-19 Pandemic* (Mar. 24, 2020), https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202003241.

³⁴ See discussion of methodology at FN 31.

³⁵ Rebecca Borné & Amy Zirkle, *Comparing overdraft fees and policies across banks*, CFPB (Feb. 10, 2022), <https://www.consumerfinance.gov/about-us/blog/comparing-overdraft-fees-and-policies-across-banks/>.

³⁶ *Id.*

Some banks made changes to their policies by expanding their fee waiver policies, including establishing a daily limit of one fee per day even if multiple overdrawing transactions are paid;³⁷ establishing de minimis negative balance thresholds of \$50 or more, within which overdrafts do not result in a fee; and implementing grace periods giving consumers time through the next business day to bring their accounts positive before a fee is assessed.³⁸ Collectively these changes resulted in a sustained reduction in overdraft revenues as compared to pre-pandemic levels.³⁹ Marketwide overdraft revenue in 2022 was an estimated \$9.1 billion (\$7.9 billion in 2019 dollars, a 37 percent drop in real terms).⁴⁰ Of that, an estimated \$6.16 billion, or 68 percent, was earned by financial institutions with above \$10 billion in assets.⁴¹ At the same time, most very large financial institutions eliminated NSF fees.⁴²

Although there was some overall decline in the charging of overdraft fees, a sizeable majority of banks and credit unions with over \$10 billion in assets (i.e., 68 percent) continue to charge between \$30 and \$37 per transaction incurring an overdraft fee, and more than half charge \$35.⁴³ Most financial institutions' policies allow consumers to incur multiple overdraft fees per day. Financial institutions continue charging these high fees even though the fees far exceed institutions' costs and losses associated with providing non-covered overdraft credit. CFPB data collections and outreach have found that the single largest cost or loss to financial

³⁷ *Id.*

³⁸ *Id.*

³⁹ CFPB, *Data Spotlight: Overdraft/NSF revenue down nearly 50% versus pre-pandemic levels* (May 24, 2023), <https://www.consumerfinance.gov/data-research/research-reports/data-spotlight-overdraft-nsf-revenue-in-q4-2022-down-nearly-50-versus-pre-pandemic-levels/full-report/> (CFPB May 2023 Data Spotlight); see also CFPB, *Trends in overdraft/non-sufficient fund (NSF) fee revenue and practices* (Apr. 24, 2024), <https://content.consumerfinance.gov/data-research/research-reports/trends-in-overdraftnon-sufficient-fund-nsf-fee-revenue-and-practices/> (CFPB April 2024 Data Spotlight) (reflecting data and analysis published periodically from Dec. 1, 2021 to present).

⁴⁰ See discussion of methodology at FN 31.

⁴¹ Estimated using data from 2022 Federal Financial Institutions Examination Council (FFIEC) Call Reports and methodology discussed at FN 31.

⁴² CFPB, *Data spotlight: Vast majority of NSF fees have been eliminated, saving consumers nearly \$2 billion annually* (Oct. 11, 2023), <https://www.consumerfinance.gov/data-research/research-reports/vast-majority-of-nsf-fees-have-been-eliminated-saving-consumers-nearly-2-billion-annually/> (CFPB October 2023 Data Spotlight) (finding that nearly two-thirds of banks with over \$10 billion in assets have eliminated NSF fees).

⁴³ CFPB Market Monitoring of Publicly Available Overdraft Practices, Dec. 2022–July 2023.

institutions associated with overdraft programs is charged-off account balances, which most frequently occur when a consumer's subsequent deposits do not cover the negative balance created by the overdraft(s) and associated fee(s).⁴⁴ The CFPB's study of 2011 bank data found that charge-offs were small relative to the fee revenue banks earned through their overdraft programs.⁴⁵ Among those banks, charged-off principal account balances due to overdraft programs represented 14.4 percent of the net overdraft fees (not including NSF fees) at those banks.⁴⁶ During the first half of 2023, the CFPB collected additional data from several banks, which again showed that charge-offs associated with negative account balances were the largest cost or loss associated with providing overdraft. As discussed further in part IV.D.3, charge-offs amounted to an average of \$2 per overdraft transaction, whether or not such transaction incurred an overdraft fee, and an average of \$5 per overdraft transaction that incurred an overdraft fee—representing 6 percent and 15 percent, respectively, of the average fee of \$32.50 charged by those banks during the period studied.

4. Consumer Impact of Overdraft Fees

As cumulative overdraft fee revenue for financial institutions increased before recent reductions, so did the cumulative burden of overdraft fees on consumers, particularly more financially vulnerable consumers. CFPB research found that 79 percent of combined overdraft and NSF fees were paid by 9 percent of consumers who paid more than 10 such fees per year, incurring a median of \$380 in these fees in a year.⁴⁷ Consumers paying more than 20 such fees in a year accounted for about 5 percent of accounts, while paying over 63 percent of the fees.⁴⁸

High overdraft fees can make it more difficult for consumers to return their account to a positive balance, contributing to account charge-offs, involuntary account closures, and consumers blocked out of the banking system. The CFPB found that the banks with the highest share of accounts with frequent overdrafts tended to have the highest rates of involuntary account closure; conversely, those with the

⁴⁴ CFPB 2013 White Paper at 17.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ David Low et al., CFPB, *Data Point: Frequent Overdrafters*, at 5 (Aug. 2017), https://files.consumerfinance.gov/f/documents/201708_cfpb_data-point_frequent-overdrafters.pdf (CFPB 2017 Data Point); CFPB 2014 Data Point at 12 (both analyzing 2011–2012 data).

⁴⁸ CFPB 2017 Data Point at 5.

lowest share of accounts with frequent overdrafts tended to have the lowest rates of involuntary closure.⁴⁹ Account closures, in turn, are often reported to account screening consumer reporting agencies, and a negative report from an account screening company may limit a consumer's ability to open an account at a bank or credit union in the future. Negative experiences with overdraft fees likely also discourage many consumers from wanting a bank account at all. The Federal Deposit Insurance Corporation (FDIC) estimates that there were approximately 5.6 million unbanked households in the U.S. in 2023,⁵⁰ nearly half of which had a bank account in the past.⁵¹ Of those previously banked households, nearly two-thirds have little or no interest in having a bank account again,⁵² with high fees, unpredictable fees, and not enough funds to meet minimum balance requirements among the most cited reasons.⁵³

Consumers can face significant uncertainty about whether they will incur overdraft fees. Though financial institutions may provide disclosures related to their transaction processing, deposit availability, and overdraft assessment policies, these policies can be extraordinarily complex.⁵⁴ Even consumers who closely monitor their account balances may not know with certainty when transactions will post to their accounts, whether a particular transaction will be paid or returned unpaid, or whether a particular paid

transaction will be deemed an overdraft and assessed an overdraft fee.⁵⁵

In response to the CFPB's 2022 request for information regarding fees that are not subject to competitive processes that ensure fair pricing, which received over 80,000 responses,⁵⁶ overdraft-related fees were by far the most common issue raised. Common concerns included that the fees were unclear or confusing, disproportionate compared to the incidents resulting in the fees, and difficult or impossible to avoid. These concerns were generally consistent with those reflected in complaints about overdraft fees consumers have submitted to the CFPB since its inception in 2011.

The CFPB has also studied how consumers who are opted-in to overdraft services on one-time debit card and ATM transactions—and thus subject to overdraft fees on those transactions—fare compared to those who are not opted-in. In total, opted-in accounts incurred more than seven times as many overdraft fees as accounts that were not opted-in.⁵⁷ At the account level, opted-in accounts were three times as likely to have more than 10 overdrafts per year as accounts that were not opted-in.⁵⁸ And among frequent overdrafters, those who were opted-in appeared similar across a number of dimensions to frequent overdrafters who were not opted-in, but incurred significantly more—at the median, 13 more—overdraft/NSF fees per year.⁵⁹ In addition, involuntary account closure was about 2.5 times as likely for consumers who were opted-in than for consumers who were not.⁶⁰

Consumers whose accounts are frequently overdrawn are typically more financially insecure than those who do not overdraw or who do so

infrequently.⁶¹ Compared to non- or infrequent overdrafters, frequent overdrafters tend to have lower incomes and lower end-of-day balances.⁶² They are also less likely to have access to alternative credit options: they have lower credit scores, are less likely to have a general purpose credit card, and, if they do have such a card, they have less credit available on it.⁶³ Black households and Latino households are more likely to incur overdraft fees than white households.⁶⁴

Further, evidence suggests that millions of accounts with outstanding overdrafts are closed every year, and those former accountholders may have less subsequent access to the formal banking system as a result.⁶⁵

⁴⁹ CFPB has previously used “frequent overdrafters” to describe those who incur more than 10 overdraft/NSF fees in one year and “very frequent overdrafters” to describe those who incur more than 20 overdraft/NSF fees in one year. See CFPB 2017 Data Point at 4–5.

⁶² *Id.* at 15–16 (finding that as neighborhood income decreases, overdraft frequency increases); *id.* at 6 (finding that nearly 70 percent of frequent overdrafters had end-of-day balances with medians between \$237 and \$439, while another 20 percent had median end-of-day balances of \$140). See also FHN, *Overdraft Trends Amid Historic Policy Shifts* (June 1, 2023), <https://finhealthnetwork.org/research/overdraft-trends-amid-historic-policy-shifts/> (FHN Brief 2023) (finding that households with incomes under \$30,000 were twice as likely to report at least one overdraft than those with incomes of \$100,000 or more).

⁶³ CFPB 2017 Data Point at 15–16.

⁶⁴ See FHN Brief 2023 (finding that 26 percent of Black, 23 percent of Latinx, and 14 percent of White households reported having overdrafted, making Black and Latinx households 1.9 and 1.6 times as likely as White households, respectively, to have overdrafted); see also FHN Brief 2024 (finding that 31 percent of Black, 24 percent of Latinx, and 14 percent of White households reported having overdrafted in 2023); Meghan Greene et al., FHN, *FinHealth Spend Report 2022: What U.S. Households Spent on Financial Services During COVID-19*, at 14 (Apr. 2022), https://finhealthnetwork.org/wp-content/uploads/2022/05/FinHealth_Spend_Report_2022_Final.pdf (finding in a 2021 survey that Black and Latinx households with a savings or checking account were 1.8 and 1.4 times as likely as White households to report having overdrafted); see also CFPB, *Overdraft and Nonsufficient Fund Fees*, at 25 (Dec. 2023), https://files.consumerfinance.gov/f/documents/cfpb_overdraft-nsf-report_2023-12.pdf (finding that Black and Hispanic consumers are 69 and 60 percent more likely to reside in a household charged at least one overdraft or NSF fee in the past year).

⁶⁵ For example, a 2012 study found that 30 million checking accounts were involuntarily closed from 2001–2005 due to excessive overdrafts, with the former accountholders having limited or no subsequent access to the formal banking system. See Dennis Campbell et al., *Bouncing out of the banking system: An empirical analysis of involuntary bank account closures*, 36 J. Banking & Fin. 1224 (2012). The CFPB's supervisory experience suggests that overdraft-related involuntary closures remain prevalent in today's market.

⁴⁹ CFPB 2013 White Paper at 25.

⁵⁰ FDIC, *2023 FDIC National Survey of Unbanked and Underbanked Households*, at 1 (Nov. 2024), <https://www.fdic.gov/household-survey/2023-fdic-national-survey-unbanked-and-underbanked-households-report> (FDIC 2023 Unbanked Report).

⁵¹ *Id.* at 27 tbl.1.3 (47.4 percent of unbanked households previously had a bank account).

⁵² *Id.* at 28 fig.1.7 (47.5 percent of previously banked households are not at all interested in having a bank account, and 17.8 percent are not very interested).

⁵³ FDIC, *2023 FDIC National Survey of Unbanked and Underbanked Households—Appendix Tables* (November 2024), at 13 tbl.A.8, <https://www.fdic.gov/household-survey/2023-fdic-national-survey-unbanked-and-underbanked-households-appendix-tables> (among previously banked households, 32.8 percent cited bank account fees are too high, 30.6 percent cited bank account fees are too unpredictable, and 43.3 percent cited that they do not have enough money to meet minimum balance requirements).

⁵⁴ See Press Release, CFPB, *CFPB Orders Regions Bank to Pay \$191 Million for Illegal Surprise Overdraft Fees* (Sept. 28, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-regions-bank-pay-191-million-for-illegal-surprise-overdraft-fees/>; see also Press Release, CFPB, *CFPB Orders Atlantic Union Bank to Pay \$6.2 Million for Illegal Overdraft Fee Harvesting* (Dec. 7, 2023), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-atlantic-union-bank-to-pay-6-2-million-for-illegal-overdraft-fee-harvesting/>.

⁵⁵ *Id.*; see also 87 FR 66935, 66935–40 (Nov. 7, 2022).

⁵⁶ 87 FR 5801 (Feb. 2, 2022).

⁵⁷ CFPB 2014 Data Point at 21.

⁵⁸ *Id.* at 13.

⁵⁹ CFPB 2017 Data Point at 6, 32–33. This dynamic was likely driven primarily by the scenario where a debit card or ATM transaction is authorized against a sufficient balance but then settles against an insufficient balance. A consumer who was not opted-in would have had this transaction approved and assessed no fee. A consumer who was opted-in may have been charged a fee. For discussion of regulatory guidance and CFPB enforcement actions addressing overdraft fees assessed on these “authorize positive, settle negative” transactions, see part I.B.5.

⁶⁰ CFPB, *A Closer Look: Overdraft and the Impact of Opting-In* (Jan. 19, 2017), https://files.consumerfinance.gov/f/documents/201701_cfpb_overdraft-and-impact-of-opting-in.pdf (citing a rate of 6.2 percent in a given year for non-opted-in consumers and 2.5 percent for opted-in consumers, based on calculations using the same large bank data used in CFPB 2014 Data Point).

5. Growing Regulatory Concerns About Non-Covered Overdraft Credit

As financial institutions began to evolve the provision of non-covered overdraft away from the historical model and toward increased automation, greater frequency, and higher revenues, Federal regulators expressed increasing consumer protection concerns. In 2001, in declining to issue a requested “comfort letter” for a financial institution’s overdraft program, the Office of the Comptroller of the Currency (OCC) stated that overdraft services are extensions of credit and that the associated charges may be “just as burdensome as those imposed on borrowers utilizing other types of high interest rate credit.”⁶⁶ In 2002, the Board noted that some non-covered overdraft credit may not be all that different from overdraft lines of credit,⁶⁷ and in 2004 the Board stated that further consideration of the need for Regulation Z coverage of overdraft services would be appropriate if consumer protection concerns were to persist.⁶⁸ In 2005, the Federal banking agencies issued joint guidance on non-covered overdraft credit noting that “the existing regulatory exceptions [*i.e.*, exceptions in Regulation Z such that it does not apply] were created for the occasional payment of overdrafts, and as such could be reevaluated by the Board in the future, if necessary” and “[w]here the Board to address these issues more specifically, it would do so separately under its clear [TILA] authority.”⁶⁹ In 2009, the Board adopted a rule under Regulation E prohibiting institutions from assessing overdraft fees on one-time debit card and ATM transactions unless the institution obtained the consumer’s affirmative consent to such fees (“opt-in rule”).⁷⁰ Following the adoption of the Board’s rule, the FDIC issued additional supervisory guidance,⁷¹ which advises, among other things, that where transactions overdraw an account by a de minimis amount, the overdraft fee should be eliminated or be reasonable and

proportional to the amount of the transaction.⁷²

More recently, in October 2022, the CFPB issued a policy statement stating that the assessment of overdraft fees that consumers would not reasonably anticipate, including overdraft fees on debit card or ATM transactions that are authorized when the consumer’s available balance is sufficient to cover the transaction but that later settle against a negative balance due to intervening transactions or complex processes (“authorize positive, settle negative” or “APSN” transactions), likely violates the Consumer Financial Protection Act of 2010 (CFPA)’s statutory prohibition against unfair practices.⁷³ In April 2023, the OCC and FDIC issued guidance advising that overdraft fees charged on such transactions raise heightened risk of unfair, deceptive, or abusive acts or practices.⁷⁴ The OCC’s guidance also describes certain practices that it notes may help to manage risks associated with overdraft programs, including assisting consumers in avoiding “unduly high costs” in relation to the face value of the item being presented, the amount of their regular deposits, and their average account balances, and implementing fees and practices that bear a reasonable relationship to the risks and costs of providing overdraft programs.⁷⁵

The CFPB has previously established rules governing overdraft credit on prepaid accounts. In 2016, the CFPB

⁷² *Id.*

⁷³ CFPB Circular 2022–06: *Unanticipated Overdraft Fee Assessment Practices*, 87 FR 66935 (Nov. 7, 2022). The CFPB, the Board, and the FDIC also highlighted risks related to the imposition of overdraft fees from 2015 to 2018. See CFPB, *Supervisory Highlights*, at 8–9 (Winter 2015), https://files.consumerfinance.gov/f/201503_cfpb_supervisory-highlights-winter-2015.pdf (last visited Dec. 3, 2024) (CFPB Winter 2015 Highlight); FRS, *Interagency Overdraft Services Consumer Compliance Discussion*, Outlook Live presentation slides, at 20–21 (Nov. 9, 2016), <https://www.consumercomplianceoutlook.org/-/media/ccol/Outlook-Live/2016/110916.pdf>; FRS, *Consumer Compliance Supervision Bulletin*, at 12 (July 2018), <https://www.federalreserve.gov/publications/files/201807-consumer-compliance-supervision-bulletin.pdf> (FDIC 2018 Highlight); FDIC, *Consumer Compliance Supervisory Highlights*, at 2–3 (June 2019), https://www.fdic.gov/regulations/examinations/consumercompsupervisory-highlights.pdf?source=govdelivery&utm_medium=email&utm_source=govdelivery (FDIC 2019 Highlight).

⁷⁴ OCC, *OCC Bulletin 2023–12, Overdraft Protection Programs: Risk Management Practices* (Apr. 26, 2023), <https://www.occ.treas.gov/news-issuances/bulletins/2023/bulletin-2023-12.html> (OCC Bulletin 2023–12); FDIC, *Supervisory Guidance on Charging Overdraft Fees for Authorize Positive, Settle Negative Transactions*, FIL–19–2023 (Apr. 26, 2023), <https://www.fdic.gov/news/financial-institution-letters/2023/fil23019a.pdf>.

⁷⁵ OCC Bulletin 2023–12.

amended Regulation Z to provide that prepaid accounts that offer credit features are generally covered under Regulation Z’s credit card rules.⁷⁶ The CFPB also amended the compulsory use provision under Regulation E to prohibit prepaid card issuers from requiring consumers to set up preauthorized EFTs to repay credit extended through an overdraft credit feature accessible by a hybrid prepaid-credit card.⁷⁷

In applying Regulation Z to overdraft credit features on prepaid accounts, the CFPB noted that the term “credit” in TILA includes “the right to . . . incur debt and defer its payment”⁷⁸ and explained that that definition “covers the situation when a consumer makes a transaction that exceeds the funds in the consumer’s account and a person elects to cover the transaction by advancing funds to the consumer.”⁷⁹ The CFPB further stated that overdraft fees on prepaid accounts “generally constitute finance charges, because they are directly payable by the consumer and imposed directly by the creditor as a condition of the extension of credit.”⁸⁰ The CFPB also stated that overdraft services offered in connection with prepaid accounts “can be regulated by Regulation Z as a ‘plan’ when the consumer is contractually obligated to repay the debt, even if the creditor retains, by contract, the discretion not to extend credit.”⁸¹ At that time, the CFPB stated that it was continuing to study overdraft services on checking accounts and would propose any further regulatory consumer protections in that space through a separate rulemaking.⁸²

II. The Proposal and Other Procedural Background

A. Outreach and Engagement

The CFPB has engaged in outreach and research related to overdraft fees since soon after the CFPB’s inception. In 2012, the CFPB initiated a broad inquiry into overdraft programs for consumer checking accounts.⁸³ This inquiry included a request for information on

⁷⁶ 81 FR 83934, 83934–35 (Nov. 22, 2016). The CFPB amended the 2016 Prepaid Final Rule in 2017 and 2018. See 82 FR 18975 (Apr. 25, 2017); 83 FR 6364 (Feb. 13, 2018). The 2016 Prepaid Final Rule and subsequent amendments to that rule are referred to collectively herein as the Prepaid Accounts Rule.

⁷⁷ 81 FR 83934, 83935–36 (Nov. 22, 2016).

⁷⁸ 15 U.S.C. 1602(f).

⁷⁹ 81 FR 83934, 84168 (Nov. 22, 2016).

⁸⁰ *Id.* at 84160.

⁸¹ *Id.*

⁸² *Id.* at 84162.

⁸³ Press Release, CFPB, *CFPB Launches Inquiry into Overdraft Practices* (Feb. 22, 2012), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-launches-inquiry-into-overdraft-practices/>.

⁶⁶ OCC, Interpretive Letter No. 914, at 6 (Sept. 2001), <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2001/int914.pdf>.

⁶⁷ 67 FR 72618, 72620 (Dec. 6, 2002). In 2003, the Board noted that “[t]he Board’s staff is continuing to gather information on these services, which are not addressed in the final rule.” 68 FR 16185 (Apr. 3, 2003).

⁶⁸ 69 FR 31760, 31761 (June 7, 2004).

⁶⁹ See 70 FR 9127, 9128–29 (Feb. 24, 2005).

⁷⁰ 74 FR 5212 (Jan. 28, 2009).

⁷¹ FDIC, *Final Overdraft Payment Supervisory Guidance*, FIL–81–2010 (Nov. 24, 2010), <https://www.fdic.gov/news/news/financial/2010/fil10081.html>.

the impacts of overdraft fees on consumers,⁸⁴ and collection and analysis of overdraft-related data from several large banks with over \$10 billion in assets that provided a significant portion of all U.S. consumer checking accounts.⁸⁵ The CFPB published analyses of these data in a series of reports from 2013–2017, which examined institution-level policies and data, as well as account- and transaction-level data.⁸⁶ These studies assessed, among other things, overdraft fee size, prevalence, and related account closure; overdraft policies and practices across institutions; the distribution of overdraft fee incurrence across accounts; how overdraft transactions and fees vary across opt-in status; the size of transactions that lead to overdrafts; how long account balances stay negative after overdrafts; and the characteristics of account holders (including end-of-day balance, deposits, credit score, and available credit on a credit card) across distributions of overdraft frequency. The CFPB also collected anonymized institution-level information from several core processors, which provide operations and accounting systems to financial institutions. This data collection informed the CFPB's 2021 report assessing policies and practices among a large sample of financial institutions using core processors.⁸⁷

In 2021, the CFPB examined financial institutions' reliance on overdraft/NSF fees from 2015 to 2019, finding that it was persistent.⁸⁸ Since then, the CFPB has continued tracking trends in the marketplace⁸⁹ and evaluating some banks' key overdraft-related metrics through the CFPB's supervision work.⁹⁰ From December 2022 to July 2023, the CFPB reviewed the publicly available overdraft practices of financial institutions with assets over \$10

billion.⁹¹ In addition, the CFPB has recently collected information from several financial institutions under the CFPB's supervision, including data regarding financial institutions' costs associated with offering overdraft credit, which is discussed further in part IV.D as well as in a separate report issued in January 2024 titled "Overdraft and NSF Practices at Very Large Financial Institutions."⁹²

Consistent with section 1022(b)(2)(B) of the CFPB, the CFPB has consulted with the appropriate prudential regulators and other Federal agencies, including regarding consistency with any prudential, market, or systemic objectives administered by these agencies. Consistent with the CARD Act, the CFPB consulted with the following agencies regarding rules that implement TILA section 149: (1) the Office of the Comptroller of the Currency; (2) the Board of Directors of the Federal Deposit Insurance Corporation; and (3) the National Credit Union Administration Board. The CFPB also consulted with the Board and several other Federal agencies, as discussed in part II.A.

B. Summary of the Proposed Rule

On January 17, 2024, the CFPB issued a notice of proposed rulemaking containing several proposed amendments to Regulations Z and E to extend consumer credit protections that generally apply to other forms of consumer credit to certain overdraft credit provided by very large financial institutions. This notice of proposed rulemaking was published in the **Federal Register** on February 23, 2024.⁹³ The CFPB proposed that the final rule, if adopted, would take effect on the October 1 which follows by at least six months the date it is published in the **Federal Register**, consistent with 15 U.S.C. 1604(d). The CFPB expected that would likely fall on October 1, 2025.

As described more fully below, the CFPB proposed to amend Regulations Z and E, and accompanying commentary as they relate to overdraft credit. The amendments would have applied only to very large financial institutions—i.e., insured depository institutions and credit unions with more than \$10 billion in assets. The proposal would

not change the regulatory framework for overdraft services offered by financial institutions with assets of \$10 billion or less.

The CFPB proposed to update two regulatory exceptions from the definition of finance charge so that Regulation Z would apply to overdraft credit provided by very large institutions unless it is provided at or below costs and losses as a true courtesy to consumers, as follows. First, the proposal would have updated an exception that currently provides that a charge for overdraft is not a finance charge if the financial institution has not previously agreed in writing to pay items that overdraw an account⁹⁴ so that the exception would not apply to "above breakeven overdraft credit" offered by a very large financial institution. The proposal would have given financial institutions the ability to determine whether an overdraft charge is considered above breakeven overdraft credit by either: (1) calculating its own costs and losses using a standard set forth in the proposal; or (2) relying on a benchmark fee set by the CFPB in the proposal. The CFPB asked for comment on four potential benchmark fees: \$3, \$6, \$7, or \$14. Second, the proposal would have updated a related exception that provides that a charge imposed on an asset account in connection with an overdraft credit feature is not a finance charge if the charge does not exceed the charge for a similar transaction account without a credit feature.⁹⁵

As a result of these proposed changes, above breakeven overdraft credit that is not currently subject to Regulation Z would have become subject to Regulation Z, including provisions in subpart B that govern open-end credit (e.g., the account opening disclosures, periodic statements, and advertising rules).

The proposal would also have required covered overdraft credit offered by very large financial institutions to be put in a credit account separate from the asset account, and it would have updated exceptions relating to credit cards. Among other changes, it would have applied the portions of Regulation Z that implement the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act)⁹⁶ to covered overdraft credit that can be accessed by a hybrid debit-credit card, such as a debit card or other single credit device (including certain account numbers) that a consumer may use from time to time to obtain covered overdraft

⁸⁴ 77 FR 12031 (Feb. 28, 2012).

⁸⁵ See CFPB 2013 White Paper at 8; see also CFPB 2014 Data Point at 6–7.

⁸⁶ See CFPB 2013 White Paper; CFPB 2014 Data Point; CFPB 2017 Data Point.

⁸⁷ Nicole Kelly & Éva Nagypál, Ph.D., CFPB, *Data Point: Checking Account Overdraft at Financial Institutions Served by Core Processors* (Dec. 2021), https://files.consumerfinance.gov/f/documents/cfpb_overdraft-core-processors_report_2021-12.pdf.

⁸⁸ CFPB 2021 Data Point.

⁸⁹ CFPB April 2024 Data Spotlight.

⁹⁰ See Patrick Gibson & Lisa Rosenthal, *Measuring the impact of financial institution overdraft programs on consumers*, CFPB (June 16, 2022), <https://www.consumerfinance.gov/about-us/blog/measuring-the-impact-of-financial-institution-overdraft-programs-on-consumers/>; CFPB, *Fall 2023 Supervisory Highlights Junk Fees Update Special Edition*, at 7–9 (Oct. 2023), https://files.consumerfinance.gov/f/documents/cfpb_supervisory_highlights_junk_fees-update-special-ed_2023-09.pdf (CFPB Fall 2023 Highlight).

⁹¹ CFPB Market Monitoring of Publicly Available Overdraft Practices, Dec. 2022–July 2023.

⁹² See CFPB, *Overdraft and NSF Practices at Very Large Financial Institutions* (Jan. 2024), https://files.consumerfinance.gov/f/documents/cfpb_overdraft-nsf-practices-very-large-financial-institutions_2024-01.pdf (CFPB Overdraft and NSF Practices Report).

⁹³ 89 FR 13852 (Feb. 23, 2024).

⁹⁴ 12 CFR 1026.4(c)(3).

⁹⁵ 12 CFR 1026.4(b)(2).

⁹⁶ Public Law 111–24; 123 Stat. 1734 (2009).

credit from a very large financial institution. Provisions of the CARD Act that would have applied to such overdraft credit include, but are not limited to, ability to pay underwriting requirements, limitations on penalty fees including certain fees on transactions that are declined due to nonsufficient funds, and various requirements related to rate changes.

The proposal would also have prohibited compulsory use of preauthorized electronic fund transfers (EFTs) for repayment of covered overdraft credit provided by very large financial institutions, which would have ensured that consumers using those products have a choice of at least one alternative method of repayment. As a result of this change, covered overdraft credit offered by very large financial institutions could not be conditioned on consumers agreeing to automatic debits from their checking account. Consumers could still opt into automatic payments on a periodic basis if offered by their financial institution, but they would have the right to repay this overdraft credit manually if they prefer.

Comments

The CFPB received over 48,000 comments on the proposal.⁹⁷ Over 47,000 of those comments were from individual consumers and over 1,000 were from or about institutions with fewer than \$10 billion in assets. The CFPB also received many comments from consumer advocate commenters, academic commenters, industry commenters, State regulators, State Attorneys General, and members of Congress. This also includes comments received after the comment period closed via ex parte submissions and meetings.⁹⁸ All comments, including ex parte submissions and summaries of ex parte meetings, will be available on the public docket for this rulemaking.⁹⁹

Relevant information received via comment letters, as well as ex parte submissions, is discussed below in subsequent parts of this document, as applicable. The CFPB considered all the comments it received regarding the proposal, made certain modifications, and is adopting the final rule as described in part IV below.

III. Legal Authority

A. Truth in Lending Act

TILA section 105(a). TILA section 105(a) directs the CFPB to prescribe regulations to carry out the purposes of TILA and provides that such regulations may contain additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, that the CFPB judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.¹⁰⁰ A purpose of TILA is to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various available credit terms and avoid the uninformed use of credit.¹⁰¹ This stated purpose is tied to Congress's finding that economic stabilization would be enhanced and competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit.¹⁰² Thus, strengthened competition among financial institutions is a goal of TILA, achieved through the effectuation of TILA's purposes. A purpose of TILA is also to protect the consumer against inaccurate and unfair credit billing and credit card practices.¹⁰³

CARD Act section 2. Section 2 of the CARD Act, which amended TILA to establish fair and transparent practices relating to the extension of credit under an open-end consumer plan, and for other purposes, also specifically grants the CFPB authority to issue rules and model forms it considers necessary to carry out the CARD Act and amendments made by the CARD Act.¹⁰⁴

For the reasons discussed in this notice, the CFPB is amending Regulation Z with respect to overdraft credit to carry out TILA's purposes. The CFPB is retaining additional requirements, adjustments, and exceptions as, in the CFPB's judgment, are necessary and proper to carry out the purposes of TILA, prevent circumvention or evasion thereof, or to facilitate compliance. In developing these amendments pursuant to its authority under TILA section 105(a), the CFPB has considered the purposes of TILA, including ensuring meaningful disclosures, facilitating consumers'

ability to compare credit terms, helping consumers avoid the uninformed use of credit, and protecting consumers against inaccurate and unfair credit billing and credit card practices, and the findings of TILA, including strengthening competition among financial institutions and promoting economic stabilization.

B. Electronic Fund Transfer Act

EFTA section 902 establishes that the purpose of the statute is to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in EFT and remittance transfer systems but that its primary objective is the provision of individual consumer rights.¹⁰⁵ Among other things, EFTA contains provisions regarding compulsory use of EFTs.¹⁰⁶

EFTA section 904(a) authorizes the CFPB to prescribe regulations to carry out the purposes of EFTA.¹⁰⁷ EFTA section 904(c) provides that regulations prescribed by the CFPB may contain such classifications, differentiations, or other provisions, and may provide for such adjustments or exceptions for any class of EFTs or remittance transfers, that the CFPB deems necessary or proper to effectuate the purposes of EFTA, to prevent circumvention or evasion, or to facilitate compliance.¹⁰⁸ The Senate Report accompanying EFTA noted that regulations are "essential to the act's effectiveness" and "will add flexibility to the act by permitting the [CFPB] to modify the act's requirements to suit the characteristics of individual EFT services. Moreover, since no one can foresee EFT developments in the future, regulations would keep pace with new services and assure that the act's basic protections continue to apply."¹⁰⁹

EFTA section 904(c) also provides that the "CFPB shall by regulation modify the requirements imposed by this subchapter on small financial institutions if the CFPB determines that such modifications are necessary to alleviate any undue compliance burden on small financial institutions and such modifications are consistent with the purpose and objective of this subchapter."

As discussed in part IV below, the CFPB is adopting amendments to Regulation E, including with respect to compulsory use of preauthorized repayment and the definition of overdraft services, pursuant to the

⁹⁷ See <https://www.regulations.gov/docket/CFPB-2024-0002/comments>.

⁹⁸ See CFPB, *Policy on Ex Parte Presentations in Rulemaking Proceedings*, 82 FR 18687 (Apr. 21, 2017).

⁹⁹ See <https://www.regulations.gov/docket/CFPB-2024-0002/>.

¹⁰⁰ 15 U.S.C. 1604(a).

¹⁰¹ 15 U.S.C. 1601(a).

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Public Law 111–24; sec. 2, 123 Stat. 1734, 1735 (2009).

¹⁰⁵ 15 U.S.C. 1693.

¹⁰⁶ 15 U.S.C. 1693k.

¹⁰⁷ 15 U.S.C. 1693b(a).

¹⁰⁸ 15 U.S.C. 1693b(c).

¹⁰⁹ See S. Rep. No. 95–1273, at 26 (1978).

CFPB's authority under, as applicable, EFTA section 904(a) and (c).

C. Consumer Financial Protection Act

CFPA section 1022(b)(1). Section 1022(b)(1) of the CFPA authorizes the CFPB to prescribe rules "as may be necessary or appropriate to enable the [CFPB] to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof."¹¹⁰

Among other statutes, TILA, EFTA, and the CFPA are Federal consumer financial laws.¹¹¹ Accordingly, in issuing this rule, the CFPB is exercising its authority under CFPA section 1022(b) to prescribe rules that carry out the purposes and objectives of TILA, EFTA, and the CFPA and prevent evasion of those laws.

IV. Discussion of the Final Rule

A. Overview of the CFPB's Approach

As discussed above, the CFPB proposed to amend Regulations E and Z to update regulatory exceptions for overdraft credit provided by very large financial institutions, thereby ensuring that extensions of overdraft credit adhere to consumer protections required of similarly situated products, unless the overdraft fee is a small amount that only recovers estimated costs and losses. These consumer protections allow consumers to better comparison shop across credit products and provide substantive protections that apply to other consumer credit.

As a result of the evolution of the overdraft market over the last few decades, the regulatory exceptions for overdraft credit provided by very large financial institutions no longer serve their original purpose. The CFPB proposed preserving a limited exception to encourage the availability of overdraft coverage, which can benefit consumers, especially given that much overdraft credit is incidental in nature, as consumers often do not know with certainty whether a transaction will be presented against sufficient funds. But the proposal stated that a blanket exception for all of today's non-covered overdraft credit—which poses serious risks to consumers as reflected in the discussion of consumer impacts noted above, and resembles other mass-marketed high-cost consumer credit products—cannot be justified as an exception for a courtesy to consumers,

nor as consistent with TILA's purposes of promoting the informed use of credit and comparison shopping across credit products, and protecting consumers against inaccurate and unfair credit billing and credit card practices.

The CFPB is adopting the same general approach in the final rule, with some modifications, as discussed herein.

Comments Received on the CFPB's Proposed Approach Generally

Comments received by the CFPB on the proposal, and responses thereto, are discussed in more detail throughout this part IV. The following is a synopsis of comments received on the CFPB's proposed approach generally.

Many of the commenters supported the CFPB's proposal, stating among other things that the rule would reduce fee burdens and associated consequences and support the informed use of credit. These commenters generally focused on negative consumer experiences with overdraft fees, stating that what began as a narrow exception to provide for occasional accommodation now generates billions of dollars in fees from vulnerable populations. A State agency commenter noted that overdraft fees can discourage many consumers from wanting a bank account at all and noted that overdraft fees can deduct funds from a consumer's public benefits, thereby frustrating the purpose of those benefit programs. A consumer advocate commenter noted that some financial institutions are already lowering fees or offering alternative products to meet consumer needs and posited that the CFPB's proposal would continue this progress by supporting market shifts that benefit consumers. Another commenter noted that the proposal continues to offer flexibility to covered entities such that they may offer overdraft as courtesy non-covered overdraft or as a covered overdraft line of credit.

Other commenters, including banks, credit unions, and industry groups, did not support the proposed rule, arguing, for example, that it is unnecessary because overdraft fees are already effectively disclosed consistent with Regulations DD and E, and that consumers find value in overdraft programs and expressly opt into them. Therefore, some argued that the CFPB should further study why consumers sometimes use higher-cost credit options and, in the case of overdraft programs, expressly opt into them, before proposing new regulations to ensure that any changes will achieve their goals. Commenters also

emphasized a number of changes to overdraft programs that have already reduced fees in recent years and noted that if the proposal is finalized, financial institutions might pass along costs to consumers by increasing other fees or limiting credit or other services, including the possibility that transactions would not be paid through overdraft credit but would instead be declined or that consumers might migrate to less regulated credit alternatives. Some commenters objected to the CFPB's focus on whether overdraft fees recover more than applicable costs and losses.

B. Entity Coverage

Proposed Rule

The CFPB proposed to expand protections to consumers of overdraft credit at financial institutions with more than \$10 billion in assets. Under the proposal, the regulatory framework would not change for overdraft credit offered by financial institutions with \$10 billion or less in assets.

To limit the proposed rule to overdraft credit offered by financial institutions with assets of more than \$10 billion, the proposed rule would have defined in proposed § 1026.62(b)(8) the term "very large financial institution" as an insured depository institution or an insured credit union with total assets of more than \$10 billion and any affiliate thereof. The proposed rule then used the term "very large financial institution" to limit the scope of overdraft credit that would be subject to the proposed rule.

The CFPB preliminarily determined in the proposal that overdraft services offered by financial institutions with more than \$10 billion in assets should be subject to this rule. The proposal noted that, in the supervisory context, Congress adopted in 12 U.S.C. 5515(a) a \$10 billion threshold to define the "very large banks, savings associations, and credit unions" that would be subject to the CFPB's primary supervision authority. The CFPB preliminarily determined that a \$10 billion threshold similarly should be used to define "very large financial institution" for limiting the scope of overdraft credit that would be covered by the proposed rule.

The CFPB preliminarily determined in the proposal that consumers would benefit from a rule that would apply to very large financial institutions—i.e., those with assets of \$10 billion or more. The proposal noted that such a rule would increase protections for the overwhelming majority of consumers of overdraft credit. The CFPB noted that the proposed rule would have covered

¹¹⁰ 12 U.S.C. 5512(b)(1).

¹¹¹ CFPA section 1002(14), 12 U.S.C. 5481(14) (defining "Federal consumer financial law" to include the provisions of the CFPA and enumerated consumer laws; "enumerated consumer laws" is defined in CFPA section 1002(12), 12 U.S.C. 5481(12)).

financial institutions holding approximately 80 percent of consumer deposits as of December 2022¹¹² and responsible for approximately 68 percent of overdraft charges as of December 2022.¹¹³ The CFPB preliminarily determined that consumers at very large financial institutions would benefit from the expanded protections that would be provided by the proposed rule.

The CFPB noted that in light of the different circumstances smaller financial institutions may face in adapting to the proposed regulatory framework, the CFPB did not propose to extend the proposed rule to those institutions with \$10 billion or less in assets. The CFPB noted that while it did not propose any changes to the regulatory requirements for smaller financial institutions, the CFPB will continue to monitor the market in coordination with State and Federal supervisors.

The CFPB requested comment on its preliminary determination to apply the proposed rule only to very large financial institutions and on whether \$10 billion is an appropriate threshold for defining very large financial institutions.

For the reasons discussed below, the CFPB is adopting the very large financial institution definition as proposed.

Comments Received

Several commenters, including several consumer advocates, supported the proposal's approach to apply the rule to very large financial institutions. They stated that the rule would benefit a majority of consumers, that very large financial institutions have greater resources to adapt to regulatory changes, and that the CFPB may need additional time to gather relevant cost data for smaller financial institutions. These commenters recommended that the CFPB take steps to conduct a rulemaking as soon as possible to consider expanding the scope of the rule to entities that are not very large financial institutions (non-VLFIs).

A number of industry commenters maintained that the CFPB did not provide a sufficient justification for applying the rule only to very large financial institutions. The industry commenters criticized on several different grounds the proposed rule's approach to apply the revised regulatory framework only to very large financial institutions.

Some industry commenters stated that the CFPB lacks authority to apply the rule only to very large financial institutions. Several industry commenters maintained that the differential treatment of very large financial institutions would be inconsistent with TILA, stating that the proposed rule did not explain why subjecting smaller financial institutions to the rule would not provide a meaningful benefit to consumers while subjecting very large financial institutions to the rule would provide a meaningful benefit. Other industry commenters stated that the proposal did not consider the five factors for an exemption under section 105(f)(2) of TILA and that the CFPB did not explain why it would be appropriate to define overdraft as credit and an overdraft fee as a finance charge only for very large financial institutions.

Several industry commenters stated that the proposal failed to provide a sufficient explanation for covering only very large financial institutions. The commenters stated that the proposal noted the \$10 billion supervisory threshold but did not sufficiently explain why that threshold was relevant for exempting very large financial institutions from the proposed overdraft rule. While these commenters acknowledged that the proposal noted that smaller financial institutions may face "different circumstances," they maintained that the proposal did not sufficiently explain what those circumstances are and why they are relevant.

Several industry commenters stated that the proposal provided insufficient data to support applying the rule only to very large financial institutions. The commenters stated that data cited in the proposed rule indicated that smaller financial institutions hold only 20 percent of deposits but receive 32 percent of overdraft fees. Commenters stated the CFPB's own data indicate that smaller financial institutions appear to receive similar or greater overdraft fees per account compared to larger financial institutions.

Several industry commenters also maintained that applying the rule only to very large financial institutions would cause consumer confusion and market disruption. The commenters stated that consumers would receive different disclosures based upon the asset size of their financial institution and may not understand the differences among the overdraft programs at different financial institutions.

Several industry commenters expressed concern that the CFPB's proposal to apply the rule only to very

large financial institutions avoided the CFPB's SBREFA obligations. Moreover, some commenters argued that the CFPB did not fulfill its obligations with respect to the SBREFA process.

In addition, many non-VLFI industry commenters stated that, even if the rule would not apply to non-VLFIs, they would nevertheless face competitive pressure to alter their overdraft programs and reduce their overdraft fees. They maintained that, because they lack the resources of larger financial institutions, they would have difficulty altering their overdraft programs and reducing their fees to compete with larger financial institutions and may be forced to decrease availability of or discontinue overdraft programs.

Several commenters, including consumer advocates, academic commenters, and State Attorneys General, recommended that the CFPB apply the rule's framework to all financial institutions. They stated that non-VLFIs engage in the same problematic overdraft practices that harm consumers and that all consumers should receive the protections from the rule's overdraft framework. Some commenters stated that many large institutions already have eliminated or reduced their overdraft and NSF fees, whereas most small institutions have not and that the proposed rule therefore would not apply to many of the institutions that are causing significant harm to their consumers through their overdraft programs.

A couple of commenters recommended adjusting the threshold. One consumer advocate supported reducing the threshold to the SBREFA threshold of \$850 million, noting that the rule provides multiple pathways for financial institutions to determine breakeven overdraft fees. A few other commenters recommended raising the threshold to \$100 billion or more, arguing that the largest financial institutions have the resources to adapt to regulatory changes.

Some commenters, including a consumer advocate and a bank, raised concerns that nonbanks that partner with banks to offer bank accounts could evade coverage under the rule. They stated that large nonbanks could evade the rule by partnering with multiple smaller banks with assets under \$10 billion. The consumer advocate stated that some nonbanks offer accounts that they claim are checking accounts exempt from the prepaid rule and its protections applicable to overdraft fees on prepaid cards. The consumer advocate recommended that the CFPB clarify that any such account, even if tied to a bank account, is a prepaid

¹¹² Computed from 2022 FFIEC and National Credit Union Administration call report data.

¹¹³ Estimated using data from 2022 FFIEC Call Reports and methodology discussed at FN 29.

account. Alternatively, the consumer advocate recommended that the CFPB expand the rule's definition of "very large financial institution" by using the Regulation E definition of "financial institution," which is broader than depository institutions, and including within the scope of the rule nonbanks that offer accounts in partnership with depository institutions. Otherwise, the consumer advocate stated, nonbanks will partner with one or more smaller financial institutions with less than \$10 billion in assets to ensure that their accounts would not be subject to this rule. The consumer advocate stated that nonbanks already are using these partnerships to avoid having to comply with the Durbin Amendment's interchange fee limits.

Final Rule

For the reasons stated in the proposal and below, the CFPB is adopting the very large financial institution definition as proposed to expand protections for consumers of overdraft credit at financial institutions with more than \$10 billion in assets. The rule does not change the regulatory framework for overdraft credit offered at financial institutions with \$10 billion or less in assets. The CFPB plans to monitor market responses to the protections adopted in this rule, analyze additional information, and consider whether to apply expanded protections to overdraft credit offered by financial institutions with \$10 billion or less in assets. As in the proposed rule, the final rule defines the term "very large financial institution" in § 1026.62(b)(6) as an insured depository institution or an insured credit union with total assets of more than \$10 billion and any affiliate thereof. A financial institution may determine whether it has total assets of more than \$10 billion using the same determination that is used to determine whether such institutions are subject to the CFPB's supervisory authority under 12 U.S.C. 5515(a). The CFPB currently publishes a list of such institutions at <https://www.consumerfinance.gov/compliance/supervision-examinations/institutions/>. The final rule uses the term very large financial institution to limit the scope of overdraft credit that is subject to the final rule.

The CFPB has determined that it is appropriate to move forward with a rule that expands protections for consumers of overdraft credit at very large financial institutions. The majority of consumers will benefit from such a rule. As noted above, approximately 80 percent of consumer deposits are at very large financial institutions, and more than two-thirds of overdraft fees were

imposed by very large financial institutions. Using its supervision and market monitoring capabilities, the CFPB has observed recent market changes for overdraft programs, especially at very large financial institutions. Many very large financial institutions have altered their overdraft programs and reduced or eliminated overdraft fees without imposing additional fees, indicating that very large financial institutions have the capacity to adapt their overdraft programs without impairing their provisions of other products and services.

By contrast, smaller financial institutions may have less flexibility in adapting to changes in the regulatory framework for overdraft credit. To the extent that changes to the regulatory framework would result in a reduction in overdraft revenue, smaller financial institutions may have greater difficulty in absorbing a reduction in overdraft revenue without it having some impact on their operations, and this impact could negatively affect consumers at smaller financial institutions. Although the CFPB has less information about smaller financial institutions, information from the bank call reports and comments on the proposal indicate that smaller financial institutions currently are more reliant on overdraft revenue under the existing regulatory framework than very large financial institutions. For example, based on 2023 call report data, combined revenue from overdraft and NSF charges was 44 percent of deposit service charges and 4.7 percent of noninterest income for banks with assets between \$1 billion and \$10 billion, as compared to 19 percent and 1.8 percent, respectively, for banks with assets greater than \$10 billion. These data suggest that smaller financial institutions are more reliant on overdraft revenue and may be less able to adapt to a regulatory framework that results in reductions in overdraft revenue. A number of non-VLFI industry commenters claimed that if they were subject to the rule, they would face significant challenges that would cause them to alter or eliminate their overdraft programs and impair their ability to offer other products and services. Moreover, as a consumer advocate commenter noted, smaller institutions may have less flexibility to adjust their product offerings.

As noted above, many very large financial institutions have recently adjusted their overdraft credit programs by, among other things, reducing or eliminating fees. This suggests that very large financial institutions, with their diverse product offerings and multiple

sources of revenue, would have flexibility to respond to changes in the regulatory framework for overdraft credit and would be able to adapt to a reduction in fee revenue from non-covered overdraft credit. This also suggests that, if very large financial institutions want to continue offering non-covered overdraft credit that is not subject to Regulation Z after the rule goes into effect, they should be able to reduce their fees to continue providing non-covered overdraft credit. The CFPB has not observed a significant number of smaller financial institutions modifying their overdraft credit offerings to reduce or eliminate overdraft fees. On the contrary, the CFPB received feedback from smaller financial institutions stating that they were not capable of making such changes. Given the CFPB's limited information about the potential impact that revising the regulatory framework for overdraft credit could have on smaller financial institutions, and the consumers that rely on those smaller financial institutions, the CFPB has determined that it should proceed at this time with a rulemaking that narrows the exceptions only for very large financial institutions, *i.e.*, those with assets of \$10 billion or more.

As noted above, several industry commenters stated that the CFPB lacks authority under TILA to revise the regulatory framework only for very large financial institutions, maintaining that the proposed rule did not consider the standards for TILA exemptions under section 1604(f). As discussed in more detail elsewhere, including in the section discussing changes to the definition of finance charge, the CFPB is partially removing the existing regulatory exceptions created by the Board, not creating new exemptions from TILA or Regulation Z, and therefore need not invoke its statutory exception or exemption authority. Section 1604(f)(2) starts with the phrase "[i]n determining which classes of transactions to exempt," and then provides a list of factors that the CFPB would need to consider to justify creating an exemption under that authority. It is not a list of factors the CFPB must consider to justify partially removing an existing exception, which is what this rule does.¹¹⁴ And the CFPB

¹¹⁴ Section 1604(a) provides that the CFPB may prescribe regulations that contain such adjustments and exceptions for all or any class of transactions that the CFPB judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. The CFPB likewise does not have to invoke this statutory adjustment or exception authority to narrow the scope of an existing exception.

is not obligated to justify the portion of the Board's exception that the CFPB is not reversing (the portion applicable to non-VLFIs) using those factors) just because the CFPB is declining at this time to remove that portion of the existing exception due to the policy and prudential reasons described herein. As noted above, the CFPB plans to monitor market responses to the protections adopted in this rule and consider whether to remove the exception as to smaller financial institutions.

Nevertheless, these changes are also consistent with TILA § 105(a), which grants the CFPB authority to establish "additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, as in the judgment of the [CFPB] are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith." Consistent with the discussion above, the CFPB has determined that covering overdraft credit only from VLFIs in this rule at this time will facilitate compliance with TILA and its purposes by providing the protections of TILA and Regulation Z to the vast majority of consumers of overdraft credit, while the CFPB monitors the market impact of the rule, but not disturbing the status quo for smaller financial institutions that may be less equipped to adapt to such changes without impacting their operations in a manner that could negatively affect their consumers. The CFPB notes that consumers of overdraft credit at smaller institutions will remain covered by the existing regulatory regime.

For similar reasons, the CFPB has determined that the elimination of the regulatory exception to EFTA's compulsory use prohibition only for overdraft credit provided by a VLFI is consistent with EFTA § 904(c), which empowers the CFPB to "provide for such adjustments and exceptions for any class of electronic fund transfers or remittance transfers as in the judgment of the [CFPB] are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith," and also to "modify the requirements imposed by [EFTA] on small financial institutions if the Bureau determines that such modifications are necessary to alleviate any undue compliance burden on small financial institutions and such modifications are consistent with the purpose and objective of [EFTA]." The CFPB has determined that, because

smaller financial institutions may face difficulty in adapting to these regulatory changes without negatively impacting their consumer base, applying the amendment to the compulsory use exception only to VLFIs in this rule at this time will prevent undue compliance burden on those institutions, facilitate compliance with EFTA, and be consistent with the purpose and objective of EFTA by continuing, for now, the existing regulatory framework establishing the rights, liabilities, and responsibilities of participants in those electronic fund transfer systems while the CFPB monitors the market impact of the rule.

Several industry commenters maintained that the CFPB lacks data for its approach of limiting the applicability of the rule to very large financial institutions, noting that non-VLFIs hold only 20 percent of deposits but receive 32 percent of overdraft fees. As noted above, the CFPB has concluded that it is appropriate to adopt a rule now that covers very large financial institutions because the CFPB has more information about overdraft programs at very large financial institutions and about the capacity for them to adapt to a revised regulatory framework and because such a rule would provide protections to a significant majority of consumers. The CFPB has limited information about the costs for overdraft programs at smaller financial institutions and the cost data that the CFPB relied upon in developing the benchmark fee in § 1026.62(d)(1)(ii) may not be representative of the costs for non-VLFIs. The CFPB is concerned that non-VLFIs would face more significant challenges in adapting to a revised regulatory framework. The CFPB is not basing its decision to apply this rule to VLFIs on material differences in the overdraft programs at very large financial institutions and non-VLFIs.

Several industry commenters also stated that applying the rule only to very large financial institutions would cause consumer confusion and market disruption. They noted that the rule would result in a marketplace in which consumers would receive different disclosures for otherwise similar services based upon the size of the financial institution. The CFPB appreciates that the rule would create some differences in regulatory treatment of overdraft programs in the marketplace. However, the CFPB concludes that the benefits of providing additional protections to most consumers while proceeding cautiously with respect to smaller financial institutions outweighs those concerns. The CFPB plans to monitor market

responses to the protections adopted in this rule.

As noted above, a number of industry commenters maintained that the CFPB did not comply with its obligations under the SBREFA process. Several non-VLFI industry commenters maintained that the rule will have a negative impact on their financial condition and their ability to offer overdraft products and other products and services because market pressures will force non-VLFIs to lower their overdraft fees and adjust their overdraft programs even if the rule itself does not require them to do so. Other commenters maintained that the CFPB's decision to remove the existing exception for larger financial institutions but not for smaller financial institutions was designed to circumvent SBREFA. But leaving in place an existing exception for smaller financial institutions is not inconsistent with SBREFA. The CFPB has complied with its obligations under SBREFA. The rule does not require non-VLFIs to comply with the revised regulatory framework, and any competitive pressures to adjust their overdraft programs are indirect and uncertain. It is far from clear that market forces will force non-VLFIs to adjust their overdraft programs. As noted above, many very large financial institutions already have adjusted their overdraft programs, including by reducing or eliminating overdraft fees, but these changes have not forced other non-VLFIs to alter their overdraft programs similarly.

The CFPB has concluded that \$10 billion is an appropriate asset threshold for this rulemaking. The CFPB reached the decision to use \$10 billion as the threshold by borrowing from Congress's policy judgment to use that threshold to separate very large financial institutions from smaller entities in other contexts in the CFPA. The CFPB also considered the lower threshold of \$850 million used by the SBA to define small financial institutions, but decided to take the more prudent and cautious approach of initially finalizing a higher threshold that applies only to "very large" entities and not just "large" entities. Congress used a relatively high \$10 billion threshold to define "very large banks, credit unions, and savings associations" for purposes of limiting the CFPB's primary supervision and enforcement authority to very large depository institutions. The CFPB will be able to use its primary supervisory authority to closely monitor the implementation of the rule with respect to these entities, which will aid its understanding of the effects of the rule as the CFPB studies the market to

determine whether and what regulations are appropriate for the rest of the market.

The CFPB has concluded that updating the regulatory framework is appropriate for very large financial institutions for several reasons, including that the CFPB has more information about overdraft credit offered by financial institutions with more than \$10 billion in assets and about their ability to adapt to changes in the regulatory framework for their overdraft programs. As noted above, financial institutions with more than \$10 billion in assets have greater diversity in product offerings and likely would have greater flexibility in adapting quickly to a revised regulatory framework for overdraft credit. Indeed, as also noted above, many financial institutions with more than \$10 billion in assets already have modified their overdraft credit offerings to reduce or eliminate overdraft fees and available evidence indicates that these financial institutions are less reliant on overdraft revenue, indicating that they have the ability to adapt to any reductions in overdraft revenue that may result from these changes to the regulatory framework for overdraft credit.

As noted above, a bank and a consumer advocate raised concerns about nonbanks evading the rule by partnering with smaller banks to offer accounts with overdraft credit. The consumer advocate recommended clarifying that such accounts offered by nonbanks are prepaid accounts subject to the protections of the prepaid rule or, alternatively, revising the definition of “very large financial institution” in this rule to cover nonbanks with more than \$10 billion in assets. The CFPB declines to address in this rule whether such accounts would be considered prepaid accounts. The CFPB also declines to revise the definition of “very large financial institution” to include nonbanks. Nevertheless, the CFPB will continue to monitor the market and will analyze whether any market participants are taking steps to evade coverage under the rule.

C. Transaction and Account Coverage

The CFPB proposed to add § 1026.62(a) and (b) to define the scope of transactions and accounts that would be covered under the proposed rule. As discussed below, to update non-statutory exceptions in Regulation Z, the proposed updates included defined terms (e.g., “above breakeven overdraft credit,” “covered asset account,” and “hybrid debit-credit card”) that specifically reference a “very large financial institution,” as defined in

proposed § 1026.62(b)(8). The proposal would not change the regulatory framework for overdraft services offered by financial institutions with assets of \$10 billion or less.

The proposal defined overdraft credit in proposed § 1026.62(a)(2), and also provided an example of overdraft credit in proposed comment 2(a)(14)–4. The CFPB’s proposed rule would have added commentary to the definition of open-end credit in § 1026.2(a)(20) to confirm that overdraft credit that is subject to a finance charge is generally open-end credit and is therefore subject to the Regulation Z provisions that apply to open-end credit. The CFPB proposed definitions of covered overdraft credit and non-covered overdraft credit by adding § 1026.62(b) to assist with ease of reference. The proposal provided that covered overdraft credit would be overdraft credit that is subject to a finance charge or is payable by written agreement in more than four installments, and would be subject to Regulation Z. The proposal provided that non-covered overdraft credit would be overdraft credit that is neither subject to a finance charge nor payable by written agreement in more than four installments, and would not be subject to Regulation Z. Additionally, the CFPB proposed to add a definition for covered overdraft credit account to facilitate ease of reference to credit accounts through which the financial institutions extend or can extend covered overdraft credit. Each of these proposed amendments is discussed below.

1. Overdraft Credit (§§ 1026.2(a)(14) and 1026.62(a))

TILA defines “credit” to mean the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.¹¹⁵ Regulation Z similarly defines “credit” in existing § 1026.2(a)(14) to mean the right to defer payment of debt or to incur debt and defer its payment.

The CFPB’s Proposal

To facilitate compliance, proposed comment 2(a)(14)–4 provided an example of overdraft credit: funds extended by a financial institution to a consumer to pay transactions that overdraw a checking or other transaction account held at the financial institution whenever the consumer has a contractual obligation to repay the funds. The proposal noted, as stated in the 2016 Prepaid Final Rule, that a “person, in extending overdraft funds, has provided the consumer with ‘the

right . . . to incur debt and defer its payment.’”¹¹⁶

As part of defining the scope of credit transactions that would be covered under the proposed rule, proposed § 1026.62(a)(2) provided a definition of “overdraft credit”: any consumer credit extended by a financial institution to pay a transaction from a checking or other transaction account (other than a prepaid account as defined in § 1026.61) held at the financial institution when the consumer has insufficient or unavailable funds in that account. Proposed § 1026.62(a)(2) provided non-exhaustive examples, such as consumer credit extended through a transfer from a credit card account or overdraft line of credit. The definition of “overdraft credit” in proposed § 1026.62(a)(2) did not include credit exempt from Regulation Z pursuant to existing § 1026.3.

For the reasons discussed below, the CFPB is adopting comment 2(a)(14)–4 substantially as proposed and is adopting § 1026.62(a) as proposed. The CFPB is also adopting a proposed cross reference to the definition of “overdraft credit” at § 1026.62(b)(7) as proposed but with technical changes to conform to Code of Federal Regulations style requirements.

Comments Received

Several commenters, including State Attorneys General, consumer advocates, and nonprofits, agreed that when a financial institution extends funds to pay transactions that overdraw a checking account held at the financial institution, the financial institution is providing credit. A consumer advocate commenter stated that it is common sense that overdraft is credit and that regulators, including the Board, have long acknowledged that overdraft is credit. For example, the commenter noted that in 2005 the Board—along with the OCC, FDIC, and National Credit Union Administration—issued Joint Guidance on Overdraft Protection Programs, which stated that “[w]hen overdrafts are paid, credit is extended.”¹¹⁷ Among other examples, the commenter also pointed to a 2001 OCC interpretive letter stating that an “overdraft would be ‘credit,’ as defined by the Truth in Lending Act and Regulation Z.”¹¹⁸

A nonprofit commenter stated that the TILA statute defines “credit” broadly and does not exclude overdraft. The commenter further stated that when the Board excepted certain overdraft

¹¹⁶ 81 FR 83934, 84168 (Nov. 22, 2016).

¹¹⁷ 70 FR 9127, 9129 (Feb. 24, 2005).

¹¹⁸ OCC Interpretive Letter No. 914 (Aug. 3, 2001).

¹¹⁵ 15 U.S.C. 1602(f).

charges from Regulation Z's definition of "finance charge," the Board did not rely on an interpretation of the terms "finance charge" or "credit" in the statute (rather, the Board used its authority to create a regulatory exception). A consumer advocate commenter stated that it is immaterial to the definition of "credit" whether the financial institution has previously committed to pay overdrafts or has an absolute right to use every means to collect repayment; rather, "credit" simply means the right to defer payment of debt or to incur debt and defer its payment.

Several industry commenters asserted that overdraft is not credit under TILA and that TILA does not confer authority upon the CFPB to regulate overdraft. A commenter stated that the term "overdraft" does not appear in TILA's text and that the legislative history is similarly silent on the issue. Some commenters stated that, if the intent of Congress was for overdraft to be subject to TILA, then Congress would have amended TILA to supersede the Board's regulatory exception for overdraft.

Several commenters asserted that in 1969 when the Board excepted discretionary overdraft charges from Regulation Z's definition of "finance charge," it did so because the Board determined that discretionary overdraft is not "credit." A commenter asserted that the history of Regulation Z and various Board statements show that discretionary overdraft was never considered to be "credit." For example, the commenter pointed to a 1977 interpretive letter where Board staff stated that the regulatory exception for overdraft charges "relates only to regular demand deposit accounts which carry no credit features and in which a bank may occasionally, as an accommodation to its customer, honor a check which inadvertently overdraws that account."¹¹⁹

Several commenters stated that overdraft is not credit because the financial institution retains the right to decline transactions that would overdraw the account. Some commenters stated that overdraft is not credit because the consumer is obligated to pay the debt within a very short timeframe; for example, commenters pointed to a State court opinion interpreting the Iowa Consumer Credit Code definition of "credit" as not covering overdraft because the consumer "must pay the bank back immediately upon their next

deposit."¹²⁰ Some commenters also asserted that overdraft does not involve a written obligation, an interest rate, an application, or an underwriting process and otherwise lacks the hallmarks of credit.

The CFPB received few comments regarding the specific language of proposed comment 2(a)(14)–4 and proposed § 1026.62(a). A consumer advocate commenter generally supported the language of these proposed provisions and made some suggestions. First, in addition to the proposed language referencing a contractual "obligation," the commenter suggested referencing a contractual agreement regardless of whether the financial institution has agreed to limit its means of recourse if the consumer does not repay. Second, the commenter suggested revisions to reflect the possibility that overdraft credit could be extended by a different entity than the financial institution that holds the account. Third, the commenter suggested referencing an "asset account" rather than a "checking or other transaction account." Fourth, among other non-exhaustive examples of overdraft credit, the commenter suggested adding a reference to "overdraft services" as defined in Regulation E § 1005.17(a).

Final Rule

For the reasons discussed below, the CFPB is adopting comment 2(a)(14)–4 substantially as proposed and is adopting § 1026.62(a) as proposed. As proposed, § 1026.62(a)(2) provided the definition of "overdraft credit" and the CFPB is finalizing it without change. The definition of "overdraft credit" does not include credit exempt from Regulation Z pursuant to existing § 1026.3 (e.g., transactions in securities or commodities accounts in which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission). Nor does the definition of "overdraft credit" cover prepaid accounts, as the CFPB's Prepaid Accounts Rule already provides comprehensive consumer protections tailored to prepaid accounts.

Arguments that overdraft is not credit under TILA or that TILA does not confer authority upon the CFPB to regulate overdraft are not supported by the statute itself. The final rule is consistent with TILA's definition of "credit"¹²¹

and with the CFPB's statutory authority under TILA section 105(a).¹²²

TILA defines "credit" broadly and does not exclude overdraft. As stated in the 2016 Prepaid Final Rule, "[b]y authorizing or paying a transaction where the consumer does not have sufficient or available funds . . . to cover the amount of the transaction when the transaction is authorized or paid, the [institution] is allowing the consumer to incur a debt with the [institution] where payment of that debt is not immediate."¹²³ Thus, when a transaction exceeds the funds in the consumer's account and a financial institution elects to cover the transaction by extending overdraft funds, then the financial institution has provided the consumer with the right to defer payment of debt or to incur debt and defer its payment, and therefore has extended "credit" under the plain language of TILA's definition.¹²⁴

The fact that Congress did not legislatively supersede the Board's regulatory exception for overdraft does not demonstrate that overdraft is outside the scope of TILA. Rather, Congress provided a broad definition of "credit" under the statute and then delegated to the Board (and, later, the CFPB) the authority to prescribe regulations "to carry out the purposes of" TILA and which "may provide for such adjustments and exceptions . . . as in the judgment of the [agency] are necessary or proper to effectuate the purposes of [TILA], to prevent circumvention or evasion thereof, or to facilitate compliance therewith."¹²⁵ The Board used its delegated authority to create a regulatory exception from the definition of finance charge for certain overdraft fees and the CFPB is using its authority to narrow that exception.¹²⁶

¹²² 15 U.S.C. 1604(a).

¹²³ 81 FR 83934, 84167–68 (Nov. 22, 2016).

¹²⁴ 15 U.S.C. 1602(f).

¹²⁵ 15 U.S.C. 1604(a).

¹²⁶ Commenters disagreed about whether the Board, in issuing the original regulatory exception for certain overdraft fees from TILA's definition of finance charge, was relying on its delegated authority to create adjustments and exceptions or was using its delegated rule-writing authority to implement an interpretation of a statutory provision of TILA. The Board's original 1969 issuance over 50 years ago was not explicit about what authority it used for the overdraft charge exception. 34 FR 2002, 2004 (Feb. 11, 1969). And it neither discussed policy rationales nor interpretation of statutory text. The proposal did, however, invoke the Board's exception authority generally. 33 FR 15506 (Oct. 18, 1968). The inclusion of a specific "exception" for overdraft charges that would have met the general definition of finance charge but for the exception, in a rule that did not state it was an interpretation or engage in textual interpretation, suggests the exception was not created as an interpretive exercise. Regardless, the CFPB has put forward its interpretation of the relevant provisions of TILA in

¹²⁰ *Legg v. W. Bank*, 873 NW 2d 763, 770 (Iowa 2016).

¹²¹ 15 U.S.C. 1602(f).

¹¹⁹ 42 FR 22360, 22362 (May 3, 1977).

Commenters' assertion that the Board determined that discretionary overdraft is not "credit" conflates the definition of "credit" with the definition of "finance charge." The history of Regulation Z and the Board's statements show that the Board excepted certain overdraft charges from Regulation Z's definition of "finance charge," which would have been unnecessary if overdraft was not credit. The Board did not except overdraft from the definition of "credit." Existing Regulation Z's definition of "finance charge" excepts overdraft charges "unless the payment of such items and the imposition of the charge were previously agreed upon in writing."¹²⁷ But the fact that these charges were not considered "finance charges" under the regulation does not mean that the underlying overdrafts were not considered credit. For example, existing Regulation Z commentary acknowledges the existence of "incidental *credit* that is not extended under an agreement between the consumer and the financial institution."¹²⁸ One example of such incidental "credit" in the overdraft context is "*credit* inadvertently extended incident to an electronic fund transfer using a debit card, . . . if the bank and the consumer do not have an agreement to extend credit when the consumer's account is overdrawn."¹²⁹ Incidental overdraft credit remains "credit," notwithstanding that the Board excepted the overdraft charges from Regulation Z's definition of "finance charge."

Regarding the 1977 interpretive letter cited by a commenter, the CFPB notes that the letter addresses whether certain overdraft charges are finance charges, not whether overdraft is credit.¹³⁰ Board staff did not exclude overdraft from the definition of "credit." Rather, the letter states that the Board's regulatory exception for overdraft charges (*i.e.*, excepting them from Regulation Z's definition of "finance charge") "relates only to regular demand deposit accounts which carry no *credit features* and in which a bank may occasionally . . . honor a check which inadvertently overdraws that account."¹³¹ Existing Regulation Z commentary similarly distinguishes between an account with incidental overdraft credit and an account with an overdraft "credit

feature."¹³² On a deposit account with no "credit feature," as explained above, charges for incidental overdraft credit are excepted from existing Regulation Z's definition of "finance charge"—but nonetheless the incidental overdraft credit remains "credit."

Commenters' argument that overdraft is not credit because the financial institution retains the right to decline overdraft transactions is not consistent with the text of TILA and likewise appears to conflate the definition of "credit" with the definition of "finance charge." The Board excepted overdraft charges from Regulation Z's definition of "finance charge" depending on whether the payment and charge were "previously agreed upon" in writing.¹³³ The TILA definition of "credit" requires a "right" (*i.e.*, the right to defer payment of debt or to incur debt and defer its payment)—but does not require that such right be previously agreed upon.¹³⁴ Notwithstanding that a financial institution had retained discretion and could have declined an overdraft transaction, when the financial institution nonetheless elects to cover the transaction by extending overdraft funds, then the financial institution has provided the consumer with the "right" to defer payment of debt or to incur debt and defer its payment, and has therefore extended "credit" under the plain language of TILA's definition.¹³⁵ Moreover, it is well established that a financial institution's right to decline transactions does not prevent those transactions from constituting credit under TILA: as the CFPB noted in its proposal and previously in the 2016 Prepaid Final Rule, credit card issuers reserve the right to reject individual transactions in their contractual agreements, yet credit card programs are regulated as credit under TILA and Regulation Z.¹³⁶

Regarding commenters' statements that overdraft is not credit because the consumer is obligated to pay the debt within a very short timeframe, such assertion is not supported by TILA. When a financial institution extends overdraft funds that the consumer must

pay back upon their next deposit, the institution "is allowing the consumer to incur a debt with the [institution] where payment of that debt is not immediate."¹³⁷ And even though the consumer's next deposit to repay the institution is typically soon (*e.g.*, on the consumer's next payday), TILA's definition of "credit" does not have an exclusion for short-term repayment periods. TILA similarly does not support commenters' assertions that overdraft is not credit because it lacks certain so-called hallmarks of credit (*e.g.*, a written obligation, an interest rate, an application), or an underwriting process. TILA broadly defines "credit" to simply mean the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.¹³⁸ TILA does not require a transaction to have any of the so-called hallmarks to be considered credit. Moreover, to the extent that commenters' factual assertions accurately describe current market practices, some such practices might not align with Regulation Z because they pertain to currently non-covered overdraft credit (*e.g.*, overdraft credit with charges excepted from existing Regulation Z's definition of "finance charge"). Creditors may need to change their practices as a result of the final rule to come into compliance, but that does not mean that such overdraft practices today are not credit under TILA.

In response to a commenter's suggestion that proposed comment 2(a)(14)–4 reference not only a contractual "obligation" but also a contractual agreement regardless of the recourse, the CFPB is not adopting this specific suggestion but comment 2(a)(14)–4, as finalized, highlights that it provides but one "example" of overdraft credit. Comment 2(a)(14)–4 is not an exhaustive list of examples. As proposed, § 1026.62(a)(2) provided the definition of overdraft credit and the CFPB is finalizing it without change.

Regarding the commenter's suggested revisions to reflect the possibility that overdraft credit could be extended by a different entity than the financial institution that holds the account, the CFPB notes that such revisions are unnecessary because such credit does not fall within the Board's regulatory exception for overdraft and thus such credit is generally covered under existing Regulation Z. Similarly, it is also unnecessary to adopt the commenter's suggestion to reference an "asset account," rather than a "checking

this rule and explained why the statute covers overdraft fees.

¹²⁷ 12 CFR 1026.4(c)(3).

¹²⁸ Regulation Z comment 13(i)–2 (emphasis added).

¹²⁹ *Id.* (emphasis added).

¹³⁰ 42 FR 22360, 22362 (May 3, 1977).

¹³¹ *Id.* (emphasis added).

¹³² Compare Regulation Z comment 13(i)–2 (providing that credit inadvertently extended incident to an electronic fund transfer using a debit card is governed solely by Regulation E error resolution procedures), with Regulation Z comment 13(i)–3 (providing that certain Regulation Z error resolution provisions apply if a consumer uses a debit card to withdraw money at an automated teller machine and activates an overdraft credit feature).

¹³³ 12 CFR 1026.4(c)(3).

¹³⁴ 15 U.S.C. 1602(f); see also 12 CFR 1026.2(a)(14).

¹³⁵ 15 U.S.C. 1602(f).

¹³⁶ 81 FR 83934, 84176 (Nov. 22, 2016).

¹³⁷ *Id.* at 84167–68.

¹³⁸ 15 U.S.C. 1602(f).

or other transaction account,” given that the Board referenced a “checking or other transaction account” when it excepted certain overdraft charges from Regulation Z’s definition of “finance charge.”¹³⁹

In response to the commenter’s suggestion to revise proposed § 1026.62(a)(2) by adding a reference to “overdraft service” as defined in Regulation E § 1005.17(a), the CFPB is not doing so because, consistent with TILA’s broad definition of “credit,” § 1026.62(a)(2) “includes, but is not limited to, any . . . overdraft line of credit.” The commenter’s suggested revision is unnecessary and could introduce confusion because the term “overdraft service” as defined in Regulation E § 1005.17(a) “does not include any payment of overdrafts pursuant to . . . [a] line of credit subject to Regulation Z (12 CFR part 1026), including transfers from . . . [an] overdraft line of credit.”¹⁴⁰

2. Clarifications to Definition of Open-End Credit (§ 1026.2(a)(20))

The term “open-end credit” is defined in § 1026.2(a)(20) as (1) consumer “credit,” (2) that is extended under a “plan,” (3) where the person extending the credit may impose a “finance charge” from time to time on an outstanding unpaid balance, (4) the person extending the credit is a “creditor,” (5) the person extending the credit reasonably contemplates repeated transactions, and (6) the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid. This definition is consistent with TILA’s definitions of “open end credit plan” and “open end consumer credit plan,” which mean a plan under which the creditor reasonably contemplates repeated transactions, which prescribes the terms of such transactions, and which provides for a finance charge which may be computed from time to time on the outstanding unpaid balance.¹⁴¹

The CFPB’s Proposal

The CFPB proposed to clarify that virtually all overdraft credit that financial institutions provide today, such as through negative balances on checking accounts, would meet the Regulation Z definition of open-end credit, but for Regulation Z excepting overdraft fees from the definition of

finance charge. For clarity and to facilitate compliance, the CFPB proposed to add commentary regarding two terms used in the definition of open-end credit: “plan” and “finance charge.”

The CFPB proposed to add comment 2(a)(20)–2.iv to clarify that with respect to covered overdraft credit, a “plan” means a program where the consumer is obligated contractually to repay any credit extended by the creditor, even if the creditor retains discretion not to extend credit in individual transactions.

The CFPB also proposed to add comment 2(a)(20)–4.iii to explain that charges for paying a transaction that overdraws a consumer’s account generally would be “finance charges” unless they are expressly excluded from the definition of finance charge. Proposed comment 2(a)(20)–4.iii also states that these are finance charges “imposed from time to time on an outstanding unpaid balance” as long as there is no specific amount financed for the plan for which the finance charge, total of payments, and payment schedule can be calculated.

As discussed below, the CFPB is finalizing these changes substantially as proposed with only minor technical revisions for clarity, including to ensure that the changes to the commentary apply only to very large financial institutions.

Comments Received

Interpretation That Covered Overdraft Credit is Generally Open-End Credit

Consumer advocate commenters supported the proposed rule’s analysis concluding that overdraft credit is open-end credit. Specifically, the commenters agreed with the CFPB’s analysis of some of the specific elements of “open-end credit.” First, one commenter stated that overdraft fees are payable by the consumer and are imposed directly by banks as an incident to and as a condition of the extension of credit, and therefore, meet the definition of a “finance charge.” Second, that commenter agreed that a financial institution that imposes an overdraft fee on an unpaid overdraft is imposing a finance charge from time to time on an unpaid balance, regardless of whether the charge is on the deposit account or a separate credit account. Third, the commenter agreed that a very large financial institution that extends covered overdraft credit would be a “creditor” under TILA because that financial institution would regularly extend consumer credit subject to a finance charge, and the obligation is payable to that institution by agreement.

Finally, the commenter agreed that financial institutions that extend overdraft credit reasonably contemplate that consumers may engage in repeat overdrafts.

Some commenters disagreed with the proposal’s determination that overdraft credit is open-end credit. One commenter questioned the CFPB’s authority to categorize overdraft fees as “open-end credit,” explaining that they believe the Board appropriately excepted from the definition of “finance charge” overdraft fees that are not expressly agreed upon in writing because this exception aligned with the statutory intent of TILA to regulate finance charges on “open end consumer credit” plans. The commenter did not provide further explanation as to why the exception aligned with TILA’s statutory authority. This commenter appears to take issue with the revised exceptions to the definition of “finance charge” and not with the definition of “open-end credit.” The CFPB addresses the revisions to these exceptions in part IV.D below.

“Plan” (Comment 2(a)(20)–2.iv)

A consumer advocate commenter generally supported proposed comment 2(a)(20)–2.iv. Specifically, the commenter agreed that a creditor extends credit even if (1) it does not agree in writing to extend the overdraft credit or (2) it retains the discretion to refuse to extend that credit in the future.

However, the commenter recommended that the language regarding what constitutes a “plan” under the definition of “open-end credit” be changed from “obligated contractually to pay” to “obligated or contractually agrees to pay” because, the commenter stated, that financial institutions may be able to manipulate whether a consumer is considered “obligated contractually to pay” by giving the consumer the right to cancel authorization for repayment or limiting the financial institution’s recourse for repayment.

The commenter also suggested that the comment clarify that a program will be considered a “plan” when the creditor does not extend credit for transactions once the consumer has exceeded a certain amount, whether or not the limit is disclosed.

Finance Charge Imposed From Time to Time on an Outstanding Balance (Comment 1026.2(a)(20)–4.iii)

A consumer advocate commenter supported comment 1026.2(a)(20)–4.iii, which clarifies that overdraft fees are finance charges imposed from time to time on an outstanding balance if there

¹³⁹ 12 CFR 1026.4(b)(2).

¹⁴⁰ 12 CFR 1005.17(a)(1).

¹⁴¹ 15 U.S.C. 1602(j).

is no specific amount financed for the plan and regardless of whether the fees are imposed on the deposit account or the credit account. The commenter specifically supported two aspects of the statement: (1) that there is a finance charge from time to time on the outstanding balance of a plan regardless of whether the charge is on the deposit account or separate credit account; and (2) there is a finance charge from time to time on the outstanding balance of a plan if there is no specific amount financed for the plan because the amount of any overdraft is never precalculated from inception of the plan.

The commenter suggested that the term “deposit account” in the comment be replaced with “asset account” because deposit account is undefined and could present problems because there is no established regulatory or caselaw definition for deposit account.

Industry commenters stated that the proposed comment 2(a)(20)–4.iii would introduce ambiguity around finance charges. The commenters stated that the proposed comment would make it difficult for financial institutions to determine their obligations when establishing overdraft credit products. The commenters stated that the uncertain financed amount for a plan would challenge a financial institution’s compliance efforts and their ability to transparently disclose terms to consumers.

An individual commenter questioned the CFPB’s conclusion that an overdraft fee is “imposed from time to time on an outstanding unpaid balance. . . .” The commenter stated that an overdraft fee is imposed because a transaction exceeded the dollar amount in the account, and it is imposed regardless of whether the transaction is paid by the financial institution or the amount of the overdraft credit extended.

Final Rule

For the reasons stated below, the CFPB is finalizing comments 2(a)(20)–2.iv and 2(a)(20)–4.iii substantially as proposed with technical revisions for clarity, including to ensure that the comments address only the subject of the rule, *i.e.*, when a very large financial institution covers a transaction that would otherwise overdraft a consumer’s account.

Like the proposal, the final rule does not revise the definition of “open-end credit.” Rather, the final rule adds commentary to clarify how overdraft products meet the elements of the definition of “open-end credit.” Specifically, and as discussed herein, the final rule adds two comments to

clarify (1) the definition of a “plan” and (2) that overdraft fees are charges “imposed from time to time on an outstanding unpaid balance” as long as there is no specific amount financed for the plan for which the finance charge, total of payments, and payment schedule can be calculated.

The commentary does not change the term “open-end credit” in Regulation Z, which implements the statutory term “open end credit plan” under TILA. Rather, the commentary provides clarification in light of the revisions made to the regulatory exceptions to the definition of “finance charge.” Moreover, the commentary facilitates compliance with TILA by helping participants understand how overdraft products may be subject to TILA’s requirements as open-end credit.

In addition, consistent with the proposal and as discussed below, the CFPB concludes that virtually all overdraft credit that financial institutions provide today, such as through negative balances on checking accounts, would meet the Regulation Z definition of open-end credit, but for Regulation Z excepting overdraft fees from the definition of finance charge. Thus, when above breakeven overdraft credit becomes covered overdraft credit on the effective date of this rule, such credit will also likely be considered open-end credit.

(1) *Credit*. As discussed above, a person extending overdraft funds has provided credit under TILA and Regulation Z.¹⁴²

(2) *Plan*. An account agreement offered in connection with overdraft credit would—but for the Regulation Z exceptions of overdraft fees from the definition of finance charge—constitute a “plan” consistent with the definition of “open end credit plan” in TILA.¹⁴³ Specifically, but for the Regulation Z exceptions, the account agreement, consistent with the language of comment 2(a)(20)–2.i, would be “a contractual arrangement between the creditor [the institution offering checking account overdraft credit] and the consumer.”

The CFPB is finalizing proposed comment 2(a)(20)–2.iv generally as proposed (but with technical revisions for clarity) to clarify that the reservation of discretion in connection with covered overdraft does not mean the absence of an open-end credit plan. The CFPB understands that financial institutions offering automated overdraft services include in their agreements’ provisions governing how the overdraft service will

operate and information about overdraft fees. These terms-and-conditions documents typically stipulate that consumers using overdraft programs must and do agree to repay the debt created by an overdraft and the related fee, indicating that a contractual arrangement between the creditor and the consumer exists. Although these agreements typically state that the financial institution retains discretion to authorize or decline any particular overdraft, as a practical matter, financial institutions operating automated overdraft programs exercise limited, if any, discretion in authorizing particular transactions as long as the overdraft transaction is within the overdraft coverage limit that the institution has internally established. The CFPB notes that credit card issuers similarly reserve the right to reject individual transactions in their contractual agreements, yet credit card programs are open-end credit plans under TILA and Regulation Z. Treating the provision of automated overdraft credit in a comparable way promotes consistency and follows from the text of TILA and Regulation Z. Therefore, the CFPB has determined that an account agreement offered in connection with overdraft credit is a plan notwithstanding that the person offering the agreement reserves the right to not extend credit on individual transactions.

Regarding the commenter’s suggestion that comment 2(a)(20)–2.iv be revised to state that a “plan” under the definition of open-end credit means a program where the consumer is “obligated to or contractually agrees to repay any credit extended by the creditor” instead of stating that the consumer is “obligated contractually to repay . . .”, the CFPB is not adopting this specific suggestion. However, the CFPB has determined that certain minor changes would help make clear that the comment is an illustrative example. In particular, comment 2(a)(20)–2.iv, as finalized, replaces “means” with “includes” to state “a plan includes a program where the consumer is obligated contractually to repay any credit extended by the creditor.” The comment also highlights that it is providing one “example” of overdraft credit and not an exhaustive list of all overdraft credit.

In response to the same commenter’s suggestion that comment 2(a)(20)–2.iv be revised to note that a plan under the definition of open-end credit will be a plan regardless of whether the consumer receives disclosure of the overdraft credit limit, the CFPB finds this clarification unnecessary since existing comment 2(a)(20)–5.ii already clarifies

¹⁴² 15 U.S.C. 1602(f); 12 CFR 1026.2(a)(14).

¹⁴³ 15 U.S.C. 1602(j).

that a creditor does not need to establish a specific credit limit for a line of credit.

The final rule also replaces “covered overdraft credit” with “covered asset account” to ensure that changes to the commentary apply only to very large financial institutions.

(3) *Imposing a “finance charge” from time to time.* Overdraft credit is generally subject to fees that would meet the definition of “finance charges” but for the exceptions created by Regulation Z to that statutory definition. As discussed elsewhere, this final rule modifies those Regulation Z exceptions so that above breakeven overdraft credit fees will be finance charges when this rule becomes effective. Thus, as explained below, the CFPB has determined that an institution offering covered overdraft credit, including above-breakeven overdraft credit, is generally imposing a finance charge from time to time because there is no specific amount financed for the plan for which the finance charge, total of payments, and payment schedule can be calculated.

The CFPB is finalizing comment 2(a)(20)–4.iii generally as proposed (but with technical revisions for clarity) to clarify that (1) charges imposed by a very large financial institution for paying a transaction that overdraws a consumer’s account generally are finance charges unless they are excluded from the definition of finance charge; and (2) these are charges “imposed from time to time on an outstanding unpaid balance” as long as there is no specific amount financed for the plan for which the finance charge, total of payments, and payment schedule can be calculated. The CFPB does not anticipate that there will be a specific amount financed for overdraft credit at the time any such credit plan is established because the CFPB anticipates that the credit lines on these credit plans generally will be replenishing (discussed under (6) *Amount of credit replenishes when outstanding balance is repaid*, below). In such cases, an amount financed for the plan cannot be calculated because the creditor will not know at the time the plan is established the amount of credit that will be extended under the plan. Therefore, to the extent that any finance charge may be imposed in connection with such a credit plan, the credit plan will meet this criterion.

Regarding the comment that an overdraft fee is not “imposed from time to time on an outstanding unpaid balance” because the fee is charged on the occurrence of there being nonsufficient funds in the consumer’s account and not based on the extension

of credit, the CFPB disagrees for the reasons explained in more detail in part IV.D addressing the definitions of “credit” and “finance charge.”

With respect to the commenter stating that comment 2(a)(20)–4.iii would introduce ambiguity around finance charges, the commenter explained that this is because a plan with no specific finance amount makes it harder for financial institutions to determine their financial risks and challenges an institution’s ability to disclose terms to consumers. The CFPB notes that this characteristic in overdraft credit is no different from any other open-end credit product that similarly does not have a specific amount financed, and which generally must also comply with Regulation Z disclosure and other regulatory requirements.

Regarding the commenter’s suggestion that comment 2(a)(20)–4.iii reference an “asset account,” rather than a “deposit account,” the CFPB is not adopting this specific suggestion. For the same reasons provided in relation to “overdraft credit” in part IV.C.1, the CFPB finds it unnecessary to change the term to “asset account.” However, the final rule replaces “deposit account” with “covered asset account” to ensure that regulatory changes are limited to the subject of this rule, *i.e.*, overdraft credit provided by very large financial institutions. The final rule also includes other clarifying edits, including to ensure that comment 2(a)(20)–4.iii properly cross-references § 1026.4.

(4) *Person extending credit is a creditor.* Assuming that overdraft fees are finance charges, an institution providing covered overdraft credit is a “creditor” for purposes of the definition of “open-end credit.” A “creditor” is generally defined under Regulation Z to mean a person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no contract.¹⁴⁴ Thus, to the extent that overdraft credit is subject to a finance charge and is accordingly covered overdraft credit, it is also extended by a creditor if the creditor “regularly extends” overdraft credit.

The CFPB anticipates that most persons offering covered overdraft credit regularly extend overdraft credit and therefore would meet the definition of “creditor.” Further, if an institution providing open-end covered overdraft credit is considered a “card issuer,”

then it is also considered a creditor under existing § 1026.2(a)(17)(iii) for purposes of Regulation Z, subpart B.

(5) *Reasonably contemplates repeated transactions.* Institutions providing overdraft credit typically contemplate repeated overdraft transactions. As noted above, the CFPB understands that financial institutions offering automated overdraft services include in their agreements’ provisions governing how the overdraft service will operate and including information about overdraft fees. These agreements contemplate that consumers may overdraw repeatedly. Further, the CFPB found that 93.2 percent of overdraft and NSF fees were assessed on consumers with four or more overdraft or NSF transactions per year.¹⁴⁵

(6) *Amount of credit replenishes when outstanding balance is repaid.* Institutions providing overdraft credit generally replenish the amount of overdraft credit available to consumers up to any overdraft coverage limit (*i.e.*, consumers’ “shadow lines”) to the extent that any outstanding overdraft balance is repaid. This replenishable credit distinguishes open-end credit from a series of advances made pursuant to a closed-end credit loan commitment, but it does not mean that the credit plan must always be replenished to the original amount. The creditor may refuse to extend new credit in a particular case due to changes in the creditor’s financial condition or the consumer’s creditworthiness, if permitted by Regulation Z. While consumers should have a reasonable expectation of obtaining credit as long as they remain current, further extensions of credit need not be an absolute right for the plan to meet the self-replenishing criterion. Because the CFPB anticipates that financial institutions will generally replenish overdraft credit to the extent that any outstanding overdraft balance is repaid, the CFPB concludes that covered overdraft credit plans are generally replenishing.

3. Covered Overdraft Credit (§ 1026.62(b)(3)), Non-Covered Overdraft Credit (§ 1026.62(b)(6)), and Card Issuer (§ 1026.2(a)(7))

The CFPB’s Proposal

The CFPB proposed to define “covered overdraft credit” as overdraft credit that is subject to a finance charge or is payable by written agreement in more than four installments and “non-covered overdraft credit” as overdraft credit that is not subject to a finance

¹⁴⁴ See § 1026.2(a)(17)(i).

¹⁴⁵ CFPB 2017 Data Point at 13.

charge and is not payable by written agreement in more than four installments. The purpose of the proposed definitions is to assist with ease of reference to overdraft credit that is subject to, or covered by, Regulation Z. As discussed in more detail in part IV.D, some charges imposed in connection with overdraft credit are not considered finance charges.

The proposed definition of “overdraft credit” was limited to consumer credit, but, even with that qualification, not all overdraft credit would be subject to Regulation Z under the proposed rule. Many provisions of Regulation Z apply to a “creditor,” which generally is defined at § 1026.2(a)(17)(i) as “[a] person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments.” Thus, under the proposed rule, a financial institution must offer overdraft credit that is subject to a finance charge or is payable by written agreement in more than four installments (*i.e.*, covered overdraft credit) to be considered a creditor under Regulation Z. (Any financial institution offering overdraft credit will generally satisfy the definition of “regularly” under § 1026.2(a)(17)(v)). Because some charges imposed in connection with overdraft credit are not considered finance charges, a financial institution may charge for overdraft credit without being considered a creditor under Regulation Z if certain requirements are met.

Section 1026.2(a)(7) currently defines “card issuer” as a person that issues a credit card or that person’s agent with respect to the card. Unlike other creditors, card issuers are subject to Regulation Z even if they extend credit that is not subject to a finance charge and is not payable by written agreement in more than four installments. However, this does not apply to overdraft credit that is not subject to a finance charge or repayable by written agreement in more than four installments, even if the financial institution extending such credit would otherwise be considered a card issuer.¹⁴⁶

Under the proposal, extensions of overdraft credit that are not subject to a finance charge and are not payable by written agreement in more than four

installments (non-covered overdraft credit) would continue to not be covered by Regulation Z. Further, under the proposal, institutions providing debit cards that access only non-covered overdraft credit would continue not to be card issuers and would therefore not be creditors under § 1026.2(a)(17)(iii).

Comments Received and Final Rule

A commenter questioned the CFPB’s authority to define covered and non-covered overdraft credit because the commenter stated that Congress has not directed the CFPB to differentiate between these two terms. The commenter questioned the CFPB’s justification for departing from its prior approach to treating overdraft under Regulation Z because the delineation between covered and non-covered overdraft credit introduces unnecessary complexity.

The CFPB is finalizing the definition of “covered overdraft credit” and “non-covered overdraft credit” as proposed. With the addition of these two definitions, the CFPB does not create any substantive changes to TILA or Regulation Z. Instead, the additional definitions carry out the purposes of TILA by helping participants understand which forms of overdraft are subject to TILA’s requirements. The CFPB did not receive any comments on the definition of “card issuer” and is finalizing this definition as proposed because the CFPB has determined that allowing financial institutions to offer debit cards that access only below breakeven overdraft credit without being subject to Regulation Z would further the goals of the final rule.

4. Covered Overdraft Credit Account (§ 1026.62(b)(4))

The CFPB’s Proposal

The proposed rule defined “covered overdraft credit account” as a credit account through which a financial institution extends or can extend covered overdraft credit. The term would include any line of credit, credit card account, credit feature, credit line, credit plan, or credit subaccount through which the financial institution extends or can extend covered overdraft credit. Proposed § 1026.62(c) would require very large financial institutions to structure covered overdraft credit as a separate credit account. Therefore, the term “covered overdraft credit account” would assist in ease of reference to these separate credit accounts and in distinguishing them from linked checking or other transaction accounts.

Comments Received and Final Rule

The comments received on this proposed definition agreed with the CFPB’s position, and the CFPB is finalizing the definition of “covered overdraft credit account” without change. One consumer advocate commenter supported the definition of “covered overdraft credit account” because it believes that any account that can be used to access overdraft credit should be covered by the rule, regardless of the technicalities through which the credit is extended. The commenter stated that a narrower, more specific definition may encourage evasions of the rule.

For the reasons stated above, the CFPB is finalizing the definition of “covered overdraft credit account” as proposed.

D. Changes to Definition of “Finance Charge”

In explaining the meaning of “finance charge,” TILA section 106(a) (15 U.S.C. 1605(a)) provides that “the amount of the finance charge in connection with any consumer credit transaction shall be determined as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit.”¹⁴⁷ The finance charge does not include charges of a type payable in a comparable cash transaction.¹⁴⁸

Similarly, under Regulation Z, the term “finance charge” generally is defined in § 1026.4(a) to mean “the cost of consumer credit as a dollar amount.” It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.

Regulation Z currently excludes certain fees or charges imposed by a financial institution for paying items that overdraw an account from the definition of “finance charge” unless “the payment of such items and the imposition of the charge were previously agreed upon in writing.”¹⁴⁹ Additionally, where the payment of such items and imposition of the charge were previously agreed upon in writing, when a creditor imposes a service, transaction, activity, or carrying charge for each item that results in an overdraft

¹⁴⁶ Comment 2(a)(15)–2.ii.A. This comment provides that a debit card is not a credit card if there is no credit agreement, even if the creditor occasionally honors an inadvertent overdraft. Because the debit card is not considered a “credit card” under Regulation Z, a financial institution offering a debit card that can access non-covered overdraft credit is not considered a card issuer.

¹⁴⁷ 15 U.S.C. 1605(a).

¹⁴⁸ *Id.* The term finance charge also excludes certain fees and amounts imposed by third party closing agents.

¹⁴⁹ 12 CFR 1026.4(c)(3).

on an account, such fees are excluded from the definition of finance charge if they do not exceed the charges imposed for paying or returning overdrafts on a similar transaction account that does not have such a written agreement.¹⁵⁰ Neither of these exclusions appear within the statutory text of TILA.

The CFPB proposed to amend the definition of “finance charge” in § 1026.4 in three ways. First, it proposed to modify the partial exception provided in § 1026.4(b)(2) for certain charges imposed on checking and other transaction accounts so that the partial exception would no longer apply to “covered asset accounts” as defined in proposed § 1026.62. Second, it proposed to add § 1026.4(b)(12) to provide examples of charges imposed in connection with overdraft credit that are finance charges. Third, it proposed to amend the exception provided in § 1026.4(c)(3) so that the exception would no longer apply to “above breakeven overdraft credit” as defined in proposed § 1026.62. These proposed amendments are intended to specify which overdraft transactions include a finance charge and, therefore, may be subject to the requirements of TILA and Regulation Z. Each of these proposed changes are discussed below.

1. Examples of Finance Charges (§ 1026.4(b)(2))

Section 1026.4(b) provides examples of types of charges that are finance charges, except if those charges are specifically excluded under existing § 1026.4(c) through (e). In particular, existing § 1026.4(b)(2) provides that examples of finance charges generally include service, transaction, activity, and carrying charges imposed on a checking or other transaction account (except a prepaid account as defined in § 1026.61). However, the Board added a partial exception to this example such that if a charge for an account with a credit feature does not exceed the charge for a similar account without a credit feature, then the charge is not a finance charge under existing § 1026.4(b)(2) and its commentary.¹⁵¹ As discussed in the proposal, the Board and the CFPB have amended § 1026.4(b)(2) and its commentary over time.¹⁵²

The CFPB proposed to amend this current example of a finance charge as described in § 1026.4(b)(2) and comment 4(b)(2)–1 to set forth a different rule for when charges imposed on a covered asset account, as that term

is defined in § 1026.62(b)(2), would be finance charges. The CFPB also proposed to add § 1026.4(b)(12) to provide examples of finance charges with regard to a covered asset account, as defined in proposed § 1026.62(b)(2). These proposed changes specified which overdraft transactions include a finance charge and, therefore, may be subject to the requirements of TILA and Regulation Z.

Proposed § 1026.4(b)(12)(i) described as an example of a finance charge any service, transaction, activity, or carrying charges imposed on the separate credit account required by § 1026.62(c), which is also a covered overdraft credit account. Proposed § 1026.4(b)(12)(ii) described as an example of a finance charge any service, transaction, activity, or carrying charges imposed on the covered asset account to the extent the charge exceeds a comparable charge imposed on a checking or other transaction account that does not have overdraft credit. Proposed § 1026.4(b)(12)(iii) then described certain charges imposed on a checking or other transaction account that does not have overdraft credit that are not comparable to charges imposed on a covered asset account, which, by definition (see § 1026.62(b)(2)), does have overdraft credit tied to it and is provided by a very large financial institution. As discussed in the proposal, the proposed limitations in § 1026.4(b)(12)(iii)(A) through (E) would prohibit a very large financial institution from comparing charges that are not comparable cash transactions or from using comparisons in a way that may lead to evasion of the requirements of Regulation Z. These proposed changes would broaden the example of a “finance charge” for covered asset accounts to apply the applicable rules to such accounts so that the full cost of credit is more accurately disclosed. For the reasons discussed below, the CFPB is finalizing these proposed revisions with certain clarifying changes.

Finance Charges Generally

Several commenters, including industry trade groups, objected to the CFPB’s proposed changes to § 1026.4(b)(2) and (b)(12), while other commenters, including consumer advocate and academic commenters, supported the changes. Most commenters did not address the specific language of the proposed changes to § 1026.4(b)(2) and (b)(12), focusing instead on broader concerns. One consumer advocate commenter supported the language of the proposed changes and suggested certain changes, including adding additional

commentary, an additional example, and an additional comment related to eliminating the participation fee exception for covered asset accounts.

Commenters opposing the proposed changes argued that the CFPB’s proposal misclassifies overdraft as “credit” and, because overdraft is not credit, overdraft charges are not a “finance charge” under TILA. As discussed above, arguments that overdraft is not credit under TILA are not supported by the statute itself; TILA defines “credit” broadly and does not exclude overdraft.

Industry commenters opposing the proposed changes also argued that, even if overdraft is “credit,” overdraft charges are not incident to or a condition of the extension of credit and therefore do not meet the definition of a “finance charge.” These commenters argued that overdraft charges are service charges applied, for example, for keeping an overdrawn account open or compensating for the failure to timely remedy the overdraft. Commenters pointed to case law that they believe supports this characterization of overdraft charges. At least one industry commenter further argued that the CFPB lacks the authority under TILA to redefine covered overdraft fees as finance charges.

Commenters supporting the proposal argued that the term “finance charge” is broadly defined and contains no limitation for overdraft charges in its definition. Members of Congress commented that the proposed rule is consistent with and helps fulfill TILA’s purpose by ensuring that consumers have critical protections when offered credit. A consumer advocate commenter stated that overdraft charges imposed on a credit account are clearly incident to credit, and that charges for credit imposed on other asset accounts are part of the cost of the credit and incidental to that credit, even if there are comparable charges in another non-credit context. A consumer advocate commenter provided specific suggestions for amending existing comments 4(b)(2)–1 and 4(b)(2)–1.ii.

With respect to commenters stating that an overdraft charge is not a “finance charge” under TILA and that TILA does not confer authority upon the CFPB to regulate overdraft, such assertions are inconsistent with TILA.¹⁵³ The definition of “finance charge” under TILA section 106(a) and in Regulation Z under § 1026.4(a) is very broad and, unless specifically excluded by the regulation, includes amounts imposed directly or indirectly by the

¹⁵⁰ 12 CFR 1026.4(b)(2).

¹⁵¹ Regulation Z comment 4(b)(2)–1.

¹⁵² 89 FR 13852, 13864 (Feb. 23, 2024).

¹⁵³ See part III.A for a discussion of the CFPB’s authority under TILA section 105(a).

creditor as an incident to or condition of the extension of credit.

Moreover, the CFPB discussed the regulatory history of the overdraft exception extensively in the prepaid rule proposal.¹⁵⁴ As summarized in that proposal, although Congress did not exempt overdraft services or similar programs offered in connection with deposit accounts from TILA, the Board in issuing Regulation Z in 1969 carved financial institutions' "bounce-protection" programs out of the new regulation.¹⁵⁵ The Board revisited the exception of bounce protection programs from Regulation Z over the years, including signaling concern with overdraft services in a number of rulemaking actions.¹⁵⁶ In particular, the Board revisited the exception of bounce protection programs from Regulation Z in 1981, in a rulemaking in which the Board implemented the Truth in Lending Simplification and Reform Act.¹⁵⁷ In the related proposal, the Board considered adjusting its overdraft exception to apply only to "inadvertent" overdrafts because, as the Board stated, "a charge imposed for honoring an instrument under any agreement between the institution and the consumer is a charge imposed for a credit extension and thus fits the general definition of a finance charge, whether or not the charge and the honoring of the check are reflected in a written agreement. The characterization of the charge will thus depend on whether 'credit' has been extended, within the meaning of the regulation."¹⁵⁸ Further, in a 2002 proposal to amend Regulation Z with regard to the status of certain credit card-related fees and other issues, the Board noted that some overdraft services may not be all that different from overdraft lines of credit, which typically include a written agreement, and requested comment on whether and how Regulation Z should be applied to banks' bounce-protection services.¹⁵⁹ That proposal cited to Regulation Z's exclusion of a charge for overdraft unless the payment of such items and the imposition of the charge are previously agreed upon in writing and noted that "[f]ees imposed in

connection with 'bounce protection' services may or may not meet the definition of a finance charge."¹⁶⁰ This regulatory history indicates that, but for the exception established under Regulation Z, a charge for overdraft would fall within the definition of a "finance charge."

Some comments stated that an overdraft charge is not a finance charge because it is a fee for providing a service related to the account and is imposed regardless of whether credit is extended such that it is not a fee incident to or a condition of the extension of credit. The CFPB notes, however, that this argument appears inconsistent with current market practices, which do often distinguish between overdraft fees and other fees. Financial institutions subject to this rule generally make clear in their account agreements that overdraft coverage is a separate feature with fees that often differ from those charged when an overdrawing transaction is declined. Such financial institutions also often do not assess NSF fees on declined card transactions, and many such financial institutions are no longer charging NSF fees on any types of transactions. These considerations highlight the fact that the overdraft fee is incident to or a condition of the extension of credit, even if the financial institution charges an NSF fee, characterizes the fee as a bank account service fee, or charges the fee for keeping an overdraft account open or because an overdraft is not repaid within a certain period of time.

For these reasons, CFPB is finalizing the proposed change to § 1026.4(b)(2) and corresponding changes to comment 4(b)(2)–1 to set forth a different rule for when charges imposed on a covered asset account, as that term is defined in § 1026.62, are finance charges. As discussed below, the CFPB is also finalizing § 1026.4(b)(12) to provide an example of a finance charge with regard to a covered asset account.

The CFPB declines to incorporate the commenter's suggestions on commentary 4(b)(2)–1 because it believes that finalizing commentary 4(b)(2)–1 as proposed makes clear that charges applied to covered asset accounts are evaluated under § 1026.4(b)(12). The CFPB declines to incorporate the commenter's suggested revisions on commentary 4(b)(2)–1.ii. While the CFPB recognizes that retaining the existing language regarding

"paying or returning" an item on a similar account without a credit feature could be read to imply that a comparable account with overdraft is nevertheless an account without a credit feature, the discussion of "overdraft credit" above in part IV.C.1 notes the distinction between incidental credit and a credit feature.

Example of a Finance Charge for the Separate Credit Account

With regard to a covered asset account, proposed § 1026.4(b)(12)(i) described as an example of a finance charge any service, transaction, activity, or carrying charge imposed on the separate credit account required by § 1026.62(c). Proposed section 1026.62(c) stated that a very large financial institution shall structure covered overdraft credit as a separate credit account and stated that the separate credit account is a covered overdraft credit account.

An industry commenter objected to the lack of language in proposed § 1026.4(b)(12)(i) to account for a comparable cash transaction or to provide for a comparison to a charge imposed on a checking or other transaction account that does not have overdraft credit. This commenter argued that the lack of such language contravenes the specific exclusion in TILA section 1605(a) for charges of a type payable in a comparable cash transaction, and stated that these exclusions from the finance charge definition are mandated by TILA's provisions and tied to TILA's purpose.

A consumer advocate commenter supported § 1026.4(b)(12)(i) because the service, transaction, activity or carrying charges identified in that section are imposed on a credit account and thus are clearly incident to credit. This commenter noted that this is true under the law today and would remain true if banks restructure their overdraft services as lines of credit to comply with the CFPB's rule. This commenter also agreed with the proposal's rationale that it would not make sense to compare fees on a credit account to those on a noncredit account.

Regarding the commenter's argument that the CFPB erred by not providing for a comparison to a charge imposed on a checking or other transaction account that does not have overdraft credit, final § 1026.4(b)(12)(i) does not change existing law. Existing § 1026.4(b)(2) provides that examples of finance charges include service, transaction, activity, and carrying charges imposed on a credit account. Onto this example, the Board added a partial exception in § 1026.4(b)(2) stating that any charge

¹⁵⁴ 79 FR 77102, 77117–20 (Dec. 23, 2014).

¹⁵⁵ 34 FR 2002 (Feb. 11, 1969). See § 1026.4(b)(2) and (c)(3).

¹⁵⁶ 79 FR 77102, 77119 (Dec. 23, 2014).

¹⁵⁷ Public Law 96–221, sec. 601, 94 Stat. 132; 45 FR 80648 (Dec. 5, 1980).

¹⁵⁸ 45 FR 80648, 80657 (Dec. 5, 1980). The Board ultimately made only a few minor editorial changes to the exclusion, thus preserving the exemption unless there is an agreement in writing to pay items and impose a charge. 46 FR 20848, 20855 (Apr. 7, 1981).

¹⁵⁹ 67 FR 72618, 72620 (Dec. 6, 2002).

¹⁶⁰ *Id.* The Board did not modify the Regulation Z exemptions when it issued final rules in 2003, instead stating in preamble that "[t]he Board's staff is continuing to gather information on these services, which are not addressed in the final rule." 68 FR 16185 (Apr. 3, 2003).

imposed on a checking or other transaction account (emphasis added), such as a service or transaction account charge, is only a finance charge to the extent that the charge exceeds the charge for a similar asset account without a credit feature.¹⁶¹ Under existing § 1026.4(b)(2), service, transaction, activity, and carrying charges imposed on an overdraft line of credit account (as opposed to the checking or other transaction account to which the credit line is tied) are generally finance charges. This is true whether or not the charge exceeds the charge for a similar asset account without a credit feature. The CFPB's rule does not change this treatment of fees assessed on overdraft lines of credit or credit card accounts, which many financial institutions currently provide, and which are, in general, currently covered by Regulation Z. Similarly, the separate credit account required by § 1026.62(c) is not a checking or other transaction account that would qualify for the partial exception. The CFPB is also, as described in the proposal, concerned that adding such a comparison might lead to potential evasion of the rule. For these reasons, proposed § 1026.4(b)(12)(i) is consistent with existing § 1026.4(b)(2) and the CFPB is finalizing § 1026.4(b)(12)(i) as proposed.

Example of a Finance Charge for the Covered Asset Account

Proposed § 1026.4(b)(12)(ii) largely echoed existing § 1026.4(b)(2) by providing that any service, transaction, activity, or carrying charge imposed on a covered asset account is a finance charge to the extent that the charge exceeds a comparable charge imposed on a checking or other transaction account that does not have overdraft credit. Commenters, in general, did not focus specifically on proposed § 1026.4(b)(12)(ii), instead focusing their criticism or support on § 1026.4(b)(12)(iii) (discussed below). The CFPB is finalizing § 1026.4(b)(12)(ii) largely as proposed with minor stylistic changes to match existing § 1026.4(b)(2).

Proposed § 1026.4(b)(12)(iii) described five specific types of charges imposed on a checking or other transaction account without overdraft credit that are not comparable to charges imposed on a covered asset account. Industry commenters objected to

§ 1026.4(b)(12)(iii), focusing most heavily on the inability to use a nonsufficient funds (NSF) fee as a comparable charge to reduce the extent to which an overdraft fee is a finance charge. These commenters argued that eliminating this exception would reduce the availability of covered overdraft credit, and such reduction would disadvantage consumers, who would face the same or higher fees without the benefit of a paid transaction. At least one industry commenter also argued that precluding this comparison contradicts TILA's goal of requiring disclosure of fees that are payable by credit customers but not by cash customers. This same commenter argued that both an overdraft charge and an NSF fee are imposed upon an overdrawn account and serve many of the same functions, citing to court cases and agency publications grouping overdraft and NSF fees in the same category. This commenter argued that nothing in TILA section 1605(a) precludes the "cash transaction" description from applying to a payment for services and that the concept of a "cash transaction" relates to the method of payment, rather than what is provided in return.

A consumer advocate commenter supported this proposed provision, arguing that the comparable cash transaction exception has been used to hide or exclude amounts even where no comparable transaction actually exists; therefore, the proposed restrictions in § 1026.4(b)(12)(iii) would help to prevent evasions. This commenter also argued that returning an item unpaid is not a comparable cash transaction to paying it as an overdraft as one transaction is credit, with the fee being the cost of that credit, and the other transaction is not credit, with the fee serving a different purpose. This commenter supported the limitations proposed in § 1026.4(b)(12)(iii), arguing that the charges listed in (A) through (D) are not associated with cash transactions. This commenter also supported the limitation on using a charge for transferring funds into the checking or other transaction account from any other asset account (such as a savings account), arguing that a charge for overdraft credit reflects the cost of that credit and that the full amount of that fee should be viewed as a finance charge, noting that this policy is already reflected in existing comment 4(a)–4 and would reflect the reality that the consumers who incur the most overdraft fees are unlikely to have significant linked savings or other asset accounts that can be used to cover overdrafts.

This commenter also recommended adding commentary interpreting § 1026.4(b)(12) for clarity, including a comment stating that transfer fees imposed on any credit account, whether an overdraft line of credit or traditional credit card, are a finance charge and a comment comparing the monthly account fees of two asset accounts that differ in whether they have a tied credit feature or not, such that the difference in the asset accounts' monthly fees is a finance charge.

As to the commenter's request for additional commentary, the purpose of § 1026.4(b)(12)(iii) is to clarify which types of transactions are not comparable to an overdraft charge for purposes of the comparison calculation described in § 1026.4(b)(12)(ii). As discussed further below, specific charges are identified in § 1026.4(b)(12)(iii) for the purpose of prohibiting comparison for purposes of § 1026.4(b)(12)(ii); § 1026.4(b)(12)(iii) does not address whether or not such fees are themselves "finance charges." Thus, the CFPB declines to add additional commentary.

After considering the comments, the CFPB is finalizing § 1026.4(b)(12)(iii) largely as proposed in order to prohibit very large financial institutions from comparing overdraft charges to charges that are not comparable cash transactions, to prevent using such comparisons in a way that may lead to evasion of the requirements of Regulation Z, and to ensure that the full cost of credit is more accurately disclosed. Accordingly, § 1026.4(b)(12)(iii) includes the limitation in proposed § 1026.4(b)(12)(iii)(B) and (C) because fees for declining to authorize or pay a transaction or for returning a transaction unpaid—often referred to as NSF fees—are not comparable to overdraft charges. As discussed in the proposal, an NSF fee is assessed when a transaction is declined while an overdraft charge is assessed when a transaction is paid and the institution lends the consumer money to pay that transaction. As to commenters' concerns that proposed § 1026.4(b)(12)(iii) would have designated NSF fees themselves as examples of "finance charges," final § 1026.4(b)(12)(iii) does not do so. The proposed regulatory text was intended to prohibit the use of an NSF fee to offset an overdraft charge. Final § 1026.4(b)(12)(iii) prohibits that same comparison but adds stylistic changes to clarify that the types of transactions identified in § 1026.4(b)(12)(iii)(A) through (E) are itemized solely for the purpose of clarifying that they cannot be compared to charges imposed when overdraft credit is extended. Nothing in

¹⁶¹ Existing comment 4(b)(2)–1 similarly provides that a checking or transaction account charge imposed in connection with a credit feature is a finance charge under existing § 1026.4(b)(2) to the extent the charge exceeds the charge for a similar account without a credit feature.

final § 1026.4(b)(12)(iii)(A) through (E) changes or modifies whether or not these five types of transactions are examples of finance charges.

Specifically, final § 1026.4(b)(12)(iii) does not comment on whether or not an NSF fee would be a finance charge.

For the reasons discussed above, the CFPB is finalizing § 1026.4(b)(12)(ii) and (iii) largely as proposed. The CFPB makes two additional clarifying changes to the regulatory text of § 1026.4(b)(12)(iii). First, the final rule strikes “covered” from “covered overdraft credit” in § 1026.4(b)(12)(iii). Proposed § 1026.4(b)(12)(ii) referred to a checking or other transaction account that does not have overdraft credit; proposed § 1026.4(b)(12)(iii) referred to a checking or other transaction account that does not have covered overdraft credit. Thus, changing “covered overdraft credit” to “overdraft credit” in final § 1026.4(b)(12)(iii) resolves what could have been read as a conflict between the regulatory text of final § 1026.4(b)(12)(ii) and final § 1026.4(b)(12)(iii) to which this section applies. Second, the final regulatory text of § 1026.4(b)(12)(iii) adds descriptive language to make clear that the comparison at issue is between the charge or combination of charges, including a per transaction fee, imposed on a covered asset account when overdraft credit is extended and the five types of charges itemized in final § 1026.4(b)(12)(iii)(A) through (E). Accordingly, the CFPB finalizes § 1026.4(b)(12)(iii) with these clarifying changes.

2. The § 1026.4(c)(3) Finance Charge Exception

The CFPB’s Proposal

Existing § 1026.4(c)(3) provides that charges imposed by a financial institution for paying items that overdraw an account are not finance charges unless the payment of such items and the imposition of the charge were previously agreed upon in writing. The CFPB proposed to change this exception to the finance charge definition by adding a new sentence to the end of § 1026.4(c)(3) that provided that the paragraph does not apply to above breakeven overdraft credit as defined in proposed § 1026.62. In addition to amending § 1026.4(c)(3), the CFPB also proposed to add comment 4(c)(3)–3 to direct readers to see proposed § 1026.4(b)(12) for guidance on when fees imposed on a covered asset account as defined in § 1026.62 are finance charges. For the reasons discussed below, the CFPB is finalizing these changes as proposed and is

revising comment 4(c)(3)–1 to clarify that it does not apply to above breakeven overdraft credit as defined in § 1026.62(b)(1).

Comments Received

Many commenters criticized the existing § 1026.4(c)(3) exception, stating that it does not adequately protect consumers. Several of these commenters noted that financial institutions frequently offer overdraft services under the existing § 1026.4(c)(3) exception at a high cost relative to other credit options. Among these commenters, several observed that, in the aggregate, low-income and minority consumers typically pay higher fees for non-covered overdraft credit offered through the existing § 1026.4(c)(3) exception. At least one of these commenters also explained that the existing § 1026.4(c)(3) exception helps financial institutions disguise the true cost of deposit accounts by allowing them to generate substantial fee revenue, which they use to drive profits and to offer free or low-cost banking services to consumers who are relatively more advantaged.

Commenters who criticized the existing § 1026.4(c)(3) exception generally expressed support for the proposed changes to the § 1026.4(c)(3) exception. Many of these commenters indicated that the proposed changes would advance one of TILA’s fundamental purposes—promoting the informed use of credit. Specifically, these commenters agreed with the proposal’s preliminary determination that the proposed changes would ensure that, when consumers utilized above breakeven overdraft credit, they would receive important Regulation Z protections, such as account-opening disclosures, credit card protections, and ability to repay assessments. These commenters further noted that, by providing consumers with these Regulation Z protections, the proposed changes to the § 1026.4(c)(3) exception not only would help consumers recognize that they are entering into a credit transaction when utilizing above breakeven overdraft credit, but also would help consumers compare the cost of above breakeven overdraft credit with other credit options more effectively. One academic commenter supported requiring TILA disclosures for overdraft products but also emphasized the importance of simplicity and clarity in such disclosures.

Many of the proponents of the proposed changes to the § 1026.4(c)(3) exception also stated that it made sense for the proposed rule to allow very large financial institutions to continue to provide non-covered overdraft credit at

or below a very large financial institution’s breakeven price. These commenters noted that limiting the application of the § 1026.4(c)(3) exception to non-covered overdraft credit offered at or below a very large financial institution’s breakeven price, as proposed, would return the § 1026.4(c)(3) exception to its original courtesy purpose and would reduce fee burdens on consumers, especially low-income and minority consumers. They also explained that returning the § 1026.4(c)(3) exception to its original courtesy purpose would realign the incentives of very large financial institutions so that they would be deterred from adopting practices that push consumers into overdrafting and incurring high fees. Further, they stated that it was unnecessary to eliminate the § 1026.4(c)(3) exception completely because consumers typically would benefit from receiving non-covered overdraft credit provided at or below cost, making TILA protections less critical.

The same commenters also noted that the proposed changes to the § 1026.4(c)(3) exception would require very large financial institutions to better disclose the terms of above breakeven overdraft credit. As a result of these proposed changes, they anticipated that the proposal would help many consumers avoid surprise overdrafts.

Other commenters opposed the proposed changes to the § 1026.4(c)(3) exception. Many of these commenters stated that very large financial institutions should be allowed to earn a profit on non-covered overdraft without abiding by the requirements of TILA and Regulation Z. These commenters also expressed concern that financial institutions could not sustainably offer overdraft credit at or below their breakeven price and would not incur the operational costs or take the compliance and litigation risks necessary to offer above breakeven overdraft in compliance with Regulation Z.

Commenters opposed to the proposed changes to the § 1026.4(c)(3) exception also questioned the need for the proposed changes. Specifically, these commenters contended that existing disclosures and opt-in requirements adequately inform consumers of the terms for non-covered overdraft services. At least one of these commenters further stated that the CFPB inadequately explained why consumers are currently unable to compare the cost and terms of overdraft credit with other kinds of credit. Another commenter questioned why the CFPB would not consider the existing disclosures for

overdraft services provided under Regulations DD and E effective in helping consumers understand above breakeven overdraft credit. This commenter further questioned why the CFPB finds that Regulation Z disclosures would provide consumers a better understanding of these services and would help them make more informed decisions when using such services.

Commenters opposed to the proposed changes to the § 1026.4(c)(3) exception also stated that the CFPB's proposal to change the § 1026.4(c)(3) exception was arbitrary and capricious. At least one of these commenters stated that the CFPB's proposal to change the § 1026.4(c)(3) exception was arbitrary and capricious because the changes it proposed would apply only to above breakeven overdraft credit even though the proposal's stated consumer protection goals would apply equally to non-covered overdraft credit. At least one other commenter argued that the CFPB arbitrarily and capriciously relied upon the promotion of the informed use of credit to apply TILA and Regulation Z to overdraft fees. This commenter stated that the CFPB provided inadequate evidence to support its statement that applying consumer credit protections to above breakeven overdraft credit would help consumers make informed decisions about such credit. In particular, the commenter questioned the volume of evidence marshalled by CFPB. The commenter also stated that the CFPB should consider other reasons consumers may utilize non-covered overdraft credit rather than alternative credit products, including timeliness, ease of use, lack of access to alternatives, or cost.

A few commenters asked the CFPB to amend its proposal to change the § 1026.4(c)(3) exception. One commenter recommended that the CFPB amend comment 4(c)(3)–1 to specify that the comment does not apply to above breakeven overdraft credit offered in connection with a covered asset account as defined in § 1026.62(b)(2). Another commenter stated that the CFPB should eliminate the § 1026.4(c)(3) exception rather than attempt to amend it. This commenter provided several justifications for this viewpoint, including that the exception originally applied to checks, but that checks are used less frequently today, and that overdraft fees put a significant strain on low-income households while providing outsized profits to financial institutions.

Final Rule

For the reasons stated in the proposal and below, the CFPB finalizes § 1026.4(c)(3) and comment 4(c)(3)–3 as proposed. Additionally, as discussed below, the CFPB revises comment 4(c)(3)–1 to clarify that it does not apply to above breakeven overdraft credit as defined in § 1026.62(b)(1).

As further discussed below, the CFPB is finalizing § 1026.4(c)(3) for several independent reasons, consistent with the proposal. First, amending the § 1026.4(c)(3) exception so that it no longer applies to above breakeven overdraft credit (the § 1026.4(c)(3) amendment) returns the exception to its original conception—excepting overdraft services from Regulation Z when offered as a courtesy or accommodation to customers—while adapting it to fit within the modern payments system. Additionally, the § 1026.4(c)(3) amendment furthers TILA's purpose of promoting the informed use of credit by ensuring that above breakeven overdraft credit is disclosed as a credit product and facilitating comparison shopping across credit products. Moreover, applying the Regulation Z regulatory framework to above breakeven overdraft credit products will benefit consumers by applying the regulation's existing substantive protections to such credit products, consistent with TILA's purpose of protecting consumers against inaccurate and unfair credit billing and credit card practices. The § 1026.4(c)(3) amendment also reflects, in part, an effort to balance the reliance interests of very large financial institutions and consumers against these other considerations.

Adapting the Courtesy Exception To Fit Within the Modern Payments System

Commenters opposed to the revision to the § 1026.4(c)(3) exception stated that the rationales for the amendment provided in the proposed rule—protecting consumers against inaccurate and unfair credit practices and promoting the informed use of credit—were arbitrary and capricious. They stated that this was because the consumer protection goals justifying the amendment apply equally to both above breakeven overdraft credit and non-covered overdraft credit provided at or below breakeven pricing, and the amendment applies only to at or below breakeven overdraft credit. The CFPB acknowledges that Regulation Z disclosures and protections would be helpful to consumers both in circumstances where overdraft fees are profit-generating and in circumstances

where they are not. However, consistent with the Board's original reasoning, the CFPB's revision to the exception is based on the countervailing considerations discussed herein, including that consumers receive a benefit from the availability of this service if it is offered as a courtesy and that very large financial institutions are more likely to offer courtesy overdraft when they are able to recover the costs of providing that service. In light of these considerations, the revision to the § 1026.4(c)(3) exception allows very large financial institutions to provide non-covered overdraft without being subject to Regulation Z requirements.

As explained in the proposal, the existing § 1026.4(c)(3) exception no longer reflects its original courtesy purpose. Historically, whenever a consumer bounced a check written against a deposit account that lacked a credit feature, the consumer's financial institution typically returned the check unpaid and assessed the consumer an NSF fee. In addition, the payee on the check might have taken various actions against the consumer, such as assessing the consumer a late fee or returned item fee, reporting the consumer's payment as late to a credit bureau, or bringing legal action against the consumer for writing a bad check.¹⁶² However, instead of returning the check unpaid, a financial institution, in its discretion, might have paid the check into overdraft as a courtesy.¹⁶³

When it issued Regulation Z in 1969, the Board created a limited exception for this longstanding practice.¹⁶⁴ Specifically, the Board added § 226.4(d), which provided that “[a] charge imposed by a bank for paying checks which overdraw or increase an overdraft in a checking account is not a finance charge unless the payment of such checks and the imposition of such finance charge were previously agreed

¹⁶² 74 FR 5212, 5214 (Jan. 29, 2009); 74 FR 59033, 59035 (Nov. 17, 2009); Steve Cocheo, *Follow the Bouncing Check*, 95 ABA Banking J. 32, at 34 (2003) (Cocheo 2003).

¹⁶³ See Peter G. Weinstock & Stephanie E. Dreyer, *Overdraft Protection Programs: The Emerging Battleground for Bankers and Consumer Advocates*, 121 Banking L. J. 791, at 795 (2004) (“Banks have been paying NSF items as a service to customers on a case-by-case basis for decades.”); see also Cocheo 2003 at 34 (“Our overdraft program formalizes the traditional courtesy of paying insufficient checks. . . .”) (quoting Gaynell Lawson, Executive Vice President and Chief Financial Officer of Citizens Bank of Blount County).

¹⁶⁴ 34 FR 2002, 2004 (Feb. 11, 1969); 73 FR 28904, 28927 (May 19, 2008) (“Historically, if a consumer engaged in a transaction that overdrawed his or her account, depository institutions used their discretion on an ad hoc basis to pay the overdraft, usually imposing a fee. The Board recognized this longstanding practice when it initially adopted Regulation Z in 1969 to implement TILA.”).

upon in writing.”¹⁶⁵ A bank providing discretionary, check-centric overdraft (also known as “bounce-check protection” or “courtesy overdraft protection” services, as noted in later **Federal Register** publications)¹⁶⁶ was not a creditor subject to Regulation Z because, pursuant to this exception, it did not impose a finance charge (and otherwise did not structure the repayment of credit by written agreement in more than four installments).¹⁶⁷ As Board commentary on Regulation Z noted, this exception enabled a bank to “occasionally, as an accommodation to its customer, honor a check which inadvertently overdraws that account” without having to comply with the requirements of Regulation Z.¹⁶⁸

In 1981, the Board amended Regulation Z to, among other things, make “a few minor editorial changes” to the § 226.4(d) exception.¹⁶⁹ Specifically, the Board changed the term “bank” to “financial institution” and the term “checks” to “items.”¹⁷⁰ The Board made these changes “to reflect the ability of financial institutions other than banks, such as savings and loan associations, to pay items that are similar to checks, such as negotiable orders of withdrawal, into overdraft.”¹⁷¹ Additionally, the Board renumbered § 226.4(d) to § 226.4(c)(3).¹⁷² By making these “minor editorial changes,” the Board stated that “[n]o substantive change is intended”¹⁷³ In other words, the Board did not change the purpose of the § 226.4(d) exception, which was to allow financial institutions to provide consumers with ad hoc, fee-based, check-centric, courtesy overdraft services without having to comply with the requirements of TILA and Regulation Z.¹⁷⁴

Despite the fact that neither the Board nor the CFPB has changed the purpose of the § 1026.4(c)(3) exception, the market for non-covered overdraft credit has changed in important ways—many

financial institutions have automated their non-covered overdraft programs and expanded them to cover non-check transactions, while also adjusting their account pricing structure to more heavily emphasize overdraft fees.¹⁷⁵ These changes have caused the market for non-covered overdraft credit to move away from the historical courtesy model to the point that, for a significant number of consumers, non-covered overdraft credit is no longer an occasional accommodation for inadvertent overdrafts.

Unlike in 1969, when checks made up the lion’s share of overdraft transactions,¹⁷⁶ recent CFPB analysis of account data from a number of large banks showed that on average overall only 10.36 percent of monthly debit transactions occurred by check, while 62.14 percent occurred by debit card (both one-time and recurring), 12.14 percent occurred by ACH, 6.43 percent occurred by ATM, 0.71 percent occurred by bank teller, and the remainder occurred by other means.¹⁷⁷ This shift away from check transactions is significant because, as financial institutions have automated their non-covered overdraft programs and expanded them to cover non-check transactions, the sheer volume of overdraft transactions and associated fees has increased.¹⁷⁸ This trend especially is pronounced with respect to debit cards, where CFPB research shows that incidence of overdraft increases for consumers who use debit cards. For example, CFPB research shows that 92.3 percent of accounts that do not use debit cards have no overdrafts in a year of account use and only 0.6 percent of such accounts incur more than 10 overdrafts per year.¹⁷⁹ In contrast, accounts that use their debit cards more than 30 times per month have the lowest percentage of accounts with no overdraft (51.2 percent) and the highest percentage of accounts that overdraft more than 10 times per year (18.0 percent).¹⁸⁰ In other words, for many consumers who use debit cards frequently, non-covered overdraft credit services are no longer provided as an occasional accommodation.¹⁸¹

Moreover, financial institutions today routinely extend overdraft credit in circumstances where they stand to generate more direct revenue from extending overdraft credit to cover a transaction than they would from declining it (because, for example, consumers are rarely charged NSF fees for declined debit card transactions,¹⁸² and nearly two-thirds of banks with over \$10 billion in assets have eliminated NSF fees¹⁸³).¹⁸⁴ As a result of these changes, non-covered overdraft programs now generate a substantial portion of the direct fee revenue that many financial institutions make from checking accounts (and much of the total revenue that financial institutions make from low-balance accounts), which has encouraged some financial institutions to promote consumers’ use of non-covered overdraft credit and/or to calibrate their systems to increase overdraft fee revenue.¹⁸⁵ This shift represents a significant departure from the historical courtesy model, which provided an accommodation to consumers for the occasional, inadvertent overdraft.

The CFPB’s amendment to the § 1026.4(c)(3) exception reestablishes the original courtesy purpose of the § 1026.4(c)(3) exception by providing the exception only for overdraft credit priced at or below a very large financial institution’s breakeven point.

Promoting the Informed Use of Credit

Commenters opposed to the CFPB’s amendment to the § 1026.4(c)(3) exception contended that existing disclosures and opt-in requirements adequately inform consumers of the terms for non-covered overdraft services.

As an initial matter, the CFPB is amending the § 1026.4(c)(3) exception to return the regulatory requirements closer to TILA’s original effect. The CFPB is following Congress’s judgment that standardized disclosures across

occasionally, as an accommodation to its customer, honor a check which inadvertently overdraws that account.”)

¹⁸² 74 FR 5212, 5217 (Jan. 29, 2009).

¹⁸³ See CFPB October 2023 Data Spotlight.

¹⁸⁴ This was not always the case. Historically, financial institutions charged no more for honoring an overdrawing check through non-covered overdraft credit than they did for returning the check unpaid. For example, a 1976 report on bank fees presented the results of a survey of banks in New York and Washington, DC. Of the 41 banks surveyed, 39 charged overdraft fees that were equal to or less than the amount of their NSF fees. See Senate Staff Report at 10–11.

¹⁸⁵ See 81 FR 83934, 83950–51 (Nov. 22, 2016); 70 FR 29582, 29583 (May 24, 2005); CFPB 2013 White Paper at 16–17; CFPB Winter 2015 Highlight at 8–9; FDIC 2018 Highlight at 12; FDIC 2019 Highlight at 2–3.

¹⁶⁵ 34 FR 2002, 2004 (Feb. 11, 1969).

¹⁶⁶ 70 FR 29582, 29582 n.1 (May 24, 2005).

¹⁶⁷ See 12 CFR 1026.2(a)(17)(i).

¹⁶⁸ 42 FR 22360, 22362 (May 3, 1977).

¹⁶⁹ 46 FR 20848, 20855 (Apr. 7, 1981).

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ The language from the Board’s 1981 version of § 226.4(c)(3) remains in effect unchanged at § 1026.4(c)(3) in the CFPB’s existing version of Regulation Z. In 2016, the CFPB added an additional sentence to the end of § 1026.4(c)(3) to clarify that the paragraph does not apply to credit offered in connection with a prepaid account as defined in § 1026.61. See 81 FR 83934, 84179 (Nov. 22, 2016). However, this amendment did not impact the text of the portion of § 1026.4(c)(3) adopted in 1981.

¹⁷⁵ 74 FR 5212 (Jan. 29, 2009); 81 FR 83934, 83950–51 (Nov. 22, 2016).

¹⁷⁶ Stephen Quinn & William Roberds, *The Evolution of the Check as a Means of Payment: A Historical Survey*, 93 Fed. Rsv. Bank Atlanta Econ. Rev. 1, at 21 (2008).

¹⁷⁷ CFPB 2014 Data Point at 17.

¹⁷⁸ 81 FR 83934, 83950–51 (Nov. 22, 2016).

¹⁷⁹ CFPB 2014 Data Point at 15 tbl.4c.

¹⁸⁰ *Id.*

¹⁸¹ 42 FR 22360, 22362 (May 3, 1977) (“[Section 226.4(d) (now section 1026.4(c)(3))] relates only to regular demand deposit accounts which carry no credit features and in which a bank may

different types of credit help consumers better comparison shop.

As the CFPB explained in the proposed rule, most non-covered overdraft credit is subject to Regulations DD and E. Although Regulations DD and E require certain disclosures for non-covered overdraft credit, neither regulation requires that such non-covered overdraft credit be disclosed as a credit product. Instead, both regulations use terms like overdraft fees, overdraft practices or overdraft services that tend to obscure the fact that financial institutions are providing consumers a credit product. Unlike the disclosures required under Regulations DD and E, the disclosures required by Regulation Z are designed to set forth contractual terms for credit products clearly. Regulation Z would also apply additional requirements under subparts B and G, including periodic statement requirements and advertising rules meant to help consumers better understand credit terms, monitor their use of the product, and trace how their funds are being used.

Applying the Regulation Z regulatory framework to above breakeven overdraft credit benefits consumers by ensuring that above breakeven overdraft credit is disclosed as a credit product and treated like other credit products. Treating above breakeven overdraft credit like other credit benefits consumers by helping them understand that they are entering into a contract for a credit product provided by a creditor.

Additionally, disclosing above breakeven overdraft credit services under the Regulation Z regulatory framework also promotes the informed use of credit because requiring very large financial institutions to present the credit terms for above breakeven overdraft credit in the same form that creditors present the credit terms of other credit products will allow consumers to compare the cost of such credit with the cost of alternative credit products. For example, the cost of non-covered overdraft credit is typically disclosed as a fee, and no annual percentage rate disclosure is required. In contrast, Regulation Z requires disclosure of periodic rates as annual percentage rates, which will aid consumers in comparing the cost of covered overdraft credit to other credit products.

At least one commenter also contended that the CFPB did not adequately explain how its proposed amendment would allow consumers to compare the cost and terms of overdraft credit with other kinds of credit better than existing requirements. In particular, this commenter stated that

the CFPB did not cite sufficient evidence to support its finding that consumers have difficulty comparing non-covered overdraft credit services with available alternatives. The commenter also asserted that the CFPB failed to consider other reasons why consumers may utilize non-covered overdraft credit over alternative sources of liquidity, such as timeliness, ease of use, lack of access to alternatives, and cost.

As an initial matter, the reports cited in the proposed rule to support the finding that many consumers have difficulty comparing non-covered overdraft credit services with available alternatives are bolstered by other research.¹⁸⁶ For example, a survey conducted by the Pew Charitable Trust found that 42 percent of the overdrafters they polled had sufficient credit available on a credit card to cover an emergency expense of \$400.¹⁸⁷ This finding is significant because, according to a CFPB 2014 report, the median amount of overdraft credit extended per non-covered overdraft transaction was \$50 across all transaction types¹⁸⁸ and was only \$25.50 for debit card transactions,¹⁸⁹ well within the amount of credit card credit available to many overdrafters polled by Pew. Therefore, as explained in the proposal, a significant number of consumers continue to use non-covered overdraft credit services despite the availability of alternative credit that is generally much cheaper than overdraft credit.¹⁹⁰

As the commenter noted, consumers who have access to cheaper, alternative sources of liquidity still may opt to use non-covered overdraft credit services despite the higher cost if, for example, they believe these services are more timely and easier to use. (The commenter's other two theories for why consumers might use non-covered overdraft—lack of access to alternatives and cost—do not apply to consumers who have access to lower cost liquidity.) However, other evidence cited in the proposal indicates that many consumers often do not understand the cost and terms of non-covered overdraft. For

example, the proposed rule noted that a significant number of commenters responding to the CFPB's 2022 request for information (2022 RFI) stated that overdraft fees were unclear or confusing. The proposed rule further noted that the concerns raised by commenters responding to the 2022 RFI were generally consistent with the concerns reflected in consumer complaints about overdraft fees submitted to the CFPB.

Applying Substantive Protections

Applying the Regulation Z regulatory framework to above breakeven overdraft credit services also benefits consumers by applying the regulation's existing substantive protections to such credit services. For example, the rule applies the due date requirement in § 1026.7(b)(11)(i)(A), the offset prohibitions in § 1026.12(d)(1), and the ability to pay provisions in § 1026.51 to covered overdraft credit accounts (including credit that currently is non-covered above breakeven overdraft credit) that can be accessed by a hybrid debit-credit card. Therefore, applying Regulation Z to above breakeven overdraft credit accessible via a hybrid debit-credit card prohibits very large financial institutions from immediately taking funds from any incoming deposit in repayment of the consumer's overdraft balance, requires very large financial institutions to establish due dates on the same day of each billing cycle, and requires very large financial institutions to assess the consumer's ability to pay for such credit—all protections that the current Regulations DD and E regulatory frameworks do not provide.

Balancing Reliance Interests Against Other Considerations

The rule does not entirely eliminate the § 1026.4(c)(3) exception in part because both very large financial institutions and consumers have reliance interests in the existence of non-covered overdraft. Very large financial institutions have undertaken efforts to ensure that their non-covered overdraft credit programs comply with Regulations DD and E, and some consumers have come to rely on the availability of non-covered overdraft credit.

The rule's amendment to the § 1026.4(c)(3) exception addresses the CFPB's consumer protection concerns while recognizing these reliance interests. Under the rule's approach, consumers who use above breakeven overdraft credit will receive Regulation Z's credit disclosures as well as Regulation Z's substantive protections.

¹⁸⁶ 89 FR 13852, 13868 n.165 (Feb. 23, 2024); CFPB 2013 White Paper at 52; CFPB 2014 Data Point at 5.

¹⁸⁷ Pew Charitable Tr., *Overdraft Does Not Meet the Needs of Most Consumers*, at 9 (Dec. 2017), https://www.pewtrusts.org/-/media/assets/2017/12/cb_overdraft_does_not_meet_the_needs_of_most_consumers.pdf (Pew 2017 Chartbook). The proposed rule referenced this study as evidence that consumer understanding of the Regulation E opt-in right is low. See 89 FR 13852, 13892 n.255 (Feb. 23, 2024).

¹⁸⁸ CFPB 2014 Data Point at 5.

¹⁸⁹ 89 FR 13852, 13869 n.166 (Feb. 23, 2024).

¹⁹⁰ *Id.* at 13868.

Consumers who use non-covered overdraft credit will receive courtesy overdraft credit priced at or below a very large financial institution's breakeven point. In addition, very large financial institutions that have invested in compliance with Regulations DD and E can maintain their current processes for providing consumers with non-covered overdraft credit so long as they price such credit at or below breakeven pricing.

Commenters opposed to the CFPB's amendment to the § 1026.4(c)(3) exception objected to the amendment's impact on the pricing of non-covered overdraft credit. These commenters stated that, as a matter of principle, very large financial institutions should be allowed to earn a profit on non-covered overdraft without abiding by the requirements of TILA and Regulation Z. The CFPB takes a different view. When Congress created TILA, it did not exempt any category of overdraft credit from TILA. Rather, the Board created a limited exception for the longstanding practice of courtesy overdraft. The concept of a courtesy or an accommodation is the provision of a service primarily for the convenience of a customer. A credit product that produces large amounts of revenue and profit is inconsistent with the concept of providing an additional service as a courtesy because it encourages financial institutions to promote consumers' use of non-covered overdraft credit and/or to calibrate their systems to increase overdraft fee revenue.¹⁹¹ In contrast, providing overdraft credit at or below its breakeven point incentivizes a very large financial institution to provide overdraft credit simply for the convenience of the customer so as to foster customer goodwill and to improve customer retention.

These commenters also expressed concern that financial institutions could not sustainably offer overdraft credit at or below their breakeven price and would not incur the operational costs or take the compliance and litigation risks necessary to offer above breakeven overdraft in compliance with Regulation Z. However, even before the CFPB issued the proposed rule, several very large financial institutions had reduced or eliminated their overdraft fees,¹⁹² and most financial institutions currently waive overdraft fees for at least some overdrafts. Since some very large financial institutions can provide

consumers with overdraft credit without assessing any overdraft fees, it stands to reason that other very large financial institutions could continue to provide non-covered overdraft credit for a fee that is at or near their breakeven price. Similarly, many very large financial institutions currently offer overdraft lines of credit that comply with Regulation Z. Commenters have not explained why they think that applying Regulation Z to above breakeven overdraft credit would create compliance and litigation risks that are materially different from the compliance and litigation risks that very large financial institutions already face when offering overdraft lines of credit. The CFPB acknowledges that certain above breakeven overdraft credit also must comply with certain CARD Act provisions and the compulsory use prohibition; but again, commenters have not explained how these provisions create materially different compliance and litigation risks from the risks faced by very large financial institutions with respect to their existing credit card offerings. And lastly, the breakeven standard is designed to allow very large financial institutions to break even regardless of the financial institution's cost level. If a financial institution has unique circumstances that cause it to have higher compliance or other costs or losses, those can be incorporated into the financial institution's fee amount to ensure that the courtesy overdraft product is offered without overall losses to the financial institution. The CFPB does not find it credible that a financial institution would choose to incur the reputational and competitive harms associated with eliminating overdraft altogether if the financial institution does not lose money on the service; however, if a financial institution chose to do so, consumers who want non-covered overdraft could avoid any ensuing harms by switching to a financial institution that does offer non-covered overdraft credit.

Requested Changes to the CFPB's Amendment to the § 1026.4(c)(3) Exception

One commenter recommended that the CFPB amend comment 4(c)(3)–1 to specify that the comment does not apply to above breakeven overdraft credit offered in connection with a covered asset account as defined in § 1026.62(b)(2).

Comment 4(c)(3)–1 currently provides that, except with respect to credit offered in connection with a prepaid account as defined in § 1026.61, a charge on an overdraft balance computed by applying a rate of interest

to the amount of the overdraft is not a finance charge, even though the consumer agrees to the charge in the account agreement, unless the financial institution agrees in writing that it will pay such items. The purpose of the comment is to clarify whether interest charged on overdraft credit is exempt from the Regulation Z definition of a finance charge. In the proposed rule, the CFPB proposed to amend the regulatory text of § 1026.4(c)(3) to establish that the paragraph does not apply to above breakeven overdraft credit. Accordingly, the paragraph's commentary also would not have applied to above breakeven overdraft credit. Therefore, interest charges imposed on above breakeven overdraft credit would have been finance charges under the proposed rule regardless of whether a very large financial institution agreed in writing to pay an item into overdraft. Nonetheless, for clarity, the final rule amends comment 4(c)(3)–1 to provide that the comment, like the regulatory text in § 1026.4(c)(3), does not apply to above breakeven overdraft credit as defined in § 1026.62(b)(1).

Another commenter stated that the CFPB should eliminate the § 1026.4(c)(3) exception rather than attempt to amend it. They noted that the exception originally applied to checks, but that checks are used less frequently today, and contended that overdraft fees put a significant strain on low-income households while providing outsized profits to financial institutions.

The CFPB has determined that amending the § 1026.4(c)(3) exception better serves the market and consumers than eliminating the exception completely because the amendment addresses the CFPB's consumer protection concerns while acknowledging the long-standing reliance interests of both very large financial institutions and consumers and ensuring availability of courtesy overdraft credit. As explained above, the rule's amendment to the § 1026.4(c)(3) exception adequately addresses the CFPB's consumer protection concerns because consumers who use above breakeven overdraft credit will receive Regulation Z's credit disclosures as well as Regulation Z's substantive protections while consumers who use non-covered overdraft credit will receive courtesy overdraft credit priced at or below a very large financial institution's breakeven point. This approach mitigates certain risks associated with current non-covered overdraft credit, like high cumulative fee burdens, account charge-offs, involuntary account closures, and loss of access to the banking system, while

¹⁹¹ See 81 FR 83934, 83950–51 (Nov. 22, 2016); 70 FR 29582, 29583 (May 24, 2005); CFPB 2013 White Paper at 16–17; CFPB Winter 2015 Highlight at 8–9; FDIC 2018 Highlight at 12; FDIC 2019 Highlight at 2–3.

¹⁹² See CFPB May 2023 Data Spotlight.

allowing very large financial institutions to continue offering and consumers to continue accessing non-covered below breakeven overdraft credit as a courtesy.

Comment 4(c)(3)–3

Proposed comment 4(c)(3)–3 would have directed readers to see § 1026.4(b)(12) for guidance on when fees imposed on a covered asset account as defined in § 1026.62 are finance charges. The CFPB received no comments specifically addressing this proposed comment. Accordingly, the CFPB finalizes comment 4(c)(3)–3 as proposed.

3. Defining and Determining “Above Breakeven Overdraft Credit”

The CFPB’s Proposal

The proposed rule added “above breakeven overdraft credit” as a new defined term at proposed § 1026.62(b)(1). Proposed § 1026.62(b)(1) defined above breakeven overdraft credit to mean overdraft credit extended by a very large financial institution to pay a transaction on which, as an incident to or a condition of the overdraft credit, the very large financial institution imposed a charge or combination of charges exceeding the average of its costs and charge-off losses for providing non-covered overdraft credit as described in proposed § 1026.62(d).

Proposed § 1026.62(d)(1) clarified that overdraft credit offered by a very large financial institution was “above breakeven overdraft credit” for purposes of proposed § 1026.62(b)(1) if the charge or combination of charges for such credit exceeded the greater of (1) the pro rata share of the very large financial institution’s annual total direct costs and charge-off losses for providing non-covered overdraft credit calculated in accordance with § 1026.62(d)(2); or (2) an estimate published by the CFPB.

For purposes of proposed § 1026.62(d)(1), a “combination of charges” included all revenue received in connection with an overdraft transaction, including any extended or sustained overdraft fees, any interest charges on outstanding overdraft balances, and any other payments the very large financial institution received in connection with an overdraft transaction or transactions.

Proposed § 1026.62(d)(1) provided two methods for determining whether an overdraft charge exceeded the average of a very large financial institution’s costs and charge-off losses for providing non-covered overdraft credit—the breakeven standard and the benchmark fee. To the extent that a very

large financial institution preferred not to calculate its average costs and charge-off losses for providing non-covered overdraft credit using the breakeven standard, the proposal permitted the very large financial institution to determine whether it was offering above breakeven overdraft credit based solely on the benchmark fee.

Proposed Breakeven Standard

Under the proposed breakeven standard, a very large financial institution used a two-step process to determine whether an overdraft charge exceeded the average of the institution’s costs and charge-off losses for providing non-covered overdraft credit. First, the very large financial institution determined its total direct costs and charge-off losses for providing non-covered overdraft credit to all accounts open at any point in the previous year (Step 1). For Step 1, proposed § 1026.62(d)(2) clarified that only costs and charge-off losses that were specifically traceable to a very large financial institution’s provision of non-covered overdraft credit in the previous year could be considered total direct costs and charge-off losses for purposes of the breakeven standard. The proposed rule instructed a very large financial institution to exclude general overhead costs and charge-off losses resulting from unauthorized use, EFT errors, billing errors, returned deposit items, and rescinded provisional credit from the breakeven calculation because those costs and charge-off losses were not specifically traceable to a very large financial institution’s provision of non-covered overdraft credit.

Next, the very large financial institution divided the total direct costs and charge-off losses figure from Step 1 by the total number of non-covered overdraft transactions attributable to those accounts occurring in the previous year (Step 2). For purposes of calculating Step 2, the proposed rule allowed the very large financial institution to exclude non-covered overdraft transactions that did not incur fees from the total number of non-covered overdraft transactions. Additionally, the proposed rule clarified that, when a very large financial institution applied the breakeven standard either for the first time or after transitioning from the benchmark fee described at proposed § 1026.62(d)(1)(ii), the very large financial institution could include direct costs and charge-off losses from any non-covered overdraft transaction occurring in the previous year regardless of whether the transaction

would be considered above breakeven overdraft credit during that period.

Proposed Benchmark Fee

Under the benchmark fee approach outlined at proposed § 1026.62(d)(1)(ii), a very large financial institution could presume that any charge or combination of charges it imposed for paying a transaction that overdraws an account did not exceed its costs and charge-off losses for providing non-covered overdraft credit if the charge or combination of charges was less than or equal to any benchmark fee established by the CFPB. The CFPB proposal suggested four potential options for this benchmark fee—\$3, \$6, \$7, and \$14—and sought comment on whether to finalize one of these numbers or some other number.

The CFPB used the same general formula to calculate all four of the proposed alternative benchmark fees—charge-off losses divided by non-covered overdraft transactions, plus costs of \$1 per non-covered overdraft transaction—but referred to different datapoints from data collected from five very large financial institutions (the sample) to derive each fee amount. The CFPB proposed four benchmark fee amounts in order to get feedback on two issues: (1) whether the CFPB should calculate charge-off losses based on the average across all institutions in its sample or across just the outlier in its sample with the highest costs (the outlier); and (2) whether the CFPB should include all non-covered overdraft transactions in its calculation or only non-covered overdraft transactions for which the institutions in its sample assessed a fee (fee-assessed transactions).

The proposed \$3 benchmark fee is the fee that results from calculating the benchmark fee using all non-covered overdraft transactions from all institutions in the CFPB’s sample; the proposed \$6 benchmark fee is the fee that results from calculating the benchmark fee using only fee-assessed non-covered overdraft transactions from all institutions in the CFPB’s sample; the proposed \$7 benchmark fee is the fee that results from calculating the benchmark fee using all non-covered overdraft transactions from the outlier in the CFPB’s sample; and the proposed \$14 benchmark fee is the fee that results from calculating the benchmark fee using only fee-assessed non-covered overdraft transactions from the outlier in the CFPB’s sample.

Comments Received

Comments Relating to Above Breakeven Overdraft Credit

Several commenters responded to the proposed rule's requests for comment soliciting alternative approaches for determining whether credit is above breakeven overdraft credit. Some of these commenters recommended that the final rule allow the threshold for above breakeven overdraft credit to vary based on a range of factors, such as the amount of the overdraft, the amount of overdraft fees, the duration of the overdraft, the cost to the very large financial institution of providing the overdraft, the size of the very large financial institution, and the frequency with which the consumer overdraws their account. At least one of these commenters recommended that the charge to the consumer for non-covered overdraft should decline with each successive overdraft so that the consumer would not fall into a debt trap. Another of these commenters recommended that the charge to the consumer for the first overdraft should be lower than the charge for subsequent overdrafts in order to deter the consumer from frequently overdrawing their account. Other commenters recommended that the final rule define the threshold for above breakeven overdraft credit as an annual percentage rate rather than a flat fee.

At least one commenter recommended that the final rule allow above breakeven overdraft credit to continue to qualify as non-covered overdraft credit if such credit included consumer-friendly features, such as cure periods, de minimis limits, transaction limits, and real-time notifications.

Comments Relating to the Breakeven Standard

Specifically Traceable Costs and Charge-Offs

Various commenters asked the CFPB to provide greater clarity regarding the breakeven standard. Most of these commenters asked the CFPB to provide additional guidance regarding the types of costs and charge-off losses that would have been considered specifically traceable costs and charge-off losses under the breakeven standard. One of these commenters asked the CFPB to amend the Official Interpretations of Regulation Z to clarify whether the final rule would permit a very large financial institution to allocate a portion of its call center expenses to overdraft transactions if it did not have a method to track the calls it received relating to non-covered overdraft credit.

A significant number of commenters requesting additional guidance regarding the breakeven standard also expressed concern that, as proposed, it was unclear whether the breakeven standard allowed very large financial institutions to recover certain costs, such as communication costs, branch servicing costs, collection costs, core provider/vendor costs, compliance costs, and technology costs. These commenters stated that a lack of clarity regarding these costs would create too much compliance and litigation risk for very large financial institutions to adopt the breakeven standard. Industry commenters stated that the formula for calculating costs and charge-off losses under the breakeven standard should include general overhead costs and charge-off losses resulting from unauthorized use, EFT errors, billing errors, returned deposit items, or rescinded provisional credit. These commenters also stated that the CFPB did not sufficiently explain its rationale for excluding such costs and losses from the breakeven standard's cost and loss calculation formula. In contrast, consumer advocate commenters stated that it was appropriate to exclude general overhead costs and charge-off losses resulting from unauthorized use, EFT errors, billing errors, returned deposit items, and rescinded provisional credit from the breakeven standard's cost and loss calculation formula because those costs and charge-off losses did not have a direct relationship to the provision of non-covered overdraft services. These commenters further explained that including such costs in the breakeven standard's cost and loss calculation formula would allow very large financial institutions to earn profits from their non-covered overdraft programs.

Using Less Than 12 Months of Cost and Charge-Off Loss Data

At least one commenter asked the CFPB to clarify how a very large financial institution would implement the breakeven standard if the institution lacked 12 months of cost and charge-off loss data. This commenter suggested that the CFPB should amend the breakeven standard so that it provides very large financial institutions with the flexibility to use less than 12 months of cost and charge-off loss data to calculate the breakeven fee.

Accounting for Fee Waiver Policies

Various commenters addressed whether the final rule's breakeven standard should allow very large financial institutions to adjust their non-

covered overdraft transaction totals to account for non-covered overdraft transactions that do not incur fees. Many commenters opposed allowing such adjustments because they believed that very large financial institutions would be less likely to grant discretionary waivers to frequent overdrafters than to infrequent overdrafters. These commenters also expressed concern that frequent overdrafters, who are disproportionately made up of lower-income and minority consumers, would pay higher fees than they would if very large financial institutions could not adjust their non-covered overdraft transaction totals to account for their fee waiver policies. Other commenters supported a rule that would allow very large financial institutions to adjust their non-covered overdraft transaction totals to account for non-covered overdraft transactions that do not incur fees. These commenters noted that, if transaction totals included waived and refunded transactions, it would discourage very large financial institutions from continuing consumer friendly policies, such as offering grace periods before assessing overdraft fees, capping the number of overdraft fees per day, and establishing de minimis thresholds for assessing overdraft fees. Additionally, these commenters noted that very large financial institutions legally cannot charge overdraft fees for certain transactions, such as certain APSN transactions, and, therefore, those institutions likely would reduce access to overdraft credit if the rule required them to include such transactions in their transaction totals. One of these commenters further stated that the final rule should only allow very large financial institutions to adjust their non-covered overdraft transaction totals to account for their fee waiver policies if the rule also mandated additional consumer protections, such as grace periods, caps on the number of overdraft fees per day, and de minimis thresholds.

Extended or Sustained Overdraft Fees, Interest Charges on Outstanding Overdraft Balances, and Other Fees

At least one commenter asked the CFPB to amend the Official Interpretations of Regulation Z to clarify whether extended or sustained overdraft fees, interest on outstanding overdraft balances, and transfer fees assessed to move funds from a credit account to the consumer's depository account would count as overdraft charges for purposes of determining whether overdraft credit was above breakeven overdraft credit.

Calculating Average Costs and Charge-Off Losses Within Subsets of Account Portfolios When Applying the Breakeven Standard

At least one commenter provided their views on whether the final rule should allow very large financial institutions applying the breakeven standard to make separate calculations of their average costs and charge-off losses for non-covered overdraft within subsets of their depository account portfolios, such as account relationship tiers or average account balance ranges. This commenter stated that the final rule should not allow this practice because it would allow very large financial institutions to charge vulnerable consumers higher fees for non-covered overdraft credit while also raising the bar for such consumers to receive Regulation Z protections.

Comments Relating to the Benchmark Fee

The Benchmark Fee Formula

At least one commenter stated that the formula used to calculate the benchmark fee should match the formula used to calculate the breakeven standard.

Support for a Specific Benchmark Amount

Numerous commenters responded to the proposed rule's requests for comment soliciting feedback on the proposed benchmark fee figures. Commenters consisting of consumer advocates, government organizations, plaintiffs' attorneys, and members of the public generally supported adoption of a \$3 benchmark fee while financial institution and industry trade group commenters generally supported adoption of a high benchmark fee (\$14 or more). Some commenters supported benchmark fees falling between \$3 and \$14.

Proponents of the \$3 benchmark fee noted that it would provide greater benefits to consumers. These benefits included access to cheaper credit, decreased risk of falling into debt cycles, and decreased risk of becoming unbanked. Proponents of the \$3 benchmark were generally skeptical that adopting a low benchmark fee would limit consumers' access to overdraft credit. They presented three points in support of this view. First, they noted that many very large financial institutions either currently do not charge a fee for overdraft services or have significantly reduced their fees. Second, they noted that very large financial institutions with costs exceeding the \$3 benchmark fee could

calculate their own costs under the breakeven standard and charge a higher fee, or offer overdraft credit that complies with Regulation Z. Third, they noted that very large financial institutions could make changes to their overdraft programs to lower their costs in response to the rule.

Proponents of a \$3 benchmark fee further stated that the proposed rule's cost and loss estimates were generous. Specifically, they explained that, when estimating the cost of funds for financial institutions, the proposed rule assumed that financial institutions would lend an average of \$120 to consumers per transaction for a period of one month. However, they noted that the median overdraft is only \$50 and is repaid in three days. Similarly, they explained that, when estimating financial institutions' operational costs for providing overdraft credit, the proposed rule assumed that 10 percent of non-covered overdraft transactions would require 10 minutes of a customer service representative's time and that 20 percent of these customer service contacts also would require 10 minutes of a supervisor's time. They believed that those estimates overstated the amount of call center expense associated with operational costs.

Proponents of a \$3 benchmark fee further stated that the CFPB should not base the final rule's benchmark fee on the charge-off costs of the one very large financial institution in its data with the highest costs because that institution appeared to be an outlier and, as a policy matter, the CFPB should incentivize very large financial institutions to reduce charge-offs because they often lead to consumers becoming unbanked.

Proponents of a higher benchmark fee generally indicated that the CFPB should adopt a benchmark of \$14 or more or stated only that \$14 was too low. Several industry commenters stated that the proposed ranges for the benchmark fee would not allow them to recoup their costs. Some of these commenters stated that the \$1 per transaction estimate for costs of funds and operational costs in the proposed rule was too low. Other industry commenters offered thoughts on what benchmark fee might be more appropriate for them. Two of these commenters, representing the interests of credit unions, including credit unions with assets exceeding the very large financial institution threshold, stated that average costs for the credit unions they represent ranged from \$20–22 per overdraft transaction. Another commenter representing a state-chartered bank with \$1.6 billion in

assets stated that the known operational costs (including charge-off losses) for non-covered overdraft at their institution were roughly 39 percent of overdraft fees, but that the institution incurs other costs, and that its total costs exceed \$14 per overdraft transaction. Several other industry commenters stated that the CFPB should adopt the proposed \$14 benchmark fee. Two of these commenters representing credit unions with assets below the very large financial institution threshold indicated that the institutions they represent recently lowered their overdraft fees from the \$25–\$35 range to the \$10–\$15 range (implying that their costs fall within or below the \$10–\$15 range). Another commenter expressed concern that the sample used to calculate the benchmark fee was too small and that the CFPB should set the benchmark at \$14 until the agency had an opportunity to review a larger sample. They further noted that a \$14 fee benchmark fee would represent a significant fee reduction from the current average fee of \$34 and would save low-balance account holders, on average, just over \$90 per year and frequent overdrafters at least \$220 per year. They also noted that several very large financial institutions recently reduced their fees to between \$10 and \$15, so setting the benchmark fee at \$14 would make it easier for those institutions to comply with the rule. At least one industry commenter stated that the CFPB should set the benchmark fee at the current average fee in the market and adjust it for inflation going forward.

At least one industry commenter representing a credit union with assets of approximately \$4.8 billion supported a \$5 fee per overdraft, limited to one fee per day. This commenter further explained that their institution conducted a review of costs for overdraft credit and determined that a \$5 fee would be sustainable. A consumer advocate commenter stated that the CFPB should set the benchmark fee at \$6 (*i.e.*, the proposed benchmark fee that results from calculating the benchmark fee using only fee-assessed non-covered overdraft transactions from all institutions in the CFPB's sample), but only if the rule also mandated additional consumer protections, such as grace periods, caps on the number of overdraft fees per day, and de minimis thresholds.

Data Used for the Benchmark Fee

Industry commenters criticized the analysis used to establish the proposed benchmark fee amounts. First, they stated that the sample used for the

analysis was inadequate. Specifically, they noted that the sample consisted of only five very large financial institutions (or approximately three percent of the very large financial institutions that the proposed rule would have covered). They further observed that, by attempting to incorporate a diverse set of geographic footprints, asset sizes, and business models into the sample, entire categories of financial institution types were represented by only a single institution's data. They expressed concern that estimating the breakeven cost of overdraft credit based on five institutions would not be representative of the breakeven cost of overdraft credit for most very large financial institutions. They further criticized the sample because it did not include data from financial institutions that fell under the threshold for very large financial institutions. They explained that, even though the proposed rule would not have covered such institutions, it would have impacted such institutions indirectly because they would have had to adjust their overdraft fees to remain competitive with very large financial institutions. As a result, they believed that the analysis should have considered the impact of the proposed rule on those institutions.

Consideration of Effects to Consumer Behavior

Industry commenters stated that the analysis used to establish the proposed benchmark fee amounts failed to consider changes in consumer behavior. Specifically, these commenters explained that in the current market fees for non-covered overdraft credit have a deterrent effect. These commenters anticipated that, if the CFPB finalized any of the proposed benchmark fees, consumers would increase their use of overdraft credit. These commenters expressed concern that, as consumers increased their use of overdraft credit, more consumers would default on such credit, increasing charge-off costs as well as increasing the frequency of involuntary account closures and negative credit reporting. The commenters further anticipated that, as more consumers defaulted on non-covered overdraft credit, very large financial institutions would increase restrictions on such credit. In contrast, consumer advocate commenters expressed skepticism that overdraft fees were an effective way to deter consumers from overdrawing their deposit accounts.

Consideration of Market Conditions

Various commenters stated that the analysis used to establish the proposed benchmark fee amounts failed to consider changes in market conditions, in particular how charge-off costs would increase during an economic downturn. At least one of these commenters also expressed concern that neither the benchmark fee nor the breakeven fee would be sufficient for very large financial institutions to recover losses incurred during an economic downturn. Additionally, several industry commenters noted that the proposed benchmark fee amounts failed to adjust for inflation.

Final Rule

For the reasons stated in the proposal and below, the CFPB:

- Finalizes as proposed (but with technical edits to conform to Code of Federal Regulations style requirements) the definition of above breakeven overdraft credit at § 1026.62(b)(1), the methodology described at § 1026.62(d)(1) for determining whether credit is above breakeven overdraft credit, the description of the breakeven standard at § 1026.62(d)(1)(i), and the formula at § 1026.62(d)(2) for calculating the breakeven standard;
- Amends § 1026.62(d)(1)(ii) to set the benchmark fee at \$5;
- Adds § 1026.62(d)(3) to provide additional guidance regarding the circumstances under which a cost or charge-off loss is specifically traceable;
- Adds § 1026.62(d)(4) to provide additional guidance regarding the meaning of the phrase “charge or combination of charges” for purposes of § 1026.62(d)(1);
- Adds § 1026.62(d)(5) to provide additional guidance on how a very large financial institution determines the pro rata share of its total direct costs and charge-off losses under § 1026.62(d)(1)(i); and
- Adds § 1026.62(d)(6) to define “previous year” for purposes of § 1026.62(d)(1)(i).

These sections are discussed more fully below.

Definition of Above Breakeven Overdraft Credit (§ 1026.62(b)(1))

Section 1026.62(b)(1) defines above breakeven overdraft credit as overdraft credit extended by a very large financial institution to pay a transaction on which, as an incident to or a condition of the overdraft credit, the very large financial institution imposes a charge or combination of charges exceeding the average of its costs and charge-off losses for providing non-covered overdraft credit as described in § 1026.62(d).

As discussed above, several commenters asked the CFPB to consider a threshold for above breakeven overdraft credit that varies based on a range of factors, such as the amount of the overdraft, the amount of overdraft fees, the duration of the overdraft, the cost to the very large financial institution of providing the overdraft, the size of the very large financial institution, the frequency with which the consumer overdraws their account, or a periodic rate. Other commenters asked the CFPB to allow above breakeven overdraft credit to continue to qualify as non-covered overdraft credit if such credit included consumer-friendly features, such as cure periods, de minimis limits, transaction limits, and real-time notifications.

The CFPB adopts the approach outlined in the proposed rule over the approaches proposed by commenters because it is easier for financial institutions to implement, easier for regulators to enforce, and more protective of consumers. Under the approach adopted in this rule, overdraft credit is above breakeven overdraft if the charge exceeds the higher of the fee calculated using the breakeven standard or the benchmark fee. As a result, both very large financial institutions and regulators can readily determine whether an overdraft transaction is above breakeven overdraft credit by reviewing the fee charged to verify whether it exceeds either the benchmark fee or the fee permitted under the breakeven standard. If the threshold for above breakeven overdraft varied by factors such as the amount, duration, and cost of each overdraft, both very large financial institutions and regulators would need to make case-by-case determinations regarding whether individual transactions fell above or below the relevant threshold for above breakeven overdraft credit.

As noted, the approach adopted in the rule is also more protective of consumers. For example, many non-covered overdraft programs operating under the existing 1026.4(c)(3) exception already include consumer-friendly features, such as cure periods, de minimis limits, and transaction limits. Unfortunately, despite having these consumer-friendly features, many non-covered overdraft programs still operate as high-cost consumer credit products that put consumers at risk of harms such as high cumulative fee burdens, account charge-offs, involuntary account closures, and loss of access to the banking system. Allowing above breakeven overdraft credit to continue to qualify as non-covered overdraft credit when it

includes consumer-friendly features would allow those potential harms to persist in their present form. In contrast, the approach adopted in the rule significantly mitigates these risks by ensuring that very large financial institutions provide the non-covered overdraft credit as a courtesy. Therefore, the CFPB adopts § 1026.62(b)(1) as proposed.

General Calculations for Above Breakeven Overdraft Credit (§ 1026.62(d)(1))

Proposed § 1026.62(d)(1) clarified that overdraft credit offered by a very large financial institution is above breakeven overdraft credit for purposes of proposed § 1026.62(b)(1) if the charge or combination of charges for such credit exceeds the greater of (1) the pro rata share of the very large financial institution's annual total direct costs and charge-off losses for providing non-covered overdraft credit calculated in accordance with the breakeven standard outlined in § 1026.62(d)(2); or (2) the benchmark fee published by the CFPB.

The CFPB adopts § 1026.62(d)(1) as proposed. As explained in the proposed rule, the § 1026.62(d)(1) provides very large financial institutions with two methods for determining whether its current charge for an overdraft transaction exceeds the average of its costs and charge-off losses for providing non-covered overdraft credit—the breakeven standard and the benchmark fee. This approach decreases compliance costs for some very large financial institutions by providing them with a simple bright-line method for determining whether the overdraft credit they extend is above breakeven overdraft credit, while providing other very large financial institutions the flexibility to make the above breakeven calculation on their own.

In response to commenters' request for guidance clarifying whether extended or sustained overdraft fees, interest on outstanding overdraft balances, and transfer fees would count as overdraft charges for purposes of determining whether overdraft credit was above breakeven overdraft credit, the CFPB amends its proposal by adding § 1026.62(d)(4), which incorporates guidance that appeared in the preamble of the proposed rule into the final regulation text.¹⁹³ Specifically, § 1026.62(d)(4) provides that, for purposes of § 1026.62(d)(1), a charge or combination of charges includes all revenue received in connection with an overdraft transaction, including, but not limited to, any extended or sustained

overdraft fees, any interest charges on outstanding overdraft balances, and any other payments the very large financial institution receives in connection with an overdraft transaction.

Breakeven Standard (§§ 1026.62(d)(1)(i), 1026.62(d)(5), and 1026.62(d)(6))

Proposed § 1026.62(d)(1)(i) outlined the breakeven standard used to determine whether overdraft credit was above breakeven overdraft credit for purposes of proposed § 1026.62(b)(1). To employ the breakeven standard described at proposed § 1026.62(d)(1)(i), a very large financial institution determines its total direct costs and charge-off losses for providing non-covered overdraft credit to all accounts open at any point during the prior year and then divides that figure by the total number of non-covered overdraft transactions attributable to those accounts occurring in the prior year. The CFPB adopts § 1026.62(d)(1)(i) as proposed.

The CFPB sought comment regarding whether the breakeven standard should allow very large financial institutions to make separate calculations of their average costs and charge-off losses for non-covered overdraft within subsets of their depository account portfolio, such as account relationship tiers or average account balance ranges. At least one commenter stated that the final rule should not allow very large financial institutions to make separate calculations of their average costs and charge-off losses for non-covered overdraft within subsets of their depository account portfolios. As explained above, the CFPB favors an approach for determining whether a transaction is above breakeven overdraft that is straightforward for very large financial institutions to implement and simple for regulators to validate. Requiring very large financial institutions to calculate their average costs and charge-off losses for non-covered overdraft across their entire depository account portfolio advances these goals in at least two ways. First, it simplifies the breakeven calculation because financial institutions would not need to determine how they would apportion costs within subsets of their depository account portfolios. Second, it allows regulators to confirm a very large financial institution's compliance with the above breakeven overdraft requirement more easily because they would only need to review a single calculation. Therefore, the final rule requires very large financial institutions to calculate their average costs and charge-off losses for non-covered

overdraft across their entire depository account portfolio.

The CFPB also sought comment regarding whether the rule should allow a very large financial institution to exclude non-covered overdraft transactions from the transaction totals used to calculate the threshold for the breakeven standard in instances where the very large financial institution waived, refunded, or otherwise did not assess fees for those transactions ("uncharged transactions"). As discussed above, several commenters addressed this issue. The CFPB has considered these comments and determined that a very large financial institution should include all non-covered overdraft transactions, including uncharged transactions, in the transaction totals used to calculate the breakeven threshold.

The CFPB takes this position because including all non-covered overdraft transactions in the transaction totals used to calculate the breakeven threshold will keep the breakeven standard tailored to ensuring financial institutions can break even on just the non-covered overdraft transaction products and is not used to cross-subsidize other deposit account-related expenses like losses associated with uncharged transactions. The rule is not designed to allow a financial institution to turn a profit on non-covered overdraft transactions in order to cover other expenses related to the depository account. And the CFPB concludes that it would not need to provide an incentive to ensure uncharged transactions continue because the fact that financial institutions are providing them now at a loss suggests there is already sufficient logistical, competitive, or reputational incentive for them to exist.

This approach will also result in fairer treatment of consumers who pay fees for non-covered overdraft. As explained above, a very large financial institution employs the breakeven standard by dividing its total direct costs and charge-off losses for providing non-covered overdraft credit to all accounts open at any point during the prior year (the numerator) by the total number of non-covered overdraft transactions attributable to those accounts occurring in the prior year (the denominator). If the final rule permitted very large financial institutions to exclude transactions that do not incur fees from the denominator, the share of costs and losses attributable to the transactions remaining in the denominator increases. As a result, consumers who paid fees for non-covered overdraft transactions would pay higher fees for those

¹⁹³ 89 FR 13852, 13869 (Feb. 23, 2024).

transactions than they otherwise would under a rule requiring very large financial institutions to include all non-covered overdraft transactions in the transaction totals used to calculate the breakeven threshold. To avoid such cost shifting, the CFPB has determined that a very large financial institution should include all non-covered overdraft transactions, including uncharged transactions, in the transaction totals used to calculate the breakeven threshold.

The CFPB notes that another method for ensuring that the breakeven fees only covered losses on non-covered overdraft transactions would be to take out losses associated with uncharged transactions. The CFPB has determined that it would be practically difficult for financial institutions to isolate losses from charge-offs that resulted from overdrafts that incurred fees from losses from charge-offs resulting from uncharged transactions. Therefore, the CFPB has determined the best approach is to allow financial institutions to include all losses in the breakeven calculation, and account for that by including all overdraft transactions, whether they involved a fee or not. The result is to reach a fee amount that more accurately reflects a financial institution's marginal costs and losses per transaction.

To clarify that very large financial institutions must include uncharged transactions in the transaction totals used to calculate the threshold for the breakeven standard, the CFPB amends its proposal by adding § 1026.62(d)(5). Section 1026.62(d)(5) will provide that, when calculating the pro rata share of its total direct costs and charge-off losses for providing non-covered overdraft credit in the previous year, a very large financial institution must include all non-covered overdraft transactions from the previous year in its calculation.

At least one other commenter asked the CFPB to clarify how a very large financial institution can implement the breakeven standard if the institution lacks cost and charge-off loss data from the previous year. This commenter suggested that the CFPB amend the breakeven standard so that it provides very large financial institutions with the flexibility to use less than 12 months of cost and charge-off loss data to calculate the breakeven fee.

As explained in the proposed rule, very large financial institutions must use annualized cost and charge-off loss figures because those figures even out seasonal variations that could occur with a shorter review period.¹⁹⁴ As a

result, if a very large financial institution lacks cost and charge-off loss data covering a full year, it cannot implement the breakeven standard. Instead, a very large financial institution wishing to offer non-covered overdraft credit should utilize the benchmark fee until it has sufficient data to implement the breakeven standard.

The proposal did not define the term “previous year” for purposes of § 1026.62(d)(1)(i), but the CFPB intended to provide very large financial institutions with flexibility to use cost and charge-off loss data from a recent 12-month period, such as the prior calendar year, any 365-day period that begins within the prior calendar year, the prior four financial quarters, or the prior accounting year. To provide additional guidance regarding the meaning of “previous year,” the CFPB amends its proposal by adding § 1026.62(d)(6). Section 1026.62(d)(6) provides that, for purposes of § 1026.62(d)(1)(i), the term “previous year” means a period that encompasses, at the very large financial institution's option, any of the following periods—the prior calendar year, any 365-day period that begins within the prior calendar year, the prior four financial quarters, or the very large financial institution's prior accounting year.

When implementing the breakeven standard either for the first time or after transitioning from the benchmark fee, a very large financial institution can include direct costs and charge-off losses from any transaction that was a non-covered overdraft transaction during the previous year. For example, to comply with the final rule's effective date of October 1, 2025, a very large financial institution using the breakeven standard could calculate direct costs and charge-off losses based on all non-covered overdraft transactions occurring from January 1, 2024 through December 31, 2024 (the previous calendar year).

Cost and Loss Calculation for the Breakeven Standard (§§ 1026.62(d)(2) and 1026.62(d)(3))

To provide additional guidance regarding the types of costs and charge-off losses a very large financial institution could consider when calculating the breakeven standard, the CFPB proposed to add § 1026.62(d)(2). Proposed § 1026.62(d)(2) provided that, when calculating the breakeven standard, a very large financial institution could consider costs and charge-off losses that are specifically traceable to its provision of non-covered overdraft credit in the previous year.

As discussed above, various commenters asked the CFPB to provide

greater clarity regarding the breakeven standard. Most of these commenters asked the CFPB to provide additional guidance regarding the types of costs and charge-off losses that are considered specifically traceable costs and charge-off losses under the breakeven standard.

As the CFPB explained in its proposal, when calculating its costs and charge-off losses under the breakeven standard, a very large financial institution can consider costs and charge-off losses that are specifically traceable to its provision of non-covered overdraft credit. The CFPB proposed this specifically traceable standard in order to prevent very large financial institutions from employing the breakeven standard in a manner that would have circumvented § 1026.62(b)(1). Without such a restriction, very large financial institutions might have included costs and charge-off losses in their average cost and loss calculations that are more appropriately attributable either to other segments of their deposits business or to their deposits business overhead.

The proposed rule also provided an example of how the specifically traceable test would work in practice. In that example, if a very large financial institution had used issue tagging in its call center to reasonably and accurately gauge the number of customer service calls it received relating to non-covered overdraft credit, direct costs relating to those customer service calls would be specifically traceable and the very large financial institution could include the direct costs relating to those calls in its calculation of costs under the breakeven standard. This example demonstrates that the specifically traceable test consists of two questions. First, does the cost or charge-off loss have a direct relationship to the provision of non-covered overdraft services? Second, can the very large financial institution provide evidence to demonstrate that direct relationship? If a very large financial institution can answer both questions in the affirmative, then the cost or charge-off loss is specifically traceable, and the very large financial institution may consider the cost or charge-off loss for purposes of the breakeven standard.

As discussed above, some commenters stated that the formula for calculating costs and charge-off losses under the breakeven standard should include general overhead costs and charge-off losses resulting from unauthorized use, EFT errors, billing errors, returned deposit items, or rescinded provisional credit. However, as other commenters noted, such costs and losses do not have a direct

¹⁹⁴ 89 FR 13852, 13870 (Feb. 23, 2024).

relationship to the provision of non-covered overdraft services. This is true because very large financial institutions incur those costs and losses even if they do not extend non-covered overdraft credit to the consumer. As a result, such costs and charge-off losses fail the first part of the specifically traceable test and cannot be included in the breakeven standard's cost and charge-off calculation formula.

Very large financial institutions should employ a similar analysis when considering whether costs such as communication costs, branch servicing costs, collection costs, core provider/vendor costs, compliance costs, and technology costs are specifically traceable to the provision of non-covered overdraft credit. For example, a commenter asked whether the final rule would permit a very large financial institution to allocate a portion of its call center expenses to overdraft transactions if it did not have a method to track the calls it received relating to non-covered overdraft credit. As demonstrated by the example above, because the institution could not satisfy the second part of the specifically traceable test by producing evidence to substantiate the cost, the cost would not be specifically traceable and the very large financial institution could not include the cost under the breakeven standard.

After considering the comments received, and for the reasons stated above, the CFPB adopts § 1026.62(d)(2) as proposed. For clarity, the CFPB is amending its proposal by adding § 1026.62(d)(3) to describe the two-part test discussed above. Specifically, § 1026.62(d)(3) provides that, for purposes of § 1026.62(d)(2), a cost or charge-off loss is specifically traceable if it has a direct relationship to the provision of non-covered overdraft services and the very large financial institution can provide evidence to demonstrate that direct relationship.

Benchmark Fee (§ 1026.62(d)(1)(ii))

Section 1026.62(d)(1)(ii) establishes the benchmark fee. In its proposal, the CFPB suggested four potential benchmark fee amounts—\$3, \$6, \$7, and \$14—based on data collected from five very large financial institutions (the sample) and sought comment on whether to finalize one of these or some other fee amount. The CFPB used the same formula (the benchmark formula) to calculate all four of these proposed alternative benchmark fees but relied on different datapoints from the sample to derive each fee amount.

The proposed benchmark formula used a methodology that was similar to

the methodology that a very large financial institution would use to calculate its costs and losses under the breakeven standard provided in § 1026.62(d)(2) (the breakeven formula). The CFPB sought comment on this approach. At least one commenter stated that the methodology used to calculate the benchmark fee should track the breakeven formula. The commenter further underscored that both methodologies should treat the issue of uncharged transactions consistently.

Consistent with its proposal, the CFPB uses a calculation methodology for the benchmark fee that is similar to the calculation methodology that a very large financial institution uses to calculate its cost and losses under the final rule's breakeven standard. The CFPB considers this approach appropriate because the benchmark fee is meant to serve as a proxy for a financial institution's own breakeven calculation. The CFPB finds that providing such a proxy will facilitate compliance by decreasing compliance costs for very large financial institutions and by accommodating those institutions that lack the ability to determine their average costs and charge-off losses for providing non-covered overdraft credit under the breakeven standard. To advance these goals, the CFPB conducted its own calculation under the breakeven standard using cost and loss data from a sample of very large financial institutions. The results of this calculation reflect the average costs and charge-off losses for providing non-covered overdraft credit under the breakeven standard for the financial institutions in its sample. The CFPB anticipates that many very large financial institutions will be able to rely on the benchmark fee in lieu of performing their own calculation under the breakeven standard. Furthermore, as discussed above, the final rule requires a very large financial institution to include all non-covered overdraft transactions in the transaction totals used to calculate the breakeven threshold. For the same reasons, the CFPB uses the same approach to calculate the benchmark fee.

In the proposal, the CFPB also considered whether it should calculate the benchmark fee based on data from all five institutions in its sample or just the financial institution in its sample with the highest charge-off losses. Commenters in favor of using data from all five institutions generally stated that the CFPB should not calculate the benchmark fee using the data of a single outlier financial institution and that the

average from the entire sample provides a more accurate benchmark fee estimate. These commenters also expressed concern that relying on data from the outlier institution might discourage very large financial institutions from adopting practices that reduce charge-offs, which could result in greater consumer harm in the form of account closures and negative reporting than otherwise would occur if the CFPB calculated the benchmark fee based on the average charge-off losses from all five institutions in its sample.

Commenters in favor of using data from the outlier institution stated that the CFPB's sample was small and that the average may not be probative of the appropriate benchmark fee amount. They further noted that, even if the CFPB adopted its highest proposed benchmark fee of \$14, the benchmark fee would reflect a significant reduction in the average market price for non-covered overdraft. As a result, these commenters thought that basing the benchmark fee on data from the outlier institution was the sounder approach.

The CFPB has considered these comments and determined that it should calculate the benchmark fee based on data from all five institutions in its sample. The CFPB shares the concerns expressed by commenters who noted that relying on data from the outlier institution might result in greater consumer harm than otherwise would occur if the CFPB calculated the benchmark fee based on the average charge-off losses from all five institutions in its sample. In addition, the outlier institution's losses were significantly higher than losses for other institutions in the sample and for institutions that provided loss information in their comments, which suggests that using the outlier institution's losses to set the benchmark would overestimate the losses incurred by many institutions. Moreover, to the extent the benchmark fee amount is insufficient for a given institution to recoup its costs and losses, it may calculate its own costs and losses using the breakeven standard.

By applying a calculation methodology similar to the breakeven formula to all transaction data taken from all five of the very large financial institutions, the CFPB is using the same approach it used to derive the proposed \$3 benchmark fee. As discussed above, the CFPB received numerous comments regarding the amount of the benchmark fee. These comments fell into three general categories—support for the \$3 benchmark fee, support for a benchmark fee falling in between the \$3 and \$14 range, and support for a benchmark fee

of \$14 or more. Proponents of the \$3 benchmark fee stated that a \$3 benchmark fee would benefit consumers. They also viewed a \$3 benchmark fee as generous because they believed that the CFPB overestimated the cost of funds and operational costs faced by very large financial institutions. At least two commenters supported a benchmark fee falling between the \$3 and \$14 range. One of these commenters explained that their financial institution conducted a review of its costs for overdraft credit and determined that a \$5 fee would be sustainable for their institution. The other commenter stated that the CFPB should set the benchmark fee at \$6, but only if the rule also mandated additional consumer protections, such as grace periods, caps on the number of overdraft fees per day, and de minimis thresholds. This commenter explained that it wanted the CFPB to adopt the approach it used to derive the proposed \$6 benchmark fee, but with additional consumer protections in order to prevent very large financial institutions from changing waiver policies in order to increase revenues. Proponents of a benchmark fee of \$14 or more stated either that their costs were closer to \$14 or that the CFPB's estimates of very large financial institutions' costs were too low. These commenters also criticized the analysis used to establish the proposed benchmark fee amounts. First, they stated that the sample used for the analysis was too small and was unrepresentative of the broader market. Additionally, they criticized the sample because it did not include data from financial institutions that fell under the threshold for very large financial institutions.

No commenters representing very large financial institutions provided the CFPB with additional data that would impact the findings of its original analysis establishing the proposed benchmark fee amounts. One commenter representing a bank with \$1.6 billion in assets provided a breakdown of known costs and losses associated with the operation of their bank's overdraft program. This commenter determined that the known costs and losses associated with their bank's overdraft program represented roughly 39 percent of its overdraft fee of \$25, which equates to \$9.75. However, this estimate likely overstates the costs and losses attributable to a very large financial institution's overdraft program for several reasons. First, the commenter's cost estimates included costs for manual review of overdraft payment decisions by bank employees.

These review costs represented \$1 of the \$9.75, or approximately ten percent of its costs. The CFPB expects that many very large financial institutions have automated such reviews, making them significantly less costly. Second, the commenter's cost estimates included costs associated with mailing overdraft notices. These mail-related costs represented \$1.75 of the \$9.75, or approximately 18 percent of its costs. The CFPB expects that many very large financial institutions provide such notices electronically, significantly lowering the cost of providing such notices. Accounting for these and other efficiencies gained by scale at very large financial institutions, the CFPB expects the costs and losses of many very large financial institutions to be lower than this bank's estimated costs and losses. An additional commenter representing a credit union with \$4.8 billion in assets stated that based on a recent review of costs conducted by the credit union, a \$5 fee would be sustainable for their institution.

Both commenters referenced in the preceding paragraph represented financial institutions with less than \$10 billion in assets. It stands to reason that many very large financial institutions, which have the advantage of scale, could continue to operate overdraft programs at the proposed \$3 benchmark fee. As noted above, the benchmark fee is not a regulatory obligation; it is a proxy for a financial institution's own breakeven calculation and is being adopted to ease the compliance burden of implementing the breakeven standard. To the extent the benchmark fee amount is insufficient for a given institution to recoup its costs and losses, that institution may calculate its own costs and losses using the breakeven standard. However, to help ensure that the benchmark fee covers additional costs noted by commenters, such as costs relating to branch servicing, collections, core provider/vendor services, compliance, technology, and the provision of overdraft notices, the CFPB will increase its cost estimates for its proposed \$3 benchmark fee by \$2 per transaction. Therefore, the CFPB finalizes § 1026.62(d)(1)(ii) to set the benchmark fee at \$5.

Industry commenters also expressed concern that, if the CFPB finalized any of the proposed benchmark fees, consumers would increase their use of overdraft credit. These commenters contended that, as consumers increased their use of overdraft credit, more consumers would default on such credit, increasing charge-off costs as well as increasing the frequency of involuntary account closures and

negative credit reporting. The commenters further anticipated that, as more consumers defaulted on non-covered overdraft credit, very large financial institutions would increase restrictions on such credit.

Both the proposed rule's 1022(b) analysis and the final rule's 1022(b) analysis have considered how lower prices might impact consumer behavior.¹⁹⁵ For consumers who overdraft by mistake, both 1022(b) analyses determined that a lower price for non-covered overdraft credit would be unlikely to change consumer behavior because those consumers did not intend to overdraft in the first place. This view is consistent with the views expressed by consumer advocates who commented that overdraft fees are not an effective deterrent and that lowering the amount of overdraft fees likely will not significantly impact whether or not a consumer overdraws their account. For consumers who use non-covered overdraft credit deliberately, both 1022(b) analyses determined that a lower price for non-covered overdraft credit would lead some consumers to use such credit more frequently on the margin. Nonetheless, very large financial institutions could take proactive measures to reduce such use, should they prefer that—such as by managing overdraft credit limits.

Commenters also stated that the analysis used to establish the proposed benchmark fee amounts failed to consider changes in market conditions. Specifically, these commenters noted that the analysis failed to consider how charge-off costs could increase during an economic downturn. At least one of these commenters also expressed concern that neither the benchmark fee nor the breakeven fee would be sufficient for very large financial institutions to recover losses incurred during an economic downturn. Additionally, several commenters noted that the proposed benchmark fee amounts failed to adjust for inflation.

To the extent that a very large financial institution determines that changes in market conditions, such as an economic downturn or inflation, make the benchmark fee too low, the final rule provides very large financial institutions with the flexibility to calculate their own breakeven pricing or to offer covered overdraft credit in compliance with the requirements of Regulation Z. The CFPB expects that very large financial institutions employing the breakeven standard during an economic downturn should

¹⁹⁵ See 89 FR 13852, 13893 (Feb. 22, 2024); part VII.E.1.iii of this rule.

be able to effectively manage their credit risk through traditional credit risk management practices, such as adjusting underwriting standards. Nevertheless, the CFPB will continue to monitor the market to determine whether adjustments to the benchmark fee or the breakeven standard are warranted.

E. Changes To Covered Overdraft Credit Offered by Very Large Financial Institutions

As discussed below, the CFPB is updating requirements that apply to covered overdraft credit offered by a very large financial institution by: (1) requiring covered overdraft credit to be structured as a separate account; (2) applying additional credit card provisions to covered overdraft credit that can be accessed by a hybrid debit-credit card; and (3) applying Regulation E's compulsory use prohibition to covered overdraft credit. For existing open-end covered overdraft credit products, the proposed new designation as covered overdraft credit accounts would not impose duplicative or additional account opening requirements.

1. Structure of Covered Overdraft Credit (§ 1026.62(c))

The CFPB proposed in § 1026.62(c) to prohibit a very large financial institution from structuring covered overdraft credit as a negative balance on a checking or other transaction account and to require the institution to structure covered overdraft credit as a separate credit account. The CFPB preliminarily determined that this structural requirement would make it easier for creditors and consumers to implement and understand, respectively, covered overdraft credit. For the reasons discussed below, the CFPB is finalizing § 1026.62(c) as proposed.

Comments Received

Several industry commenters opposed the CFPB's proposal. They argued that the requirement to structure overdraft as a separate account would substantially increase the cost of providing overdraft credit relative to the current cost of providing non-covered overdraft as a negative balance on the asset account. Some argued that the requirement was unreasonable or impractical in connection with most overdrafts, which are of small duration and amount.

Several consumer advocate commenters supported the CFPB's proposal. They argued that important TILA consumer protections, including the offset prohibition and the periodic statement disclosure and billing error

resolution requirements, would be difficult or impossible for creditors to implement without separating a consumer's asset account from the consumer's linked covered overdraft credit. They also argued that the separate account structure would improve consumers' ability to know when they are accessing, and to decide whether they want to access, covered overdraft credit, as well as their ability to know when they are repaying, and to decide whether they want to repay, the overdraft credit. They argued that the current high cost of overdraft credit makes such consumer understanding and control particularly important. One nonprofit commenter observed that structuring covered overdraft as a credit account separate from the asset account is the way that overdraft lines of credit have worked since TILA's enactment in 1968 and is the way that checking accounts with linked credit card accounts work. This commenter agreed with the CFPB's proposal because, this commenter stated, the separation of the credit account from the asset account is a core element of TILA.

Final Rule

For the reasons discussed below, the CFPB is finalizing § 1026.62(c) as proposed. Final § 1026.62(c) prohibits a very large financial institution from structuring covered overdraft credit as a negative balance on a checking or other transaction account and requires the institution to structure covered overdraft credit as a separate credit account. The CFPB has determined that requiring the separation of a consumer's asset balance, such as a checking or other transaction account that is a "covered asset account" as defined in proposed § 1026.62(b)(2), from the consumer's credit balance, such as a credit account that is a "covered overdraft credit account" as defined in proposed § 1026.62(b)(4), is an appropriate addition to Regulation Z under its TILA section 105(a) authority, as it is necessary or proper to facilitate creditor compliance and to effectuate the purposes of TILA by helping to avoid the uninformed use of credit and protecting consumers against inaccurate and unfair credit billing and credit card practices.

The separate account structure requirement will enable institutions to comply with the requirements of TILA and Regulation Z, including, for example, the offset prohibition. It is not possible for an institution to maintain both a credit balance and an asset balance at the same time for a consumer within a single asset account that has no tied credit account or subaccount. It is

therefore also not possible for the institution to provide overdraft credit to the consumer in a manner that complies with the Regulation Z offset prohibition without providing the consumer with a credit account or subaccount that is separate from the tied asset account.

Further, Regulation Z's open-end rules are generally drafted with the assumption that the product in question is a pure credit product, without substantial positive funds. For example, existing § 1026.11(a) generally provides that creditors must refund any positive balances on the credit account to the consumer within six months. As another example, the rules for defining finance charges in the credit card context generally treat all transaction charges as finance charges, which makes sense when all transactions are generally assumed to involve use of credit.

The separate account structure requirement will also avoid the uninformed use of credit by enabling consumers to better understand and monitor their asset and credit balances and trace how their funds are being used through more informative periodic statement disclosures, both for the asset account as required by Regulations E and DD and for the linked separate covered overdraft credit account as required by Regulation Z. The separate account structure will protect consumers from unfair credit billing and credit card practices by enabling them to control their funds. Specifically, the requirement will empower consumers to use funds from incoming deposits to their accounts for purposes other than immediately repaying an overdraft balance, as the offset prohibition requires institutions to permit consumers to do.

The CFPB has determined that the separate credit account structure by itself will not materially increase the cost of providing non-covered overdraft credit that will become covered overdraft credit under this final rule. This structure is demonstrably feasible today because very large financial institutions already have it in place for their overdraft lines of credit and for their credit cards linked to checking accounts. Indeed, creditors have structured their overdraft lines of credit in this manner since TILA's enactment. If a very large financial institution that today does not offer such lines of credit or linked credit cards seeks to provide above breakeven overdraft credit, the institution will be required to implement the separate account structure as part of doing so, when they will already be incurring costs for implementing other operational changes

to offer covered overdraft credit. The expected costs and benefits of these changes are discussed in part VII below. The CFPB has also determined that it will not be impractical for institutions to comply with the separate account requirement in connection with overdrafts of small duration and amount because these characteristics have nothing to do with the cost of the separate account structure requirement. For example, many credit card purchases are of small dollar amounts. These small purchases simply get incremented to the credit card account balance at virtually zero marginal cost. At some later time, funds are transferred from the consumer's asset account to repay the credit balance, again at virtually zero marginal cost.

2. Credit Card Changes

Credit cards and card issuers are generally subject to additional requirements in Regulation Z. The requirements that apply generally depend on whether the credit account (1) is a "credit card account under an open-end (not home-secured) consumer credit plan" under Regulation Z; or (2) can be accessed by a "credit card" or "charge card," as those terms are defined under Regulation Z. Currently, a covered overdraft credit account that can be accessed by a debit card or other device that qualifies as a credit card (including certain account numbers) is subject to some Regulation Z requirements that apply to "credit cards." Such covered overdraft credit, however, is not subject to requirements that apply to a "credit card account under an open-end (not home-secured) consumer credit plan." It is also specifically excepted from some of the requirements that apply to "credit cards." The CFPB proposed applying all credit card provisions generally to covered overdraft credit accounts if the credit account can be accessed by a hybrid debit-credit card, as defined in the proposal, namely a debit card offered by a very large financial institution. As discussed further below, the CFPB is finalizing these changes as proposed, such that the final rule applies all the credit card provisions to covered overdraft credit accounts if the credit account can be accessed by a hybrid debit-credit card.

i. Applying CARD Act Provisions of Regulation Z To Covered Overdraft Credit

The CFPB proposed subjecting all covered overdraft credit to the CARD Act provisions of Regulation Z in subparts B and G (the CARD Act provisions) if that credit is (1) open-end

credit; (2) accessible by a credit card; and (3) offered by a very large financial institution. Currently, a debit card that can access covered overdraft credit is considered a credit card under Regulation Z and generally is subject to the Regulation Z provisions that apply to credit cards, but, because of two non-statutory exceptions, the overdraft credit is not subject to the CARD Act provisions.¹⁹⁶ The final rule subjects such credit to the CARD Act provisions when it is offered by very large financial institutions. To implement these changes, the rule adds a new definition of "hybrid debit-credit card," amends the definitions of "credit card" and "credit card account under an open-end (not home-secured) consumer credit plan," and makes other clarifying changes to the rule text and associated commentary.

Background on the CARD Act and Overdraft

As discussed in the proposed rule, the CARD Act amended TILA to institute new substantive and disclosure requirements to establish fair and transparent practices for open-end consumer credit card plans.¹⁹⁷ The statutory language of the CARD Act applies the protections broadly to credit card products that can access open-end consumer credit. The CARD Act generally applies to any "credit card

account under an open-end consumer credit plan." Absent two non-statutory exceptions, this broad language generally applies to open-end covered overdraft credit that is accessed by a credit card, including a debit card.

The Board implemented this statutory language in Regulation Z in 2010 through the term "credit card account under an open-end (not home-secured) consumer credit plan."¹⁹⁸ That term is defined in existing § 1026.2(a)(15)(ii) to generally mean an open-end credit account that is accessed by a credit card. The Board then used the term "credit card account under an open-end (not home-secured) consumer credit plan" in provisions of Regulation Z in subpart B and subpart G that were promulgated or amended to implement the CARD Act. Like the statutory definition, this regulatory definition would be broad enough so that the CARD Act provisions generally would apply to covered overdraft credit that is accessed by a credit card, including a debit card.

However, overdraft lines of credit are not subject to the CARD Act provisions in subpart B and subpart G that apply to a "credit card account under an open-end (not home-secured) consumer credit plan" because the Board adopted two non-statutory exceptions that exclude overdraft lines of credit from that definition. The exceptions in existing § 1026.2(a)(15)(ii)(B) and (C), respectively, are (1) an overdraft line of credit that is accessed by a debit card; and (2) an overdraft line of credit that is accessed by an account number other than an account number that is a hybrid prepaid-credit card that can access a covered separate credit feature as defined in § 1026.61. Although Regulation Z does not explicitly define "overdraft line of credit," the term is generally understood to refer to an open-end credit product tied to an asset account. Funds are advanced from the credit product to pay for a withdrawal when the consumer withdraws more money than they have available in the asset account.

Aside from the CARD Act provisions in subpart B and subpart G, currently these overdraft line of credit products are generally subject to Regulation Z's open-end credit rules when the fees and other charges imposed on this product are finance charges. The existing

¹⁹⁶ 12 CFR 1026.2(a)(15)(i), (iv) and comment 2(a)(15)–2.i.B. Non-covered overdraft credit is not subject to Regulation Z, which includes the provisions applicable generally to credit cards and the provisions implementing the CARD Act, because (1) it is not subject to a finance charge or repayable by a written agreement in more than four installments and (2) a debit card that can access non-covered overdraft credit is not considered a credit card because, as existing comment 2(a)(15)–2.ii.A explains, a debit card with no credit feature or agreement is not a credit card even if the creditor occasionally honors an inadvertent overdraft. As discussed in the changes to the definition of finance charge section above, the final rule amends the definition of "finance charge" to expand the scope of covered overdraft credit, such that certain overdraft credit that is currently non-covered overdraft credit will be considered covered overdraft credit when this rule becomes effective. Like other covered overdraft credit, this newly covered overdraft credit will be generally subject to the Regulation Z provisions applicable to credit cards if the covered overdraft credit can be accessed by a credit card. However, without further changes, the non-statutory exceptions that exclude covered overdraft from being subject to the CARD Act provisions would prevent covered overdraft credit, including newly covered overdraft credit, from being subject to the CARD Act provisions. As discussed in this section, the final rule updates these non-statutory exceptions, which subjects certain covered overdraft credit, including certain newly covered overdraft credit, to the CARD Act provisions.

¹⁹⁷ Section 2 of the CARD Act expressly granted authority to the Federal Reserve Board to issue such rules as it considers necessary to carry out the Act, and the CFPB now has that authority pursuant to the CFPA.

¹⁹⁸ See 75 FR 7658, 7663–65 (Feb. 22, 2010). The Board first implemented the statutory term "credit card account under an open-end consumer credit plan" in its July 2009 interim final rule, which, in relevant part, exempted home equity lines of credit from certain requirements of the CARD Act. 74 FR 36077, 36083 (July 22, 2009). The Board added the term "credit card account under an open-end (not home-secured) consumer credit plan" in its 2010 final rule.

overdraft-related exclusion in 12 CFR 1026.4(c)(3), which the CFPB is narrowing in this rulemaking, does *not* exclude overdraft products where “the payment of [overdrawing] items and the imposition of the charge were previously agreed upon in writing.” To the extent these overdraft line of credit products can be accessed by a debit card or other single credit device, the debit card or other single credit device is a “credit card” and is generally subject to provisions in Regulation Z that apply to a “credit card.”¹⁹⁹

The Board acknowledged in its February 2010 rule that it believed that, as a general matter, Congress intended the CARD Act to apply broadly to products that meet the definition of a credit card.²⁰⁰ The Board also acknowledged that a debit card that accesses an overdraft line of credit is a “credit card.”²⁰¹

Nevertheless, the Board relied on its authority under TILA section 105(a) and section 2 of the CARD Act to create two exceptions for overdraft lines of credit, including one for debit cards that can access an overdraft line of credit. As a result of the exceptions, such accounts are not subject to the various CARD Act provisions in subpart B and subpart G that apply to a “credit card account under an open-end (not home-secured) consumer credit plan.” In creating the exceptions, the Board stated that, at the time, Regulation Z-covered overdraft lines of credit were not in wide use and that, as a general matter, creditors who offered overdraft lines of credit did not engage in some of the practices regulated by the CARD Act provisions with respect to those products.²⁰² The Board cited three examples of practices regulated by the CARD Act that were not currently present in the market: (1) increasing annual percentage rates, (2) applying different rates to different balances, and (3) allowing grace periods before charging interest. The Board did not specifically address other provisions, such as limitations on penalty fees, over-the-limit fees, and the requirement to assess ability to pay, which may have had an impact on practices involving overdraft lines of credit. Because of its assessment that the small market for overdraft lines of credit did not present substantial consumer protection concerns similar to those addressed by the CARD Act, the Board concluded that “alternative forms of regulation” such as Regulation E were “better suited” to protect consumers

from harm with respect to those products.²⁰³

Hybrid Debit-Credit Card (§ 1026.62(b)(5)), Credit Card (§ 1026.2(a)(15)(i)), and Credit Card Account Under an Open-End (Not Home-Secured) Consumer Credit Plan (§ 1026.2(a)(15)(ii))

In § 1026.62(b)(5), the CFPB proposed defining the new term “hybrid debit-credit card” for clarity and ease of reference. It also proposed amending the definition of “credit card” in § 1026.2(a)(15)(i) and related commentary in 2(a)(15) to clarify what is and is not a credit card when certain credit devices can access covered overdraft credit. Under current Regulation Z, a debit card that can access an overdraft line of credit is a credit card.²⁰⁴ The CFPB also proposed amending the definition of “credit card account under an open-end (not home-secured) consumer credit plan” in § 1026.2(a)(15)(ii) by narrowing the two overdraft-related exceptions so that open-end covered overdraft credit offered by a very large financial institution would no longer be excepted from the definition of a “credit card account under an open-end (not home-secured) consumer credit plan.” Such credit offered by a very large financial institution would be subject to the CARD Act provisions in subpart B and subpart G. This would include existing covered overdraft credit (currently commonly referred to as “overdraft lines of credit”) and overdraft credit that would become covered overdraft credit because it is above breakeven overdraft credit.

Comments Received

Various commenters provided general feedback on the application of the credit card provisions. With regard to adding a new definition of “hybrid debit-credit card,” and amending the definitions of “credit card,” and “credit card account under an open-end (not home-secured) consumer credit plan,” several commenters, including consumer advocates as well as a trade group, wrote in support of these changes, with the consumer advocate commenters noting that the CFPB has authority under TILA and the CARD Act to make these changes, these changes are consistent with Regulation Z, and finance charges or four installments are not necessary for there to be a credit card. Some commenters, including a

consumer advocate, a think tank, and a member of Congress, noted that debit cards that can access overdraft credit are credit cards under TILA and the CARD Act. At least one consumer advocate commenter also noted that the CFPB has the authority to bring all overdraft credit accessed through a device within the definition of credit card, regardless of the size of the fee or even the presence of any fee at all. These and other consumer advocate commenters support the CFPB eliminating the regulatory exceptions to bring the regulatory scheme closer to the plain meaning of the CARD Act, and to fulfill the consumer protection purposes of the CARD Act.

Many industry commenters opposed the application of the credit card rules to overdrafts, stating that there would be additional costs, complexity, and risk involved for very large financial institutions offering above breakeven overdraft credit. Industry commenters said consumers would also be harmed because they would be denied overdraft credit because of the CARD Act requirements, would see the cost of their asset accounts go up due to the cost of the credit card provisions, and would be confused by receiving periodic disclosures under both Regulation Z and Regulation E. One noted that while stronger regulations for overdraft lines of credit are needed, regulatory flexibility in the application of the credit card rules also was needed so as not to stifle innovation. This commenter and consumer advocate commenters questioned whether certain credit card provisions should not apply to or should be more flexible for overdrafts.

With regard to comments about using CFPB’s statutory authority to expand Regulation Z credit card coverage to overdrafts that would be non-covered overdrafts under the final rule, for the reasons discussed further above, the CFPB declines to do so. The CFPB recognizes that the credit card provisions may result in additional costs, complexity and risk to very large financial institutions depending on how a very large financial institution chooses to price and structure its overdraft credit in response to this rule. However, the CFPB has determined that the regulatory exceptions from the statutory credit card provisions are no longer appropriate. While the Board created those exceptions based on the understanding that overdraft lines of credit were not in “wide use” at the time and did not include features common to other credit cards, the CFPB has determined that the prevalence or nature of a particular type of credit card should not render it

¹⁹⁹ See Regulation Z comment 2(a)(15)–2.i.B.

²⁰⁰ See 75 FR 7658, 7664 (Feb. 22, 2010).

²⁰¹ *Id.*

²⁰² *Id.* at 7665.

²⁰³ *Id.*

²⁰⁴ See existing Regulation Z comment 2(a)(15)–2.i.B (stating that examples of credit cards include a debit card that also accesses a credit account).

beyond the scope of the CARD Act. By its plain terms, the CARD Act applies to all “credit card account[s] under an open-end consumer credit plan,” which, as noted above, includes open-end overdraft credit accessible by a credit card. In any event, the CFPB anticipates that the market for covered overdraft credit could react to the changes in this rule in several ways, including by offering covered overdraft lines of credit to many consumers who currently receive non-covered overdraft credit, including subprime consumers.

Very large financial institutions could also react to this rule by offering covered overdraft credit on different terms than those that have historically been offered. Similarly, other protections, such as the requirement to assess ability to pay, the fee limitations provision, and the limits on penalty fees, may become even more important if covered overdraft credit is offered to more subprime consumers.

The CFPB also has determined that the CARD Act provisions would provide important consumer protections to those consumers most likely to use covered overdraft credit accounts. Today, a small subset of consumers, whom the CFPB has in the past referred to as “frequent overdrafters,” incur most overdraft fees. In light of the final rule’s treatment of the overdraft fee that a very large financial institution may charge for non-covered overdraft, the CFPB expects that some very large financial institutions may have reduced incentive to provide non-covered overdraft credit to the frequent overdraft consumers who typically have lower credit scores²⁰⁵ and today incur the preponderance of overdraft fees. Instead of providing these consumers with non-covered overdraft credit, some very large financial institutions may provide these consumers with covered overdraft credit accounts—the accounts to which the rule would apply the CARD Act provisions—which would allow them the flexibility to charge more than the threshold that cannot be exceeded to remain non-covered overdraft credit.

The CFPB also has determined that applying the CARD Act provisions could provide important benefits to economically vulnerable consumers such as “subprime” consumers. Many of the provisions of the CARD Act target credit card practices affecting these

consumers.²⁰⁶ To the extent that some financial institutions would offer covered overdraft credit to more economically vulnerable consumers in response to the final rule, these CARD Act provisions would offer additional protections to consumers with a debit card that accesses overdraft credit. This will result in a consumer who uses a debit card to access overdraft credit—who often is a vulnerable consumer—receiving the same protections that a subprime credit card consumer receives today, consistent with the broad statutory language in the CARD Act.

With respect to comments about possible consumer confusion due to consumers receiving both monthly credit account disclosures and monthly asset account disclosures, Regulations Z, E and DD permit the required disclosures to be combined in one communication as long as the disclosures comply with the regulatory requirements.²⁰⁷ As discussed further above, the addition of credit disclosures will further facilitate consumers’ understanding of the cost of overdraft credit.

Final Rule

To prevent the market for Regulation Z-covered overdraft from posing consumer risks after the rule goes into effect, carry out the purposes of TILA by promoting the informed use of credit and protecting consumers against unfair credit card practices pursuant to TILA section 105(a), and carry out the CARD Act pursuant to section 2 of the CARD Act, the final rule subjects all covered overdraft credit to the CARD Act provisions in subpart B and subpart G if that credit is (1) open-end credit; (2) accessible by a credit card; and (3) offered by a very large financial institution.

The final rule defines “hybrid debit-credit card” in § 1026.62 to mean any card, plate, or other single credit device that a consumer may use from time to time to obtain covered overdraft credit from a very large financial institution. This definition describes a type of credit card that has two defining characteristics: (1) the credit card must be able to access covered overdraft credit; and (2) the covered overdraft credit must be offered by a very large financial institution. This definition would include, for example, a debit card that a consumer can use to complete transactions using funds drawn from an

asset account held at a very large financial institution when that device can also be used to access covered overdraft credit.

TILA defines “credit card” as “any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.”²⁰⁸ Section 1026.2(a)(15)(i) defines credit card as “any card, plate, or other single credit device that may be used from time to time to obtain credit,” which includes “a hybrid prepaid-credit card as defined in § 1026.61.” The final rule revises § 1026.2(a)(15)(i) to clarify that a debit card that can access a covered overdraft credit account is a credit card. Thus, under the rule, a debit card that can access a covered overdraft credit account is a hybrid debit-credit card, a hybrid debit-credit card is a credit card, and a debit card that can access a covered overdraft credit account is a credit card. As noted, under the extant regulation a debit card that can access an overdraft line of credit is a credit card. Consistent with these changes and to clarify what is not a credit card, the final rule amends comments 2(a)(15)–2.i.B, 2(a)(15)–2.i.A, 2(a)(15)–2.ii.C, and 2(a)(15)–2.ii.A and adds comment 2(a)(15)–2.ii.E. As proposed, and under current law, the final rule clarifies in comment 2(a)(15)–2.ii.C that an account number is a credit card when it can access covered overdraft credit if the account number can use the credit accessed to purchase goods and services. For example, if an institution permits a consumer to use the account number to initiate ACH transactions that can access credit to purchase goods and services, the account number is a credit card. This is so even if the institution declines the consumer’s debit card transactions that would access credit if authorized.

The final rule also amends the definition of a “card account under an open-end (not home-secured) consumer credit plan” in § 1026.2(a)(15)(ii) by narrowing the two overdraft-related exceptions so that card-accessible open-end covered overdraft credit offered by a very large financial institution would no longer be excepted from the definition of a “credit card account under an open-end (not home-secured) consumer credit plan.” Such credit offered by a very large financial institution would be subject to the CARD Act provisions in subpart B and subpart G.

²⁰⁵ See CFPB 2017 Data Point at 16 tbl.2; see also CFPB 2014 Data Point at 12 (showing non-overdrafters had a median credit score of 747, infrequent overdrafters had a median credit score of 654, occasional overdrafters had a median credit score of 610, moderately frequent overdrafters had a median credit score of 585, and very frequent overdrafters had a median credit score of 563.)

²⁰⁶ See, e.g., CARD Act section 105, entitled “Standards applicable to initial issuance of subprime or ‘fee harvester’ cards.”

²⁰⁷ See Regulation Z comment 5(a)(1)–2, Regulation E § 1005.4(b), and Regulation DD § 1030.3(a).

²⁰⁸ 15 U.S.C. 1602(l).

Discussion of the Effect of Applying Regulation Z's CARD Act Provisions To Covered Overdraft Credit Accounts Accessed by a Hybrid Debit-Credit Card

The changes discussed above subject covered overdraft credit to the CARD Act provisions in subpart B and subpart G if that credit is accessible by a debit card and offered by a very large financial institution. In addition to the changes discussed above, the CFPB also proposed conforming and clarifying changes to the commentary for §§ 1026.55 and 1026.57 to reflect the changes discussed in this section. In particular, the CFPB proposed to add comment 55(a)–5 to clarify that the limitations on increasing annual percentage rates, fees, and charges apply to fees imposed in connection with covered overdraft credit whether those fees are imposed on the covered overdraft credit account or the associated covered asset account. Finally, the CFPB proposed to amend comment 57(a)(1)–1 so that it would continue to accurately reflect the exceptions from the definition of credit card issued under a credit card account under an open-end (not home-secured) consumer credit plan if changes to that definition are finalized as proposed. The CFPB is finalizing those changes as proposed.

As mentioned, various commenters provided general feedback on the application of the credit card provisions. A consumer advocate commenter noted its support and reasoning for applying each of the credit card provisions to hybrid debit-credit cards, including (but not limited to) provisions related to limitations on penalty fees (§ 1026.52(b)(1) and (b)(2)), the prohibition on increases in any APR, fee, or finance charge applicable to any outstanding balance on a credit card account (§ 1026.55), the requirement that card issuers reevaluate rate increases (§ 1026.59), and the requirement that institutions of higher education publicly disclose agreements with card issuers and limit the marketing of credit cards on or near college campuses (§ 1026.57). This commenter noted that other credit card provisions may not be applicable to debit cards that access overdraft credit as they are currently structured but that the provisions should apply as these cards or overdraft practices change. The commenter mentioned provisions including those regarding how a card issuer must allocate payments in excess of the minimum periodic payment (§ 1026.53), the limitation on card issuers imposing a finance charge as a result of the loss of a grace period

(§ 1026.54), and the restriction on fees for over-the-limit transactions to one per billing cycle and the requirement that the consumer opt-in to payment of such transactions in order for the fee to be charged (§ 1026.56).

To the extent that commenters provided substantive comments on specific credit card provisions, they are discussed below.

Ability To Pay (§ 1026.51)

The ability to pay requirement in § 1026.51 requires assessment of the consumer's ability to pay the credit extended, such as covered overdraft credit, based on the consumer's income or assets and the consumer's current obligations.²⁰⁹ It requires reasonable written policies and procedures to consider the consumer's ability to make the required minimum payments under the terms of the account based on a consumer's income or assets and a consumer's current obligations.²¹⁰ Reasonable policies and procedures also include consideration of at least one of the following: The ratio of debt obligations to income; the ratio of debt obligations to assets; or the income the consumer will have after paying debt obligations.²¹¹ It would be unreasonable for a card issuer not to review any information about a consumer's income or assets and current obligations.²¹² With regards to sources of information about a consumer's income or assets, the commentary states that the financial institution may consider information provided by the consumer in connection with the account, provided by the consumer in connection with any other financial relationship the card issuer or its affiliates have with the consumer, obtained through third parties, or obtained through any empirically derived, demonstrably and statistically sound model that reasonably estimates a consumer's income or assets.²¹³ The commentary also states that current or reasonably expected income also includes income that is deposited regularly into an account on which the consumer is an accountholder (e.g., an individual deposit account or joint account).²¹⁴ With regard to sources of information about a consumer's obligations, the commentary states that the financial institution may consider the consumer's current obligations

based on information provided by the consumer or in a consumer report.²¹⁵

Some industry commenters, and an academic commenter, argued that applying the ability to pay provision to hybrid debit-credit cards would result in a pullback of overdraft credit for those consumers who need it the most. On the other hand, a consumer advocate commenter noted that the ability to pay requirement may be too weak and this minimal requirement would not result in consumers being denied overdraft credit.

While the ability to pay requirement provides important protections, this requirement is flexible. It requires the ability to repay the required minimum periodic payments, and does not set mandatory minimum ratios, such as a minimum debt to income ratio.²¹⁶ Furthermore, application of this provision will provide an incentive for financial institutions to structure and price covered overdraft credit such that consumers are better able to repay it, relative to current non-covered overdraft credit. To the extent that a consumer does not have the ability to repay covered overdraft credit, not extending overdraft credit to such a consumer is an important consumer protection because a consumer defaulting on the overdraft credit may mean losing their asset account.

One industry commenter noted that it was impractical to comply with the ability to pay provision for an overdraft credit extension of short duration and small amount. Another industry commenter stated that conducting the ability to pay analysis before each pay/no pay decision is unworkable. These comments appear to misunderstand the ability to pay requirement. This provision does not require an ability to pay analysis at the time of each transaction that may result in an extension of overdraft funds, just as it does not require an ability to pay analysis with each credit card transaction. Nor is the analysis based on the amount of time it actually takes the consumer to repay the transaction. In the credit card context, the ability to pay provision requires the ability to pay analysis to be conducted before the credit card account is opened, and the analysis be based on whether the consumer can make required minimum periodic payments.²¹⁷ As such, the same

²⁰⁹ See 12 CFR 1026.51(a)(1)(i).

²¹⁰ 12 CFR 1026.51(a)(1)(ii).

²¹¹ *Id.*

²¹² *Id.*

²¹³ See Regulation Z comment 51(a)(1)(i)–5; see also comments –4 and –6.

²¹⁴ See Regulation Z comment 51(a)(1)(i)–4(ii).

²¹⁵ Regulation Z comment 51(a)(1)(i)–7.

²¹⁶ See 12 CFR 1026.51.

²¹⁷ See 12 CFR 1026.51(a)(i) (stating that “[a] card issuer must not open a credit card account for a consumer under an open-end (not home-secured) consumer credit plan . . . unless the card issuer considers the consumer's ability to make the

ability to pay analysis is conducted in the context of the opening of a hybrid debit-credit card, which is in advance of any transaction requiring an extension of overdraft funds.²¹⁸

Several industry commenters noted that it would cost time and money to perform an ability to pay analysis, which may include obtaining a credit report, asking a consumer for information about their income/assets and obligations, and obtaining other information on income and expenses for each customer account. Commenters also stated that there would be a reduction in the consumer's credit score resulting from pulling the consumer's credit report, and that consumers would be confused about being asked for debt and income information by an institution seeking to provide a consumer with covered overdraft credit when the consumer is opening a deposit account. An industry commenter and a consumer advocate commenter stated that a source of income/asset or obligation information may include transaction data from asset or others accounts that a financial institution may already have for the particular consumer. In addition, a nonprofit commenter asked that the CFPB clarify that underwriting based on transactions in asset accounts connected to overdraft lines of credit would satisfy the ability to pay requirement even if the creditor does not specifically identify obligations from the account.

The ability to pay analysis is currently conducted for traditional credit cards. As such, consumers have familiarity with, and very large financial institutions that issue credit cards have policies and procedures to handle, the ability to pay process. The fact that asset account consumers may now go through the ability to pay process may underline for consumers that covered overdraft credit is a credit product and encourage comparison with other credit products and an intentional upfront decision whether to obtain overdraft credit. While there are costs associated with conducting an ability to pay analysis where a very large financial institution has not had to conduct such analysis, as some commenters noted, the ability to pay provision does not require the use of a credit report or the consumer as sources of information regarding income, assets, or obligations. The commentary lists sources of information that the financial institution may use

but does not indicate that permissible sources are limited to those listed.²¹⁹ For example, for income or asset information, comment 51(a)(1)(i)–4(ii) contemplates consideration of income that is being deposited regularly into an account on which the consumer is an account holder (e.g., an individual deposit account or joint account). However, with any source of income, asset, or obligation information, Regulation Z requires that the financial institution have reasonable written policies and procedures in place to consider the consumer's ability to pay.²²⁰ As such, the source of information must be reasonable.

If the consumer's asset account reflects the consumer's income and expenses, such an asset account, alone, may be a reasonable source of information about the consumer's income, assets, and obligations for the purpose of analyzing the consumer's ability to make the required minimum payments under the terms of the hybrid debit-credit card. In this circumstance, a financial institution would not have to obtain a credit report or ask the consumer for this information. To comply with the ability to pay requirements, a financial institution could use this kind of transaction data from the accounts it maintains on behalf of the consumer, and/or it could use transaction data provided by a different financial institution if the consumer authorized its transmittal using the rights recently finalized in the Personal Financial Data Rights Rule.²²¹ The ability to pay provision requires that the financial institution use this transaction data to consider the ratio of debt obligations to income, the ratio of debt obligations to assets, or the income the consumer will have after paying debt obligations.²²²

Limitation on Fees During First Year After Account Opening (§ 1026.52(a))

Section 1026.52(a) limits the amount of certain fees, such as overdraft fees, that an issuer can charge during the first year after opening of a credit account, such as a covered overdraft credit account, to 25 percent of the credit limit. This restriction does not apply to charges assessed as periodic rates. An account is considered open no earlier than the date on which the account may first be used by the consumer to engage in transactions.

One industry commenter opposed application of this provision, stating that this provision was meant for low-limit high-fee credit cards and not for overdraft credit. This commenter along with an academic commenter stated that application to overdraft credit would make it difficult for financial institutions to offer overdraft credit to consumers who would not qualify for a high credit limit. A consumer advocate commenter wrote in support of applying this provision, noting that application of this provision would prevent high fees from consuming a large portion of the credit line and would likely result in financial institutions moving costs into the interest rate and hence the disclosed APR. This commenter asked for clarification that this provision applies to asset accounts that are more than one year old at the time of the effective date. It also asked that the CFPB extend the limitation to beyond one year for hybrid debit-credit cards.

Regulation Z applies the first-year-fee limitation to all credit cards out of a concern that the practice of charging fees that are more than 25 percent of the credit limit would spread beyond subprime cards.²²³ To be consistent with other credit cards, the final rule also applies this limitation to hybrid debit-credit cards.

With respect to concerns about credit availability for consumers who do not qualify for a high credit limit, the first-year-fee limitation may provide an incentive for financial institutions to reduce or eliminate flat fees for overdraft and to instead apply periodic rates that must be disclosed as APRs. Doing so may improve consumers' ability to understand the price of the overdraft credit, and to compare it to the pricing of other forms of credit that the consumers might wish to consider.

With regard to when to start measuring the one year, the fee limitation applies starting no earlier than the date on which a *credit* card

required minimum periodic payments" (emphasis added)).

²¹⁸ The ability to pay analysis is also required prior to a credit line increase. See 12 CFR 1026.51(a)(i).

²¹⁹ See Regulation Z comments 51(a)(1)(i)–5 and –7.

²²⁰ See 12 CFR 1026.51(a)(1)(ii).

²²¹ See 89 FR 90838 (Nov. 18, 2024).

²²² *Id.*

²²³ See Board's Regulation Z final rule implementing the CARD Act, 75 FR 7658, 7724–25 (Feb. 22, 2010) discussing this particular provision, stating "However, while new TILA Section 127(n) is titled 'Standards Applicable to Initial Issuance of Subprime or 'Fee Harvester' Cards,' nothing in the statutory text limits its application to a particular type of credit card. Instead . . . it appears that Congress intended Section 127(n) to apply to a broad range of fees regardless of the type of credit card account. Although the practice of charging fees that represent a high percentage of the credit limit is generally limited to subprime cards at present, it appears that Congress intended Section 127(n) to prevent this practice from spreading to other types of credit card products. Accordingly, although the Board understands that complying with Section 127(n) may impose a significant burden on card issuers, the Board does not believe that this burden warrants a different interpretation of Section 127(n)."

account may first be used by a consumer to engage in transactions.²²⁴ The date on which an *asset* account is opened is not relevant to the determination of when a tied credit account may first be used by the consumer to engage in transactions. For asset accounts with debit cards in existence prior to the effective date of this final rule that include non-covered overdraft credit (but not covered overdraft credit), the one year period starts no earlier than when that debit card becomes a hybrid debit-credit card for the consumer. The debit card becomes a hybrid debit-credit card when the consumer may first engage in a transaction that accesses a tied covered overdraft credit account.

For example, assume that prior to the effective date of the CFPB's rule, a very large financial institution provides non-covered overdraft credit that is considered above breakeven debit card overdraft credit. Assume further that the institution seeks to continue to provide the consumer above breakeven overdraft credit via the card subsequent to the effective date. Because such debit card will legally be a hybrid debit-credit card on the effective date of this rule, to charge above breakeven overdraft fees beyond that date, the institution must comply with the Regulation Z credit card requirements, including the fee limitation requirement for one year from the date of credit card account opening. However, if prior to the effective date of the CFPB's rule a very large financial institution is providing a covered overdraft credit account—*i.e.*, an overdraft line of credit—accessible by a credit card, such institution would not be required to comply with the credit account opening requirements (*e.g.*, account opening disclosures, the ability to pay requirement, and the limitation on fees during the first year after account opening) solely because this rule goes into effect, as discussed in the Effective Date section below. Nonetheless, the institution must comply with ongoing credit account requirements (*e.g.*, the requirements that the ability to pay analysis be conducted prior to a credit line increase, that the payment due date be the same each month, that disclosures be delivered 21 days before due date, and that card agreements be submitted to the CFPB on a quarterly basis).

The CFPB does not currently see a reason to introduce inconsistency into the credit card provisions by applying this limitation on fees beyond one year from credit card account opening for hybrid debit-credit cards.

Limitations on Penalty Fees (§ 1026.52(b))

Section 1026.52(b) regulates the imposition of penalty fees on a credit card account under an open-end (not home-secured) consumer credit plan. TILA refers to a “penalty fee” as a fee imposed “in connection with any omission with respect to, or violation of, the cardholder agreement,” and it permits only a penalty fee that is “reasonable and proportional to the amount of such omission or violation.”²²⁵ Consistent with this statutory language, Regulation Z defines a “penalty fee” as “any charge imposed by a card issuer based on an act or omission that violates the terms of the account or any other requirements imposed by the card issuer with respect to the account, other than charges attributable to periodic interest rates.”²²⁶ Section 1026.52(b)(1) permits a card issuer to impose a penalty fee as long as that fee represents a “reasonable proportion of the total costs incurred by the card issuer as a result of that type of violation” or complies with dollar amounts specified in a safe harbor provision.²²⁷ Section 1026.52(b)(2), meanwhile, prohibits a penalty fee that exceeds the dollar amount associated with the violation or where there is no dollar amount associated with the violation.²²⁸ In particular, § 1026.52(b)(2)(i)(B)(1) prohibits any fee charged in connection with a credit card account for a “transaction that a card issuer declines to authorize.” As a result of this overdraft rule, the CARD Act's penalty fee provision will prohibit fees for declined transactions when a very large financial institution provides a covered overdraft credit account that is accessible by a hybrid debit-credit card or other credit card—*i.e.*, a credit card account.

When applied to a covered overdraft credit account accessed by a hybrid debit-credit card, § 1026.52(b)(2)(B)(1) would prohibit most declined transaction fees imposed with respect to a declined transaction that, if paid, would have overdrawn a particular consumer's asset account. When covered overdraft credit is accessible by a hybrid debit-credit card, the CFPB has determined that a fee imposed when a potentially overdrafting transaction is declined, such as a nonsufficient funds (NSF) fee, is a penalty fee.

Thus, for a covered overdraft account accessed by a hybrid debit-credit card, 15 U.S.C. 1665d(a) and § 1026.52(b) would prohibit any fee for a potentially overdrawing transaction that the card issuer declines to authorize. This would include declined debit card transactions as well as declined ACH or other transactions. However, as explained in comment 52(b)(2)(i)–4, the prohibition on fees for transactions that a card issuer declines to authorize does not extend to fees imposed for declining a “check that can access a credit card account.”²²⁹ The CFPB has determined that applying § 1026.52(b) to a covered overdraft account accessed by a hybrid debit-credit card similarly would permit fees imposed when a card issuer declines a check on an asset account with an attached covered overdraft credit account as long as those fees satisfy the restrictions in § 1026.52(b)(1).

With respect to declined transactions other than declined check transactions, the CFPB has determined that the Board's rationale in adopting § 1026.52(b)(2) continues to apply. That is, it appears that there is no dollar amount associated with a declined transaction and the imposition of the fee does not appear to be related to costs incurred by the card issuer. The CFPB recognizes that it may be possible that such fees could have a deterrent effect or could affect that consumer's conduct in certain limited situations. However, there does not appear to be any need for the financial institution to attempt to deter or influence the consumer's conduct in this situation, particularly in light of minimal costs and risks to the card issuer. With respect to costs, because the mechanism for authorizing or declining a transaction is generally automated, the CFPB understands that declining transactions imposes very minimal or no costs, which would not support imposing a penalty fee. The CFPB understands this to be the case across several payment channels, including for payments initiated via debit card, payments occurring on an ACH network, and other online payments. To the extent there are certain minimal costs associated with automated authorization and declination of transactions generally, card issuers can consider whether other sources of revenue might allow them to recoup those costs.

The CFPB notes that these considerations may apply equally to declined checks. Nonetheless, the CFPB is not at this time reconsidering the Board's prior decision to permit some amount of a fee in connection with

²²⁴ See 12 CFR 1026.52(a)(1).

²²⁵ CARD Act section 102, TILA section 149, 15 U.S.C. 1665d(a).

²²⁶ Regulation Z comment 52(b)–1.

²²⁷ 12 CFR 1026.52(b)(1)(i)–(ii).

²²⁸ Section 1026.52(b)(2) also bans the imposition of multiple fees for the same violation. 12 CFR 1026.52(b)(2)(ii).

²²⁹ Regulation Z comment 52(b)(2)(i)–4.

declining to pay a check that accesses a credit card account. This rule applies the same approach to checks issued in connection with a covered asset account tied to a covered overdraft credit account accessible by a hybrid debit-credit card.

Only one commenter provided comment on this provision, and did so in support of its application to a covered overdraft credit account accessed by a hybrid debit-credit card. After considering the comments and the factors in 15 U.S.C. 1665d(c), the CFPB is not amending § 1026.52(b) and is finalizing the rule to apply § 1026.52(b) to covered overdraft credit accounts accessed by hybrid debit-credit cards.

Submission of Card Agreements (§ 1026.58)

Section 1026.58 requires financial institutions to submit credit card agreements to the CFPB on a quarterly basis. An industry commenter questioned whether including covered overdraft credit account agreements in a credit card account agreement database would create more confusion than value. On the other hand, a consumer advocate commenter stated that collecting the agreements and making them public would promote transparency and a better understanding of the hybrid debit-credit card market. For consistency with other credit cards and for transparency to the benefit of consumers, the CFPB has determined to apply this provision to covered overdraft credit accounts accessible by hybrid debit-credit cards.

Disclosure-Related Requirements

The CARD Act also applies special rules to disclosure-related requirements in subpart B and subpart G with respect to covered overdraft credit accounts accessed by a hybrid debit-credit card. These provisions include disclosure requirements for account opening disclosures (§ 1026.6(b)), periodic statements (§ 1026.7(b)), and timing for disclosures (§ 1026.5(b)).

One industry commenter suggested that the CFPB consider whether all credit card-specific disclosure requirements are appropriate for overdraft lines of credit or whether exceptions or modifications are appropriate. Another industry commenter said that calculating the APR for each overdraft fee would be impractical for an overdraft fee of short duration and small amount, apparently inaccurately assuming that, under Regulation Z, the APR for open-end credit includes charges other than the periodic rate. A consumer advocate commenter supported application of the

solicitation and application disclosure requirements to hybrid debit-credit cards to promote meaningful and uniform disclosure of credit terms.

The CFPB has determined that Regulation Z and its commentary provide sufficient flexibility and instructions for a financial institution to meet the disclosure requirements in a manner appropriate for the particular credit card product the institution is offering. Regulation Z subpart B and subpart G, the related commentary, and the appendix G model and sample disclosures provide extensive instructions and guidance on the disclosure requirements. As such, modifications or exceptions to the disclosure requirements for hybrid debit-credit cards and additional guidance for complying with the requirements are not necessary. Consistency in the credit card disclosure requirements, including the APR and fee disclosures, will assist consumers in comparing the cost of various credit cards and various credit products.

Section 1026.7(b)(11) requires that the payment due date be the same day of the month for each billing cycle. As such the interval between due dates can be no shorter than monthly. In addition, § 1026.5(b)(2)(ii) requires that periodic statements be mailed or delivered at least 21 days prior to the payment due date disclosed on the periodic statement. One industry commenter noted that application of these requirements and the offset prohibition increase the credit risk to financial institutions of offering overdraft credit. Another industry commenter suggested that payments for small dollar lines of credit be permitted to be scheduled bi-weekly or semi-monthly and for the repayment period to be less than 21 days after a statement is delivered or mailed. On the other hand, a consumer advocate commenter supported application of the existing repayment requirement at 21 days and same-day due date each month (as well as the offset prohibition) because it would give consumers a reasonable time period to pay their hybrid debit-credit card and give the consumers certainty on their payment due date for budgeting purposes.

The CFPB has determined that a special exception to the credit card timing requirements for billing cycles, periodic statements, and due dates is not warranted for covered overdraft credit accounts accessed by hybrid debit-credit cards. Hybrid debit-credit card consumers should have these same consumer protections as other credit card consumers.

ii. Special Credit Card Provisions (§ 1026.12)

Existing § 1026.12 contains special rules applicable to credit cards and credit card accounts, including rules regarding the conditions under which a credit card may be issued, the liability of cardholders for unauthorized use, cardholder rights to assert against the card issuer claims and defenses that the cardholder has against the merchant, and the prohibition on offsets by issuers. Existing § 1026.12(a) and (b) are exceptions to the general rule that Regulation Z applies only to consumer credit. The CFPB did not propose to change the regulatory text of existing § 1026.12.

However, the CFPB proposed to revise comment 12–1 on the scope of § 1026.12 to clarify that the provisions of § 1026.12 relating to card issuance and liability apply to hybrid debit-credit cards. Specifically, the CFPB proposed to add a sentence to comment 12–1 clarifying that paragraphs (a) through (f) of § 1026.12 apply to hybrid debit-credit cards notwithstanding paragraph (g) of § 1026.12. Paragraph (g) addresses whether Regulation Z or Regulation E controls in instances where a transaction involves both credit and electronic fund transfer aspects.

The CFPB received few comments on the proposed changes to § 1026.12 and its commentary and no comments indicating a need to adjust the proposed language in comment 12–1. A consumer advocate commenter supported the revised comment, stating that the attendant protections are equally important for consumers who use overdraft credit on hybrid debit-credit cards. Therefore, for the reasons discussed in the proposal and above, the CFPB is finalizing comment 12–1 as proposed but with the addition of a cite to the definition of hybrid debit-credit cards, for convenience. Proposed changes to additional guidance on unsolicited issuance in § 1026.12(a) and the right of a cardholder to assert claims or defenses against a card issuer in § 1026.12(c) are discussed below.

iii. Clarification to Issuance of Credit Cards (§ 1026.12(a))

TILA section 132 generally prohibits creditors from issuing credit cards except in response to a request or an application. TILA section 132 explicitly exempts credit cards issued as renewals of or substitutes for previously accepted credit cards from this prohibition.²³⁰ Section 1026.12(a) of Regulation Z implements TILA section 132 and

²³⁰ 15 U.S.C. 1642.

provides that regardless of the purpose for which a credit card is to be used, including business, commercial, or agricultural use, no credit card shall be issued to any person except: (1) in response to an oral or written request or application for the card; or (2) as a renewal of, or substitute for, an accepted credit card.

The CFPB did not propose changes to the existing regulatory text for § 1026.12(a). It did, however, propose certain revisions to related commentary to clarify how the prohibition on issuing unsolicited credit cards applies to hybrid debit-credit cards.

Clarifications to Explicit Request Requirement (§ 1026.12(a)(1))

As discussed above, under the proposal and as finalized in this rule, a hybrid debit-credit card is a credit card that a consumer may use from time to time to obtain covered overdraft credit from a very large financial institution. To the extent that covered overdraft credit from a very large financial institution would be accessible through a hybrid debit-credit card, a request for such credit would constitute an application for a credit card with overdraft features. Therefore, the prohibition set forth in § 1026.12(a)(1) on issuing a credit card except in response to an oral or written request or application for the card applies to hybrid debit-credit cards.

Existing comment 12(a)(1)–1 states that the request or application for a card must be explicit and that a request for an overdraft plan tied to a checking account does not constitute an application for a credit card with overdraft checking features. The CFPB proposed to revise comment 12(a)(1)–1 to clarify that a very large financial institution cannot issue a hybrid debit-credit card to a person without first receiving an oral or written request or application from that person for the hybrid debit-credit card.

A consumer advocate commenter supported the proposed clarification, stating that it promotes TILA's purposes of ensuring the informed use of credit and prevents creditors from pushing on people credit that they may not want. The commenter further asserted that unwanted or unsolicited credit could lead to problems managing finances, damage to credit reports, debt collection harassment, and other harms, and that ensuring the informed and desired use of overdraft credit is important for hybrid debit-credit cards just as it is for other credit cards.

For the same reasons, the consumer advocate commenter supported the changes the CFPB proposed to existing

comment 12(a)(1)–2, which explains that the addition of a credit feature or plan to a non-credit card that would turn that card into a credit card under § 1026.2(a)(15)(i) constitutes issuance of a credit card. The commenter further noted that consumers should not have overdraft credit features added to their asset accounts without their request. Comment 12(a)(1)–2 currently provides two examples of when the addition of credit features constitutes issuance of a credit card. Proposed comment 12(a)(1)–2.iii set out the scenario of extending covered overdraft credit through a hybrid debit-credit card as a third example of an action that would constitute issuance of a credit card.

Because the clarification promotes TILA's purposes of ensuring the informed use of credit and for the reasons discussed above, the CFPB is finalizing the proposed changes to the commentary for paragraph 12(a)(1) with only nonsubstantive changes. As explained in the proposed rule, if a very large financial institution initially allowed a consumer to use a debit card to access overdraft credit that is not "covered overdraft credit" as defined in § 1026.62, the very large financial institution would be issuing a credit card if it then allowed the consumer to use the same card to access covered overdraft credit. Under that illustration, the debit card would convert into a hybrid debit-credit card that is a credit card under § 1026.2(a)(15)(i) and is subject to the issuance limitations in § 1026.12(a).

Clarifications to Replacement Card Requirements (§ 1026.12(a)(2))

As an additional exception to the general prohibition on the unsolicited issuance of a credit card, § 1026.12(a)(2) allows the issuance of a credit card to a person when the card is issued as a renewal of, or substitute for, an already accepted credit card. Existing comment 12(a)(2)–5 (the so-called one-for-one rule) explains that an accepted card generally may be replaced by no more than one renewal or substitute card. For example, the card issuer may not replace a credit card permitting purchases and cash advances with two cards, one for the purchases and another for the cash advances. However, comment 12(a)(2)–6 currently provides three exceptions to the one-for-one rule. In particular, existing comment 12(a)(2)–6.i explains that the unsolicited issuance rule in § 1026.12(a) does not prohibit the card issuer from replacing a single card that is both a debit card and a credit card with a credit card and separate card with only debit functions (or debit functions plus an associated

overdraft capability), since the card with only debit functions could be issued on an unsolicited basis under Regulation E.

The CFPB proposed to revise comment 12(a)(2)–6.i in two respects. First, a revision would add a clarification that a hybrid debit-credit card is an example of a single card that is both a debit card and a credit card. Second, language in an existing parenthetical that addresses debit functions and associated access to overdraft credit would be revised to align terminology relating to overdraft credit across Regulation Z, in light of the proposed amendments. Specifically, the CFPB proposed to remove the phrase "an associated overdraft capability" and replace it with the phrase "an associated capability to extend overdraft credit that is not covered overdraft credit as defined in § 1026.62." The revision to the terminology in the parenthetical would not change how the provision applies to card issuers. Rather, the purpose of these proposed revisions is to clarify that a very large financial institution may replace a hybrid debit-credit card with a credit card and a separate debit card so long as the separate debit card does not provide the capability to extend covered overdraft credit (*i.e.*, overdraft that is subject to a finance charge or payable by written agreement in more than four installments).

The CFPB received no comments on the proposed revision of comment 12(a)(2)–6.i and, because the clarification promotes TILA's purposes of ensuring the informed use of credit, is finalizing the revision as proposed. The CFPB did not propose, and has not made, changes to the two other existing exceptions to the one-for-one rule in comments 12(a)(2)–6.ii and –6.iii.

iv. Right of Cardholder To Assert Claims or Defenses Against Card Issuer (§ 1026.12(c))

When a cardholder has a dispute with a person honoring the credit card, TILA section 170 generally provides that the cardholder may assert against the card issuer all claims (other than tort claims) and defenses arising out of the transaction.²³¹ Regulation Z § 1026.12(c) implements this section of TILA.

TILA does not except overdraft credit from the scope of cardholders' right to assert claims or defenses against card issuers. However, in 1981 the Board created a non-statutory exception for the use of a debit card in connection with an overdraft credit plan.²³² This

²³¹ 15 U.S.C. 1666i.

²³² 46 FR 20848, 20865 (Apr. 7, 1981).

exception is in existing comment 12(c)–3.

As discussed above, the CFPB proposed to update exceptions in Regulation Z and thus increase consumer protections that apply to covered overdraft credit offered by very large financial institutions. Accordingly, the CFPB proposed to narrow the overdraft exception in comment 12(c)–3 such that a “hybrid debit-credit card” would be covered by the consumer protections in § 1026.12(c). As discussed above, under § 1026.62(b)(5) a “hybrid debit-credit card” includes a debit card that a consumer may use from time to time to obtain covered overdraft credit from a very large financial institution. The CFPB further proposed conforming revisions to the commentary for § 1026.12(c)(1).

The CFPB received few comments on the proposal to apply the consumer protections in § 1026.12(c) to hybrid debit-credit cards. A consumer advocate commenter supported the proposal and stated that these consumer protections are important whether the payment is made by a credit card drawing on overdraft credit or on other credit. The commenter asserted that these consumer protections give card issuers greater incentive to vet and monitor the merchants who they authorize to accept their cards because it makes the card issuers more accountable for the merchants’ conduct. The commenter further asserted that both credit and debit cards are issued on the same major networks and vetting and monitoring of the merchants that card issuers authorize to accept their cards already takes place and applies to both debit and credit cards. The commenter stated that the existing exception for hybrid debit-credit cards in comment 12(c)–3 is not in the TILA statute and the CFPB has the authority to remove or narrow the exception. The commenter further stated that, while the Board noted operational problems cited by commenters in 1981 when the Board added the exception in existing comment 12(c)–3, card issuers—particularly very large financial institutions covered by the definition of “hybrid debit-credit card”—have far greater technology and resources today to address operational issues than they did over 40 years ago.

A nonprofit commenter suggested without explanation that a § 1026.12(c) exception for hybrid debit-credit cards could provide room for innovative and affordable small dollar overdraft line of credit products.

For the reasons stated below, the CFPB is finalizing comment 12(c)–3, as well as the conforming revisions to the

commentary for § 1026.12(c)(1), as proposed. Consistent with TILA, the CFPB has determined that the consumer protections in § 1026.12(c) are important whether a credit card accesses covered overdraft credit or another type of credit from a very large financial institution. Moreover, the CFPB has determined that the rule provides room for innovative and affordable overdraft credit and that operational concerns alluded to by the Board in 1981 no longer justify the overdraft exception that the Board added in comment 12(c)–3, particularly for very large financial institutions, given advances in information technology systems over the last 40 years. The existing exception would not change for financial institutions with total assets of \$10 billion or less.

v. Credit Card Applications and Solicitations (§ 1026.60)

Existing § 1026.60 includes certain requirements related to applications and solicitations for credit cards. Among other things, it requires certain disclosures in connection with credit card applications and solicitations and prescribes content and format of the application or solicitation. Existing § 1026.60(a)(5) excepts certain types of credit from the requirements of § 1026.60, including § 1026.60(a)(5)(ii), which excepts overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards; § 1026.60(a)(5)(iii), which excepts lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines; and § 1026.60(a)(5)(iv), which excepts lines of credit accessed solely by account numbers except for a covered separate credit feature solely accessible by an account number that is a hybrid prepaid-debit card as defined in § 1026.61.

The CFPB proposed to amend § 1026.60 to narrow the exception for overdraft lines of credit. Specifically, the proposal would amend § 1026.60(a)(5)(ii), (iii), and (iv) so that those exceptions would not apply to covered overdraft credit accessed by a hybrid debit-credit card. As explained above, the CFPB is defining a “hybrid debit-credit card” as any card (including a debit card) that can access covered overdraft credit offered by a very large financial institution. Accordingly, the proposed amendments to § 1026.60(a)(5)(ii), (iii), and (iv) would narrow the exception so that the requirements of § 1026.60 would apply to covered overdraft credit offered by a very large financial institution when that credit can be accessed by any card, including a debit card.

For the reasons stated below, the CFPB is finalizing the changes to § 1026.60 as proposed.

Comments Received

As discussed in the disclosure-related requirements discussion in the CARD Act section above, the CFPB received several comments about the application of disclosure-related requirements to covered overdraft credit that can be accessed by a hybrid debit-credit card. With respect to § 1026.60, for example, an industry commenter said that more guidance is needed. For example, this industry commenter noted that many of the APR and fee disclosures would show “\$0” for all except the overdraft fee. The commenter noted that the commentary states that disclosures need only be given as applicable but the proposed rule did not state how financial institutions should adapt the forms for overdraft credit.

Final Rule

For the reasons discussed below, the CFPB is finalizing amendments to § 1026.60 as proposed. The requirements in § 1026.60 implement provisions of the Fair Credit and Charge Card Disclosure Act of 1988.²³³ The purpose of the law was to provide for more detailed and uniform disclosures of rates and other cost information in applications and in solicitations to open credit and charge card accounts. The statute applies the disclosure requirements broadly to any application to open a credit card account for any person under an open-end consumer credit plan or to a solicitation to open such an account without requiring an application. In implementing the statutory requirements, the Board narrowed the scope of coverage by adopting the exceptions in what is now § 1026.60(a)(5), determining that the requirements should apply only to “traditional” credit or charge accounts that are used primarily to purchase goods and services.²³⁴

The CFPB has determined that, as with the CARD Act provisions, covered overdraft offered by a very large financial institution that is accessible by a hybrid debit-credit card should be subject to the requirements of § 1026.60. In excepting certain types of credit from those requirements, the Board noted only that the requirements should apply only to “traditional” credit cards that are used to purchase goods and services. However, given the expanded use of debit cards to purchase goods and

²³³ Public Law 100–583, 102 Stat. 2960 (Nov. 3, 1988).

²³⁴ 54 FR 13855, 13856–57 (Apr. 6, 1989).

services, many of which are linked to accounts that offer overdraft credit, the distinction between “traditional” credit cards and debit cards that can access overdraft credit appears far less clear. The CFPB has determined that the requirements of § 1026.60 should be applied consistent with the broad statutory language to cards that can access covered overdraft credit, and that doing so will carry out the purposes of TILA by assuring a meaningful disclosure of credit terms and avoiding the uninformed use of credit.

As noted in the discussion of the CARD Act disclosure requirements above, with respect to comments that more guidance is needed, the CFPB reviewed the credit card disclosure requirements and determined that Regulation Z and its staff commentary provide sufficient flexibility and instructions for a financial institution to meet the disclosure requirements in a manner appropriate for the particular credit card product the institution is offering. As one of the industry commenters accurately noted, for § 1026.60’s application and solicitation disclosures, comment 60(a)(2)–4 states that generally, disclosures need only be given as applicable. In addition, Regulation Z subpart B and subpart G, the related staff commentary, and appendix G model and sample disclosures provide extensive instructions and guidance on the disclosure requirements. As such, modifications or exceptions to the disclosure requirements for hybrid debit-credit cards and additional guidance for complying with the requirements are not necessary. Consistency in the credit card disclosure requirements, including the APR and fee disclosures, will assist consumers in comparing the cost of various credit cards and various credit products.

vi. “Charge Card” (§ 1026.2(a)(15)(iii))

The CFPB proposed to amend the definition of “charge card” in § 1026.2(a)(15)(iii) to exclude a hybrid debit-credit card from the definition. Under the proposed amendment, a hybrid debit-credit card would be subject to the same disclosure and other rules as other credit cards, rather than certain special rules for charge cards. The CFPB proposed the amendment because it preliminarily determined that consumers using hybrid debit-credit cards would benefit from the TILA and Regulation Z provisions that apply to credit cards generally.

The CFPB did not receive any comments on the proposed change to the definition of charge card and is

finalizing this definition as proposed for the reasons stated below.

TILA defines “charge card” as “a card, plate, or other single credit device that may be used from time to time to obtain credit which is not subject to a finance charge.”²³⁵ Because hybrid debit-credit cards would generally access credit that is subject to a finance charge, they do not fit within the statutory definition of charge card. The term “charge card” was introduced into TILA with the Fair Credit and Charge Card Disclosure Act of 1988, which amended TILA to define “charge card” as “a card, plate, or other single credit device that may be used from time to time to obtain credit *which is not subject to a finance charge*” (emphasis added).²³⁶ In its rule implementing the 1988 act, the Board expanded the definition of “charge card” such that, in Regulation Z, the definition includes any card on which *there is no periodic rate*.²³⁷ In other words, a card with a finance charge that is not a periodic rate is excluded from the statutory charge card definition but is included within the Regulation Z definition of that term. The Board sought to address a perceived inconsistency between that statutory definition and the fact that some disclosure provisions that apply to charge cards reference finance charges.

Under both the statutory and regulatory definitions, a charge card is a type of credit card. Thus, where Regulation Z provisions apply to credit cards, the provisions also generally apply to charge cards. However, in specific provisions, which are listed in comment 2(a)(15)–3.i, the term charge card is distinguished from credit card such that different requirements apply. One example of such a provision is § 1026.7(b)(11), which, in accordance with TILA, requires on credit card periodic statements the disclosure of a payment due date and requires that that date be the same day of the month for each billing cycle. The Board in Regulation Z excluded charge cards from these requirements.²³⁸ The CFPB has determined, however, that these requirements should apply to a debit card that can access a covered overdraft credit account (*i.e.*, a hybrid debit-credit card). The CFPB accordingly is excluding hybrid debit-credit cards from the Regulation Z definition of charge card. This approach is consistent with TILA; in applying the TILA and

Regulation Z credit card provisions to debit cards that can access covered overdraft, the CFPB is merely declining to exercise its regulatory authority to implement TILA with respect to hybrid debit-credit cards in the ways that the Board previously did with respect to charge cards.

The CFPB understands that charge cards are typically offered to higher income individuals with prime or super-prime credit, and they often have no set credit limit.²³⁹ In contrast, current users of non-covered overdraft credit often are lower-income consumers with lower credit scores.²⁴⁰ Subsequent to the CFPB’s proposal, many of these consumers may be offered hybrid debit-credit cards, which will access covered overdraft credit that typically will be subject to finance charges, and therefore do *not* fit the statutory definition of a “charge card.” Accordingly, consistent with TILA, and to ensure that consumers who use covered overdraft credit benefit from the full protection of the Regulation Z credit card rules, the CFPB is amending the regulatory definition of “charge card” such that a ‘hybrid debit-credit card’ will *not* be within the credit card subset “charge card” but will nonetheless remain in the larger set “credit card.” This will ensure that a hybrid debit-credit card that accesses covered overdraft credit offered by a very large financial institution will be subject to the same disclosure and other rules as other credit cards, including the § 1026.7(b)(11) requirements discussed above.

3. Compulsory Use of Preauthorized Transfers (§ 1005.10(e)(1))

The CFPB proposed to apply the Regulation E compulsory use prohibition to covered overdraft credit extended by very large financial institutions. EFTA’s compulsory use prohibition, EFTA section 913(1), prohibits any person from conditioning the extension of credit to a consumer on the consumer’s repayment by means of preauthorized EFTs.²⁴¹ However, the Board in 1981 adopted in Regulation E § 1005.10(e)(1) a non-statutory exception to that prohibition for overdraft credit plans.²⁴² The CFPB proposed to eliminate that exception when covered overdraft credit is provided by a very large financial

²³⁹ See Fed. Trade Comm’n, *Comparing Credit, Charge, Secured Credit, Debit, or Prepaid Cards* (Dec. 2021), <https://consumer.ftc.gov/articles/comparing-credit-charge-secured-credit-debit-or-prepaid-cards>.

²⁴⁰ See CFPB 2017 Data Point at 6.

²⁴¹ 15 U.S.C. 1693k(1).

²⁴² 46 FR 2972 (Jan. 13, 1981).

²³⁵ 15 U.S.C. 1637(c)(4)(E).

²³⁶ See Public Law 100–583, sec. 2, 102 Stat. 2960 (Nov. 3, 1988).

²³⁷ 54 FR 13855, 13856 (Apr. 4, 1989).

²³⁸ See § 1026.7(b)(11)(ii)(A); see also 75 FR 7658, 7672–73 (Feb. 22, 2010).

institution. As a result, a very large financial institution providing covered overdraft credit would be required to offer a consumer at least one method of repaying an overdraft credit balance other than automatic repayment by preauthorized EFT. For example, in addition to an automatic repayment option, the institution could offer consumers an option to repay their outstanding overdraft credit balances by expressly authorizing (*e.g.*, on the institution's website or smartphone application) a one-time transfer of funds from the consumer's asset account. For the reasons discussed below, the CFPB is finalizing as proposed the application of the compulsory use prohibition to covered overdraft credit extended by very large financial institutions.

Many industry commenters opposed the CFPB's proposal. They argued that the requirement to offer consumers a repayment option other than automatic repayment would impose costs that would not have commensurate consumer benefit. Specifically, they argued that the requirement would result in one-time costs to implement an alternative repayment method and a process for obtaining consumers' decisions whether to use automatic repayment or the alternative, and ongoing costs of maintaining the alternative and handling the higher costs associated with those consumers who choose the alternative, including the cost of higher risk of non-repayment. They asserted that if institutions cannot guarantee themselves the repayment method of automatic transfers, the result would be a higher underwriting bar than is currently in place. They also asserted that these costs would not result in any material consumer benefit because almost all consumers will choose automatic repayment. Further, they stated, it is appropriate for consumers to choose automatic repayment because it ensures consumers do not miss repayments and thereby incur concomitant costs such as late fees and higher interest rates.

Many consumer advocate commenters supported the CFPB's proposal. They argued that improvements in technology have reduced institutions' costs associated with providing alternative means of repayment and that any costs in this area have not inhibited the credit card market (where the compulsory use prohibition has long applied). They also stated that the requirement would benefit consumers by improving their control over their funds. Further, they stated, any increased risk of non-repayment would appropriately incentivize institutions to offer overdraft credit that is affordable.

The CFPB has determined that advances in information technology in the decades since the Board's 1981 adoption of the compulsory use exception for overdraft have reduced institutions' costs of obtaining repayment by means other than automatic repayment by preauthorized EFT. For example, an institution can establish at reasonable cost an internet computer or smartphone interface through which consumers may easily initiate—such as by tapping a “button” on a smartphone screen—repayment of a monthly credit balance.

For similar reasons, the CFPB has also determined that application of the prohibition will not inappropriately increase institutions' risk of nonrepayment. Specifically, the CFPB finds that technology makes it virtually costless for institutions to remind consumers of their repayment obligation, such as through app notifications on smartphones as well as text and email messages. The CFPB also finds that technology makes it virtually costless for consumers to act in response to those notifications, such as by clicking on a notification and then making one or a few clicks (depending on the details of the repayment process the institution establishes) to specify the amount to repay, identify the funding source, and initiate the repayment. This ease of notification and consumer response helps increase the likelihood that those who can repay the credit will do so. As a result, any increased nonrepayment risk to institutions resulting from application of the compulsory use prohibition will serve as an appropriate incentive to institutions to offer covered overdraft credit to those consumers who can and will repay it, *i.e.*, to offer covered overdraft credit to those consumers who will not be harmed by it.

For these reasons, the CFPB has determined that applying the compulsory use prohibition to covered overdraft credit provided by a very large financial institution will carry out the purposes of EFTA by safeguarding consumers' rights in EFT systems. This determination is consistent with Congress's original intent in adopting the prohibition.

Offset Prohibition in 12 CFR 1026.12(d)(1)

While the CFPB did not propose to amend the Regulation Z prohibition against offset, it is closely related to the Regulation E compulsory use prohibition discussed above. Further, commenters provided feedback on application of the offset prohibition. Below the CFPB summarizes the

substance of the prohibition and addresses the comments that the CFPB received.

“Offset” is a term used to describe a practice whereby an institution uses funds from an incoming deposit to a consumer's asset account at the institution to immediately obtain repayment of the consumer's debt to the institution, such as an outstanding overdraft balance in the asset account. TILA and Regulation Z prohibit that practice with respect to credit card accounts. Specifically, TILA section 169(a) (15 U.S.C. 1666h(a)) and 12 CFR 1026.12(d)(1) prohibit an institution from using funds in a consumer's asset account at the institution to offset consumer debt arising from a credit card plan the institution provides to the consumer. Thus, when a financial institution ties a consumer's asset account (*i.e.*, a covered asset account) to covered overdraft credit accessible by credit card (*i.e.*, a hybrid debit-credit card), the institution may not use funds in the consumer's asset account to offset the consumer's overdraft credit balance.

Periodic deductions are a different practice than offset. TILA section 169(a)(1) (15 U.S.C. 1666h(a)(1)) permits an institution to periodically deduct all or part of a consumer's credit card debt from the consumer's asset account if the periodic deductions are in accordance with the consumer's preauthorized written agreement. This TILA provision is implemented in 12 CFR 1026.12(d)(3), which the CFPB did not propose to amend. Thus, when a very large financial institution provides covered overdraft credit that is accessible by a card, the institution must comply with the offset prohibition, but may obtain a consumer's preauthorized written agreement to periodic deductions of the consumer's overdraft balances from the consumer's asset balances held at the institution. Pursuant to the Regulation E compulsory use prohibition (discussed above), the institution must also provide the consumer with a repayment option other than periodic deduction.

Many industry commenters opposed application of the offset prohibition. They argued that the offset prohibition would increase risk of nonrepayment and result in higher underwriting standards relative to institutions' standards today for non-covered overdraft credit, thereby eliminating access to overdraft credit for those subprime or deeply subprime consumers (or those without any credit history) who use it today. As a result, they argued, these consumers would have no choice but to use alternative credit products such as payday loans.

Many consumer advocate commenters supported application of the offset prohibition. They observed that Congress adopted the prohibition because it was concerned about an institution's power to collect credit card debt by offsetting against money in a consumer's asset account at the institution, thereby causing other consumer payments from the account to go unpaid. They argued that the same concerns apply to covered overdraft credit, *i.e.*, that an institution's offset of overdraft credit reduces a consumer's ability to prioritize which obligations to repay and can cause consumer obligations other than overdraft to go unpaid. Consumer advocates argued that that effect is exacerbated by the high fees that typically accompany overdraft credit, because those fees increase the loss of consumer control and the amount that is offset and thus the amount of other consumer obligations that go unpaid. In light of these current consumer harms and costs from overdraft credit, consumer advocates supported higher underwriting standards for overdraft credit relative to today.

The CFPB has determined that application of the offset prohibition to above breakeven overdraft credit provided by very large financial institutions will serve the consumer protection purposes for which Congress adopted the prohibition (avoiding the uninformed use of credit and protecting consumers against inaccurate and unfair credit billing and credit card practices). To the extent the prohibition increases risk of nonrepayment and thereby causes institutions to decline some overdraft credit transactions that they currently authorize, the CFPB finds that these changes will not result in lost benefit for many of the consumers who use overdraft credit today, because the credit is often of little or no benefit for these consumers. Further, many of these consumers will be able to find other forms of consumer credit (should they think it necessary to do so). In sum, when a hybrid debit-credit card can access covered overdraft credit, the card is a type of credit card and the CFPB finds that consumers using such a card should receive the same TILA protections, including those of the offset prohibition, that any other credit card consumer receives.

Defining "Periodically"

The CFPB requested comment on whether it should define "periodically" to mean no more frequently than once per calendar month, or some other interval for covered overdraft credit accounts tied to covered asset accounts.

The CFPB received very few comments and no specific information in response. The CFPB is not taking any action at this time pursuant to this request for comment. The CFPB notes that § 1026.7(b)(11) requires the payment due date for credit card accounts under an open-end (not home-secured) consumer credit plan to be the same every month.

4. Definition of Overdraft Services in Regulation E (§ 1005.17(a))

The CFPB proposed to add comment 17(a)–2 to clarify that the added defined terms in Regulation Z regarding covered overdraft credit do not change the scope of the definition of overdraft services under Regulation E § 1005.17(a). The proposed comment clarified that covered overdraft credit, which includes above breakeven overdraft credit, is not an overdraft service under § 1005.17(a) because it is a line of credit subject to Regulation Z.

Very few commenters addressed this aspect of the CFPB's proposal and those that did supported it. The CFPB adopts comment 17(a)–2 as proposed.

V. Effective and Compliance Date

Consistent with TILA section 105(d), the CFPB proposed that the final rule have an effective date of the October 1 that follows by at least six months the date it is published in the **Federal Register**.²⁴³ The CFPB sought comment on the proposed effective date including whether such date should be different, and if so, when and why. For the reasons discussed below, the effective date is finalized as proposed. As a result, this rule will become effective on October 1, 2025.

Consumer advocates generally supported the proposed effective date. Industry commenters opposed the effective date because they stated it would not be sufficient time to implement required changes, particularly with respect to covered overdraft credit. They stated that they would need anywhere from 12 to 24 months to comply with the rule. These commenters explained that the rule would require a comprehensive review and restructuring of every aspect of their overdraft programs, from operations to technology to customer service. One commenter stated that it will need to perform an impact analysis to determine how to change its programs and then implement those changes, which will require working with third party vendors, training employees, testing, and communicating changes to consumers. With respect to

communicating changes to consumers, the commenter stated that a change in terms notice is unlikely to be sufficient and it would need to engage in an extended campaign to inform consumers about the changes and effects. One industry commenter noted that for existing debit cards on asset accounts, institutions would need to determine whether to continue offering debit cards on overdraft credit, informing their consumers about the change in card status, giving consumers time to accept the new card status, and possibly changing the card number.²⁴⁴

As discussed further above, the CFPB's rule would apply only to very large financial institutions. Accordingly, financial institutions that are not very large financial institutions would not need to make any changes in response to the rule.

With respect to very large financial institutions, the changes that the rule would require vary depending on the institution's current activities. If a very large financial institution already offers non-covered overdraft services in compliance with existing regulations and, in response to the rule, chooses to provide those services at or below its breakeven price, it could continue to provide such services without making any operational changes in response to the rule, apart from developing a process to confirm that its pricing for such services complied with the rule's breakeven standard provisions if the financial institution chooses to use that method. Alternatively, using the \$5 benchmark may further simplify compliance with the rule. If a financial institution needs extra time to convert to the breakeven method, they could charge \$5 fees on October 1, 2025, and then convert to the breakeven amount at its own pace.

If a very large financial institution currently offers non-covered overdraft services in compliance with existing regulations, and, in response to the rule, chooses to provide above breakeven overdraft credit, it would need to ensure that such credit complies with Regulation Z. If the very large financial institution is unable to bring to market by the rule's effective date an above breakeven overdraft credit program that complies with Regulation Z, including the credit card rules, the institution still could comply with the rule by charging breakeven or \$5 overdraft fees in the interim.

If a very large financial institution currently offers covered overdraft credit

²⁴⁴ Whether the debit card number must change under these circumstances is not governed by the CFPB under any of its rules.

²⁴³ 15 U.S.C. 1604(d).

in compliance with Regulation Z and, in response to the rule, chooses to continue offering such credit, the very large financial institution would need to comply with the rule by: (1) beginning to comply with the newly applicable Regulation Z provisions including, if applicable, changes to the examples of finance charges and the credit card provisions that would newly apply to certain types of covered overdraft credit; and (2) offering consumers a means of repaying their overdrafts other than by preauthorized EFTs.

Many very large financial institutions currently provide overdraft lines of credit subject to Regulation Z. Subsequent to the effective date of the rule, these lines of credit would be covered overdraft credit accounts, regardless of whether they are above or below breakeven pricing. However, the institution would not be opening a new credit account (*i.e.*, would not be newly opening an account that is subject to Regulation Z) because a credit account—the overdraft line of credit—already existed prior to the effective date of the rule. Thus, Regulation Z requirements triggered by credit-account opening (such as §§ 1026.5, 1026.6, 1026.51, and 1026.52(a) mentioned above) would not apply to these previously existing overdraft lines of credit.²⁴⁵ However, other Regulation Z requirements such as change-in-terms requirements would continue to apply to them.²⁴⁶

In general, financial institution commenters were more concerned about implementing the rule where they do not currently provide covered overdraft credit accounts. Many such institutions do already offer credit cards and therefore have in place a compliance framework that meets applicable Regulation Z requirements. Those that do not could prioritize ensuring that their pricing of non-covered overdraft credit complies with the rule's

breakeven or benchmark provisions, as described above. If needed, those institutions could delay offering new covered overdraft credit accounts to ensure compliance with Regulation Z requirements, including those tied to credit account opening.

For these reasons, the proposed effective date is sufficient for a very large financial institution to make appropriate changes necessary to comply with the rule. Accordingly, this rule has an effective date of October 1, 2025.

VI. Other Comments

A. Possible Alternative or Additional Requirements

Some commenters proposed various exemptions from the rule such as exempting credit unions and exempting check transactions. As to the credit union exemption, commenters raised that there are differences between credit unions large enough to be covered by this rule and other very large financial institutions covered by the proposed rule, including noting that credit unions are member-focused and are subject to different market incentives. Also, as discussed below regarding the implications for other laws, commenters stated that Federal credit unions are generally subject to a usury limit under the Federal Credit Union Act and asserted that it would be economically unfeasible for them to provide covered overdraft credit. These commenters also noted the small number of credit unions that would be directly covered at this time but argued that the rule could nevertheless have broad impact. As to the check exemption, one commenter argued that checks and debit cards are used by consumers in different ways and for differently sized purchases and that there may be a greater consumer impact when a check is not honored, including but not limited to possible NSF fees.

The CFPB has considered these requests for exemptions but declines to add exemptions at this time. While credit unions may operate differently from banks in some respects, those differences are generally not material in the context of overdraft credit. In addition, the relatively small number of credit unions that will be covered by the very large financial institution designation and therefore subject to the final rule represent large entities with significant market impact. The CFPB has determined that any institution, including a Federal credit union, that qualifies as a very large financial institution should not be excluded from the rule solely because other applicable

laws may limit the amount that they can charge consumers. The potential impact of other laws on institutions' overdraft credit products is discussed in parts VI.E and VII below. Applying the same rule to overdraft credit provided by all VLFIs is consistent with the policy goal of applying the same consumer protections to overdraft credit that apply to other types of consumer credit. The CFPB, as discussed further below, intends to monitor the impact of this final rule, including the potential impact on non-covered entities, which may include smaller credit unions. As to the check exemption, the CFPB did not propose such an exemption and does not believe that consumers should receive less protection for checks than for other transaction types such as debit card or ACH transactions. The CFPB also notes that consumer usage of checks has been and continues to decline, such that any exemption would have declining impact.²⁴⁷

Many industry commenters argued that instead of applying Regulation Z to above breakeven overdraft credit, the CFPB should have proposed a different rule that retains overdraft credit's current exclusions from the regulation and that encourages or mandates changes in practice for overdraft credit that some institutions have already implemented, including, for example: grace periods between when a consumer overdrafts (or further overdrafts) their account and when an institution assesses a fee; not assessing fees on de minimis overdraft balance amounts and overdraft transaction amounts; and processing transactions in an order that benefits consumers all else equal. Many of these commenters also suggested that the CFPB propose changes to the opt-in disclosure requirements in § 1005.17. In general, industry commenters argued that the CFPB's chosen approach of applying Regulation Z—and applying coverage under Regulation Z based on the price of the overdraft credit—would result in increased prices for other deposit account features, including for consumers who do not currently use overdraft credit.

The CFPB considered alternatives such as these prior to its issuance of the NPRM. The CFPB has determined that these alternative approaches would not adequately protect consumers who today use non-covered overdraft credit as an expensive short-term loan.

²⁴⁷ See FRS, *The Federal Reserve Payments Study: 2022 Triennial Initial Data Release*, <https://www.federalreserve.gov/paymentsystems/2023-April-The-Federal-Reserve-Payments-Study.htm> (last updated Nov. 13, 2024). There were 18.1 billion check payments in the U.S. in 2015, 14.0 billion in 2018, and 11.2 billion in 2021.

²⁴⁵ The ability to pay analysis is also required prior to a credit line increase. See 12 CFR 1026.51(a)(i). This requirement is applicable upon the effective date of the rule.

²⁴⁶ As noted, if a very large financial institution currently provides overdraft lines of credit in compliance with Regulation Z and chooses to continue providing them after the effective date (at which point the lines would be covered overdraft credit accounts), the institution would need to begin to provide consumers a repayment option other than preauthorized EFTs. For overdraft lines of credit (*i.e.*, covered overdraft credit accounts) extant as of the effective date where agreements are in place for preauthorized EFTs, beginning to provide the option would not trigger change-in-terms notice requirements under § 1026.9(c)(2) or § 1005.8(a)(1). However, when a card issuer opens a covered overdraft credit account on or after the effective date, section 1026.12(d)(3) requires the card issuer to clearly disclose the fact that the option exists. See comment 12(d)(3)–1.iii.

Because these consumers use overdraft credit in this way, the CFPB has determined that regulating overdraft credit as credit—*i.e.*, applying to that credit the congressionally chosen statutory framework for consumer credit—will better protect these consumers than would the alternatives suggested by industry commenters. For example, the TILA framework will facilitate consumers' ability to shop between institutions on the basis of the price institutions charge for providing covered overdraft credit. In contrast, consumers today generally do not shop between deposit accounts on the basis of institutions' fees for non-covered overdraft credit, which may explain, at least in part, why institutions' fees for non-covered overdraft credit persistently remain so high and consumers sometimes overdraw their accounts even though they have less expensive credit available elsewhere, such as through a credit card. Further, the TILA framework will require institutions to refrain from immediately taking consumers' incoming deposits to repay their outstanding overdraft balances, which will facilitate consumers' ability to control how their asset funds are used. In contrast, consumers today do not have a choice about their incoming deposits immediately being taken to repay overdrafts and the high fees. Moreover, the TILA framework will require institutions to provide separate periodic statements, and other required disclosures, for the covered overdraft credit account and for the covered asset account, which will facilitate consumers' ability to know when they are accessing overdraft credit and how much they are being charged for it.

In addition, nothing in the CFPB's rule precludes institutions from providing the consumer protective features that they provide today for non-covered overdraft credit, such as those described above, in the context of covered overdraft credit (or from continuing to provide them in the context of non-covered overdraft credit). For example, nothing in Regulation Z precludes an institution from: providing a grace period between when the institution extends covered overdraft credit and when the institution assesses a finance charge (whether a fee or a periodic rate) on the credit; providing de minimis amounts of covered overdraft credit without assessing a finance charge for the credit; or, processing covered overdraft credit transactions in an order that benefits consumers by minimizing the associated finance charges.

Regarding comments that the CFPB's chosen approach could increase prices for other deposit account features, the CFPB discusses in the "Offsetting changes to other deposit account prices" section of the CFPB section 1022(b) Analysis below the possibility of potential increases to other deposit account prices as a result of this rule, and concludes that there is uncertainty about whether lost overdraft revenue would be replaced by increases to fees on deposit accounts, taking into account the fact that the lost revenue would be relatively low if divided by account per month, and that the CFPB has not observed offsetting price increases when financial institutions recently reduced a comparable amount of overdraft revenue voluntarily. And even if financial institutions wish to do so, these prices are likely to be more salient to consumers than overdraft fees, and so the CFPB expects there to be more efficient competition over those prices, which will limit the extent to which financial institutions are able to increase those prices.

Many commenters other than industry commenters—including academic, nonprofit, and consumer advocate commenters—argued that *in addition* to the breakeven standard for the dollar amount of an overdraft fee for non-covered overdraft credit, the CFPB should restrict the number of overdraft fees for such credit that an institution may assess in a given time period (such as a day, week, month, or year). The CFPB is not adopting this additional restriction at the present time. The CFPB believes that its breakeven standard for the dollar amount of a fee for non-covered overdraft credit will provide sufficient consumer protection and that an additional restriction on the number of such fees that may be assessed is not necessary at the present time. The CFPB also believes that this additional restriction could result in increased implementation cost and complexity for institutions that might not be justified by the increased consumer benefit it would achieve.

Other commenters encouraged the CFPB to pursue disclosure-type alternatives or additions to the rulemaking, such as increased financial education. These commenters felt that better financial education could empower consumers, which may reduce reliance on overdraft programs. Other commenters suggested revised consumer opt-in disclosures, more comprehensive, upfront disclosure of fee structures, or requiring an annual opt-out notice to consumers who previously opted-into overdraft programs. Another commenter

suggested new disclosures to prevent misleading advertising. One industry commenter stated that whether a product or a service is a courtesy depends on more than whether the bank makes a reasonable profit, and encouraged the CFPB to consider the full suite of features surrounding an overdraft program in determining whether to exempt the program from Regulation Z. Two commenters suggested enhanced regulatory reporting for overdraft fees while a consumer advocate commenter suggested imposing fines for banks that abuse overdraft practices.

Before issuing the proposal, the CFPB also considered changes such as these, including modifying the opt-in disclosure requirements at § 1005.17 of Regulation E. The CFPB did not propose such disclosure interventions and declines to pursue them at this time. After considering the comments, the CFPB has determined, as it preliminarily concluded in the proposal, that Regulation E opt-in disclosures would not communicate the cost of above breakeven overdraft credit as effectively as Regulation Z disclosures. As discussed above, applying Regulation Z will ensure that above breakeven overdraft credit is disclosed as a credit product and treated like other credit products. In addition, Regulation E disclosures distinguish between overdraft transactions completed via electronic fund transfers and overdraft transactions completed via other funds transfer methods (such as checks), whereas Regulation Z disclosures would apply to above breakeven overdraft transactions regardless of fund transfer method. Modifying the opt-in disclosure requirements at § 1005.17 of Regulation E also would not provide other substantive protections available through Regulation Z, such as the ability to pay requirements and the offset prohibition discussed above. These substantive protections are important. For example, by requiring financial institutions to assess consumers' ability to pay, the rule will ensure that financial institutions confirm that consumers can make the required minimum periodic payments under the terms of their account based on their income or assets and their current obligations. As another example, by prohibiting offset and requiring the due date to be on the same day each month for covered overdraft credit accessible by a hybrid debit-credit card, the rule will give consumers more time to repay overdraft credit and greater control over how to structure those repayments.

The CFPB also observes that the Truth in Savings Act already prohibits misleading deposit account advertisements, including misleading deposit account advertisements related to overdraft.²⁴⁸ The CFPB's analysis of whether and when overdraft is or is not a courtesy is discussed elsewhere in this notice. As noted, the CFPB intends to monitor the impact of the final rule and may consider additional interventions as necessary in the future.

B. Usury Limits

Many industry commenters asserted under various bases that the CFPB's proposed rule would constitute an impermissible usury limit. Some asserted that the proposal to apply TILA and Regulation Z to above breakeven overdraft credit would constitute a usury limit in contravention of CFPA section 1027(o) because VLFIs would no longer be permitted to provide non-covered overdraft credit at a price above that amount. Other industry commenters conceded that section 1027(o) does not apply. Some asserted that TILA is a disclosure statute limited to ensuring adequate disclosure of credit terms and that the CFPB exceeded its authority by attempting to apply substantive limits to institutions' pricing of overdraft credit. Some asserted that the application of TILA's substantive protections, including the protections of the CARD Act, to covered overdraft credit would constitute an effective usury limit because, they argued, it would be infeasible for very large financial institutions to provide overdraft credit in compliance with those substantive protections. Some asserted that the proposed rule would constitute an impermissible usury limit because the application of Regulation Z to covered overdraft credit—*i.e.*, the shift in the legal status of overdraft credit from being not subject to Regulation Z (non-covered overdraft credit) to being subject to Regulation Z (covered overdraft credit)—would result in the application of usury limits in other laws to covered overdraft credit, including limits in the Military Lending Act (10 U.S.C. 987), the Federal Credit Union Act (12 U.S.C. 1751 *et seq.*), and States' laws.

Applying TILA to above breakeven overdraft credit does not create a usury limit under CFPA section 1027(o). That section states that the CFPB has no authority “to establish a usury limit applicable to an extension of credit offered or made by a covered person to a consumer, unless explicitly authorized

by law.” This CFPB rule applying Regulation Z to above breakeven overdraft credit does not “establish a usury limit”: it does not impose a fee or rate cap or ban fees above a certain threshold, and, under the rule, an institution may charge any price it wishes for overdraft credit so long as it complies with Regulation Z.²⁴⁹

It is true that the shift in the legal status of overdraft credit as a result of the CFPB's rule, from not being subject to Regulation Z (non-covered overdraft credit) to being subject to Regulation Z (covered overdraft credit), may result in other laws' usury limits applying to certain instances of covered overdraft credit, such as the limits found in the Military Lending Act (MLA), the Federal Credit Union Act (FCUA), and States' laws. Nonetheless, the CFPB's rule applying Regulation Z to covered overdraft credit is not thereby “establish[ing] a usury limit” because the CFPB's rule does not establish any applicable usury limit. Instead, the legislatures that adopted those laws—*e.g.*, the U.S. Congress and State legislatures—established those usury limits. The potential impact of the usury limits in those other laws on covered overdraft credit is discussed elsewhere in this notice.

Moreover, commenters appear to mischaracterize the benchmark and breakeven thresholds to suggest that they create regulatory obligations and apply them to credit priced above those thresholds. Overdraft services are credit and overdraft fees are finance charges under TILA, but for the existing regulatory exception in Regulation Z. The CFPB is narrowing that exception in this final rule to the breakeven or benchmark level. This means the breakeven and benchmark thresholds do not apply heightened regulatory obligations on more expensive credit. TILA does that. The failure to shield credit above a certain threshold from Congressionally created consumer protections is not the creation of a usury rate.

Regardless, TILA's requirements, which the CFPB's rule applies to covered overdraft credit, are not so onerous as to constitute an effective usury limit. As noted, TILA includes numerous substantive consumer

protections that are implemented in Regulation Z and that the CFPB is applying to covered overdraft credit. Many very large financial institutions already provide credit cards, including subprime credit cards, that comply with all of Regulation Z's substantive protections. Consumers of subprime credit cards share the same general characteristics as many consumers who use overdraft credit. The CFPB fully expects that covered overdraft credit can and will comply with the same substantive Regulation Z protections that subprime credit cards do. Accordingly, applying those Regulation Z protections to covered overdraft credit is not so onerous as to constitute an effective usury limit.

Finally, some commenters asserted that the proposed rule would constitute an unlawful taking prohibited by the Fifth Amendment to the U.S. Constitution. The rule is not a limitation on Constitutionally protected private property that renders property unusable and is not an unlawful taking under the Fifth Amendment.

C. Other Comments Regarding Statutory Authority

One commenter asserted that the CFPB lacked authority to issue this Rule, arguing that the rule constituted a matter of vast economic and political significance subject to the “major questions” doctrine. Another contended that the CFPB lacked the authority to establish rules for overdraft services based on the price of the service because the TILA statutory provisions at issue do not reference credit price, whereas other credit laws (such as the Home Ownership and Equity Protection Act and the Military Lending Act) do.

Consistent with the discussion above, the CFPB has the statutory authority to implement this rule. First, this rule does not implicate the “major questions” doctrine. This rule updates existing regulatory exceptions for overdraft credit offered by very large financial institutions and does not rely on a novel interpretation of the CFPB's statutory authority. As discussed above, the plain meaning of TILA's statutory definition of “credit” encompasses overdraft credit. Overdraft credit has only been partially excluded from TILA coverage by the operation of preexisting regulatory exceptions, including from the definition of “finance charge.” The major questions doctrine is a canon of judicial interpretation used to determine whether Congress delegated authority to an agency. This final rule does not create new obligations, but rather, it partially removes portions of existing regulation that act to relieve industry of

²⁴⁸ See 12 U.S.C. 4302(d); see also 12 CFR 1030.8(a) and 12 CFR 707.8(a).

²⁴⁹ No provision in Regulation Z limits the price that an institution may charge for credit, including covered overdraft credit. The fee harvester provision in § 1026.52(a), which implements TILA section 127(n) (15 U.S.C. 1637(n)), limits to 25 percent of the credit limit the amount of fees, other than penalty fees (which are addressed in § 1026.52(b)), that may be charged during the first year of a credit card account. However, the fee harvester provision does not limit charges that are assessed as periodic rates.

certain obligations Congress created by statute. It would be illogical to conclude an agency does not have delegated authority to remove a regulatory exception from a statute, but that the regulatory exception was nonetheless issued based on a valid delegation. Instead, both the Federal Reserve's original rule creating the exception and this rule partially removing it are pursuant to authority granted to the agencies by Congress, as described herein. Furthermore, the economic impact of this rule, as discussed elsewhere in this notice, is significantly lower than any level that would implicate the major questions doctrine.

Second, nothing in the relevant provisions of TILA precludes the CFPB from considering the price of a credit product when partially rescinding a regulatory exception to TILA's coverage. For the reasons described above, the rule's changes to § 1026.4(c)(3) are consistent with TILA and reasonable. The fact that Congress has regulated other credit products based in part on their price does not render these considerations forbidden in this context.

D. Data Supporting Application of Regulation Z to Overdraft

Some industry commenters asserted that the data the CFPB cited for its proposal to apply Regulation Z to above breakeven overdraft credit provided by very large financial institutions is outdated and therefore unreliable because some of the data predates the pandemic and some large institutions' reduction or elimination of overdraft and NSF fees during the pandemic timeframe. As a result, these commenters assert, the CFPB is using insufficient and flawed data to justify its policy change of now applying Regulation Z to above breakeven deposit account overdraft credit provided by these institutions. These commenters stated, in particular, that the CFPB is relying primarily on its own 2012 data to identify and analyze consumers who overdraft, including "frequent overdrafters" (more than 10 overdraft fees in a year), which are the consumers that will be most affected by the rule. The CFPB's 2012 data identified about 9 percent of checking accounts as belonging to frequent overdrafters, whereas commenters argued that more recent survey research has found that only roughly 1.5 percent to 3 percent of banked households report more than 10 overdraft fees in a year.²⁵⁰

²⁵⁰ These commenters point to the following three examples of more recent survey research. In survey research by FHN, 9 percent of overdrafters, representing roughly 1.5 percent of all banked

The CFPB did not primarily rely on the 2012 data and assessed a number of evidentiary sources including more recent studies, but it was appropriate to include all of the data cited in the proposal. The CFPB is finalizing this rule not because of the precise percentage of overdrafters or frequent overdrafters but because the CFPB has concluded that above breakeven overdraft credit offered by very large financial institutions should no longer be exempt from TILA's consumer credit protection for the reasons discussed above. Even were one to assume that the difference between recent surveys and CFPB data is due in whole or in part to an actual and permanent change in overdrafting frequency, the CFPB's rule would remain justified for the reasons discussed herein.

Moreover, it remains true and uncontroverted that overdraft is inordinately profitable for institutions and that this profit is made off consumers who are financially disadvantaged.²⁵¹ Specifically, evidence provided by the CFPB shows that net losses from overdraft were only 14 percent of overdraft fees.²⁵² And in 2024 the CFPB found that five large institutions' average net losses from overdraft were only about 6 percent of overdraft fees across all overdraft transactions, and about 16 percent of overdraft fees across only fee-assessed transactions.²⁵³ Also, recent uncontroverted evidence reaffirms that financially vulnerable households continue to be more likely to pay overdraft fees than are other households. Specifically, about 17 percent of all households with a checking account—i.e., households across all levels of financial health—reported incurring at least one overdraft

households, reported having incurred more than 10 overdraft fees in 2022 (FHN Brief 2023). In survey research by the Federal Reserve Bank of New York, less than 1 percent of individuals reported overdrafting more than 10 times (see Donald P. Morgan & Wilbert van der Klaauw, *Learning by Bouncing: Overdraft Experience and Salience*, Liberty Street Econ. (Apr. 2024), <https://libertystreeteconomics.newyorkfed.org/2024/04/learning-by-bouncing-overdraft-experience-and-salience/>). In survey research by the Consumer Bankers Association, 3 percent of consumers reported overdrafting 10 or more times in the past 12 months. CBA, *Nationwide Survey of Consumer Overdraft Services Use and Sentiment: Post COVID-19 Pandemic* (Mar. 2024), <https://consumerbankers.com/wp-content/uploads/2024/04/2024.03.21-CBA-Overdraft-Survey.pdf>.

²⁵¹ CFPB 2017 Data Point.

²⁵² CFPB 2013 White Paper at 17.

²⁵³ The CFPB found the average overdraft fee at these institutions to be \$32.50 and the average amount attributable to losses to be \$2.00 per overdraft transaction regardless of whether a fee was assessed, and \$5.34 per fee-assessed transaction. CFPB Overdraft and NSF Practices Report.

or NSF fee in 2022²⁵⁴ and 2023.²⁵⁵ In contrast, over that same time period, forty-six percent of financially vulnerable households reported incurring at least one overdraft fee and just 4 percent of financially healthy households reported incurring at least one overdraft fee.²⁵⁶ Commenters did not offer data to contradict these figures. Accordingly, the CFPB finds both that the overdraft fees consumers pay are about seven times higher than large institutions' losses from overdraft and that financially vulnerable consumers are more likely to pay overdraft fees than are other consumers.

Applying Regulation Z to above breakeven overdraft credit offered by VLFIs will benefit the financially vulnerable consumers who currently pay the preponderance of overdraft fees. The CFPB does not predict exactly how very large financial institutions will react to this final rule. Nonetheless, the CFPB notes that some very large financial institutions already offer overdraft credit at prices well below the median marketwide price. Whether very large institutions offer consumers non-covered, below-breakeven (courtesy) overdraft credit or covered overdraft credit that complies with the requirements of Regulation Z, the CFPB believes that such overdraft credit will be provided to these consumers on terms that are more beneficial to them than the terms on which non-covered overdraft credit currently is provided. Those disadvantaged consumers who are not offered any overdraft credit at all will benefit from avoiding the harms associated with today's non-covered overdraft credit and from using alternative forms of credit that are more beneficial (less harmful) to them to the extent available.

E. Implications for Other Laws

Commenters noted the cumulative effect of the proposed rule and other Federal and State regulatory actions would result in higher costs for financial institutions, and higher costs and limited account availability for consumers. Industry commenters identified regulatory actions by the CFPB, the Board, FDIC, OCC, FTC, SEC, and various State agencies, such as the CFPB's credit card late fee rule,²⁵⁷ the Board's Regulation II,²⁵⁸ and the prudential regulators' Basel III endgame

²⁵⁴ FHN Brief 2023.

²⁵⁵ FHN, *FinHealth Spend Report 2024*, at 16 (Aug. 2024), <https://finhealthnetwork.org/wp-content/uploads/2024/08/FinHealth-Spend-Report-2024-FHN.pdf>.

²⁵⁶ FHN Brief 2023.

²⁵⁷ 89 FR 19128 (Mar. 15, 2024).

²⁵⁸ 88 FR 78100 (Nov. 14, 2023).

proposal.²⁵⁹ In addressing the changes to overdraft products and practices with this rule, the CFPB is aware of these other regulatory changes and proposals. As noted above, in the course of developing this rule, the CFPB met with other regulators to better understand the interaction of this rule with other laws and has determined that proceeding with the rule is appropriate to effectuate the purposes of TILA.

Commenters also discussed the interaction of the rule with other statutes, regulations, and guidance. For example, industry commenters stated that the rule would result in the Equal Credit Opportunity Act (ECOA) and Regulation B applying to all financial institutions at any overdraft fee level. These commenters also stated that the CFPB did not consider the procedural burdens that applying ECOA to overdraft credit would impose on banks, such as keeping records and providing adverse action notices.

The CFPB has considered the costs of applying the ECOA and Regulation B to overdraft credit. The ECOA prohibition against discrimination already applies to covered and non-covered overdraft credit regardless of the overdraft fee amount and regardless of the size of the creditor.²⁶⁰ The 2005 Joint Guidance on Overdraft Protection Programs makes that point in its discussion of the application of ECOA and Regulation B to overdrafts.²⁶¹ However, non-covered overdraft credit is likely exempt from certain Regulation B requirements such as the requirement regarding adverse action notices²⁶² due to the Regulation

B exemption for incidental credit.²⁶³ Covered overdraft credit, such as an overdraft line of credit, does not qualify for that exemption and thus must comply with certain Regulation B requirements such as the requirement regarding adverse action notices. With this final rule and its change to the definition of finance charge, previously non-covered overdraft credit will become covered overdraft credit (*i.e.*, above breakeven overdraft credit) and will no longer qualify for the Regulation B exemption for incidental credit. Such newly covered overdraft credit must comply with Regulation B requirements such as the requirement regarding adverse action notices. Commenters provided no compelling reasons why financial institutions should not have to comply with these provisions of ECOA when they provide covered overdraft credit.

Commenters also noted the impact of the proposed rule on the effect of certain statutes and regulations promulgated and administered by other Federal or State actors due to those statutes and regulations incorporating the Regulation Z definition of finance charge. State Attorneys General commenters stated that the rule would benefit States' enforcement of their own consumer protection laws, especially in States where a practice that violates Federal law also violates the State's consumer protection law. As discussed above, industry commenters noted that deeming fees for above breakeven overdraft credit to be finance charges would result in above breakeven overdraft credit exceeding usury limits under the MLA, the FCUA, and State usury laws. Consumer advocates noted that the impact of the rule on other laws benefits consumers, and that Congress and applicable agencies or other government entities have the authority to amend the statutes or implementing regulations and guidance as they see fit. Assuming the commenters are correct about the interaction of this rule with price caps under the MLA, FCUA and State usury laws, Congress or other Federal or State agencies and government entities are the appropriate entities to address the effects of those laws on the overdraft credit market.

An industry commenter also stated that the proposal conflicts with OCC guidance and with the prudential regulators' capital requirements. Citing the OCC 2001 proposal to amend its

rules governing investment securities, bank activities and operations, and leasing,²⁶⁴ and the 2007 Interpretive Letter 1082 on overdraft practices,²⁶⁵ the commenter stated that the OCC does not treat overdrafts as credit nor treat the overdraft charges as interest. Even assuming the industry commenter's statements are accurate, the CFPB and OCC are interpreting and acting under different statutes, the CFPB under TILA and the OCC under the National Bank Act. With respect to TILA, a consumer advocate commenter noted that the 2001 OCC interpretive letter states that an "overdraft would be 'credit,' as defined by the Truth in Lending Act and Regulation Z."²⁶⁶

State regulators commented that applying Regulation Z to above breakeven overdraft credit would trigger additional capital requirements and that the additional capital requirements in combination with higher compliance costs and higher risks for financial institutions would render offering above breakeven overdraft credit impractical. The CFPB understands that, unrelated to whether the credit is subject to Regulation Z, (1) all extensions of overdraft credit—whether covered or non-covered—trigger capital requirements; and (2) it is a fact-specific analysis as to whether a particular overdraft credit contract would trigger capital requirements for credit not yet extended, including an analysis of whether there is a "commitment," whether it is "unconditionally cancelable," and what the resulting capital requirement would be.²⁶⁷

After considering comments about the cumulative impact of and interaction with other laws and after consulting with other agencies, the CFPB has determined to issue this final rule in order to effectuate the purposes of TILA.

²⁶⁴ See 66 FR 8178, 8180 (Jan. 30, 2001) (stating that the OCC's proposed rule amends § 7.4001(a) to clarify that the term "NSF fees" includes only those fees imposed by a creditor bank when a borrower attempts to pay an obligation to that bank with a check drawn on nonsufficient funds. Fees that a bank charges for its deposit account services—including overdraft and returned check charges—are not covered by the term "NSF fees." These fees are therefore not "interest" but, rather, are charges covered by 12 CFR 7.4002; see also 66 FR 34784, 34786 (July 2, 2001) (adopting the proposed change in the final rule).

²⁶⁵ See OCC Interpretive Letter 1082 (May 17, 2007) (stating that a bank "is not creating a 'debt' that it then 'collects' by recovering the overdraft and the overdraft fee from the account" and that, "[u]nder these circumstances, the [bank's] rights to collect debts under [S]tate law . . . are not implicated").

²⁶⁶ See OCC Interpretive Letter No. 914 (Aug. 3, 2001). See also 70 FR 9127, 9129 (Feb. 24, 2005) (stating that "[w]hen overdrafts are paid, credit is extended").

²⁶⁷ See 12 CFR parts 3, 217 and 324.

²⁵⁹ 88 FR 64028 (Sept. 18, 2023).

²⁶⁰ See 15 U.S.C. 1691(a); 12 CFR 1002.4(a) which prohibits a creditor from discriminating on the basis of race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract); to the fact that all or part of the applicant's income derives from a public assistance program; or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act. See 12 CFR 1002.2(l) defining a creditor as a person who, in the ordinary course of business, regularly participates in a credit decision, including setting the terms of the credit. See 12 CFR 1002.2(j) which defines credit as the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment.

²⁶¹ The 2005 Joint Guidance on Overdraft Protection Programs states that under ECOA and Regulation B, creditors are prohibited from discriminating against an applicant on a prohibited basis in any aspect of a credit transaction. This prohibition applies to overdraft protection programs. Thus steering or targeting certain consumers on a prohibited basis for overdraft protection programs while offering other consumers overdraft lines of credit or other more favorable credit products or overdraft services, will raise concerns under the ECOA. 70 FR 9127, 9131 (Feb. 24, 2005).

²⁶² See 12 CFR 1002.2(c) and 1002.9.

²⁶³ 12 CFR 1002.3(c)(1) defines incidental credit as consumer credit not made pursuant to the terms of a credit card account; not subject to a finance charge (as defined in Regulation Z, 12 CFR 1026.4); and not payable by agreement in more than four installments.

The CFPB acknowledges that these other laws may impose additional obligations and could affect a very large financial institution's decision whether to offer covered overdraft credit. Institutions must consider the interaction of various laws when considering whether to offer any consumer credit product.

VII. CFPB Section 1022(b) Analysis

A. Overview

In developing this final rule, the CFPB has considered the final rule's potential benefits, costs, and impacts per section 1022(b)(2)(A) of the Consumer Financial Protection Act of 2010 (CFPA). The CFPB requested comment on the preliminary analysis in the 2024 proposal as well as submissions of more data that could have informed the CFPB's analysis of the potential benefits, costs, and impacts. In developing the final rule, the CFPB has consulted with the appropriate prudential regulators and other Federal agencies, including about the consistency of this final rule with any prudential, market, or systemic objectives administered by those agencies, in accordance with section 1022(b)(2)(B) of the CFPA. The CFPB also consulted with agencies described in TILA section 149.

The goal of this final rule is to allow consumers to better compare certain overdraft credit to other types of credit and to provide consumers with several substantive protections that already apply to other consumer credit, while still encouraging the availability of overdraft coverage. The section proceeds as follows. First, it describes data limitations and the quantification of benefits, costs, and impacts. Second, it presents the baseline for its analysis. Third, it summarizes comments received and the CFPB's responses. Fourth, it goes through the potential benefits and costs, first to consumers and then to covered persons. Fifth and sixth, it summarizes specific impacts on financial institutions with \$10 billion in assets or less and on consumers in rural areas, respectively.

B. Data Limitation and Quantification of Benefits, Costs, and Impacts

The discussion below relies on information that the CFPB has obtained from industry, other regulatory agencies, comments received, and publicly available sources, including reports published by the CFPB. These sources form the basis for the CFPB's consideration of the likely impacts of the final rule. The CFPB provides estimates, to the extent possible, of the

potential benefits and costs to consumers and covered persons of this final rule given available data.

Specifically, this discussion is based on the CFPB's analysis of public Call Reports and other publicly available data sources, internal data from multiple supervisory information requests, as described in part II above, as well as research reports published by the CFPB. The CFPB also consulted the academic literature and policy analyses of United Kingdom and State regulators.

The CFPB acknowledges several important limitations that prevent a full determination of benefits, costs, and impacts. Quantifying the benefits, costs, and impacts requires quantifying consumer and depository institution responses to the proposed changes, and the CFPB finds the body of knowledge on relevant behavioral responses and elasticities incomplete. In particular, the CFPB is not aware of evidence that could be used to predict how changes to overdraft pricing will affect negative balance periods or the expected substitution effects across asset accounts and between deposit accounts with overdraft coverage and other forms of credit, including the consumer impact from delaying or forgoing some transactions. Similarly, the CFPB has found little reliable quantitative evidence available on the cost and effectiveness of steps financial institutions might take to facilitate clients' money management or timely repayment on overdrawn accounts; reprice any of their services; remunerate their staff, suppliers, or sources of capital differently; or enter or exit any or all segments of the checking account market. Thus, while the quantitative data and research available to the CFPB provide an important basis for understanding the likely effects of the final rule, the data and research are insufficient to fully quantify the potential effects of the final rule for consumers and very large financial institutions. This reflects, in part, the fact that the effects of the final rule will depend on choices made by independent actors in response to the final rule, and the data and research available to the CFPB do not allow reliable predictions of those choices.

In light of these data limitations, the analysis below provides quantitative estimates where possible and a qualitative discussion of the final rule's benefits, costs, and impacts. General economic principles and the CFPB's expertise, together with the available data, provide insight into these benefits, costs, and impacts. The 2024 proposal requested additional data or studies that could help quantify the benefits and

costs to consumers and covered persons of the final rule. The CFPB received little new informative data from commenters in response to this request; this information is discussed in part VII.E.

C. Baseline for Analysis

To evaluate the final rule's benefits, costs, and impacts, the CFPB measures the final rule's benefits, costs, and impacts against a baseline in which the CFPB takes no action. This baseline assumes existing regulations remain in place and that market conditions in the overdraft market do not change from their current state.

Some changes, including changes to the definition of finance charge, may affect other legal requirements under various Federal and State laws, including the Military Lending Act, usury limits, capital requirements, and interchange fees. The CFPB is not responsible for interpreting those laws and regulations, and therefore has imperfect insight as to how they might interact with the final rule. Nevertheless, the ensuing analysis discusses some interactions as the CFPB understands them under current rules, as of September 2024.

The discussion below assumes that, without action, both the overdraft credit market and the broader consumer checking market would function in the manner understood through past CFPB research, external academic literature, and supervisory activity. The CFPB bases its prediction for the baseline on market conditions and market data from the 2022 calendar year. As a result, its baseline reflects changes to the overdraft market through 2022, including changes to checking account pricing (both fee and net interest revenue) and changes to the speed, cost, availability, and prevalence of payment systems.

The CFPB sees that both the market and the regulatory environment are changing rapidly and might continue to do so absent the rule, but for purposes of the baseline the CFPB generally uses data from 2022 and established law at the time of drafting to characterize the status quo.

D. Comments Received

1. General Comments on the 1022(b)(2)(A) Analysis

Several academic and policy research groups argued that the CFPB's consideration of the proposed rule's potential benefits and costs in the 1022(b)(2)(A) section of the proposal lacked sufficient rigor. They contended the CFPB failed to quantify many of the tangible costs it identified as likely

resulting from the proposed rule. The CFPB acknowledged certain limitations in part VIII.B of the proposal and considered all the available data and evidence. In the 2024 proposal, the CFPB requested that commenters provide additional data that could help inform the rule. While few comments contained relevant empirical information, the CFPB also considered the qualitative information provided by commenters in analyzing the potential benefits and costs of the rule. Nevertheless, the CFPB does not have sufficient data to precisely estimate every potential benefit and cost of the rule. The CFPB has reasonably evaluated all available data and evidence to provide quantitative benefit and cost estimates when possible and relied on economic principles and its subject matter expertise to provide qualitative benefit and cost estimates when suitable quantitative data were not available.

Multiple industry trade groups claimed the CFPB did not appropriately consider the proposal's potential to reduce consumer access to overdraft services as required by the CFPA. The CFPB did consider access to credit in the proposal and in this final rule, as mandated. The trade groups also said this outcome would cause significant harm to consumers who rely on overdraft as a short-term liquidity tool. The CFPB has considered the full effects of the rule on consumers, including of any potential loss of access, as part of its analysis in parts VII.E and VII.F. If covered financial institutions opt to comply with the final rule by lowering their non-covered overdraft fees and charging consumers the benchmark fee, they may also choose to use tighter underwriting standards for the non-covered overdraft credit that they extend. This could result in less non-covered overdraft credit access for some consumers. Given the evidence discussed in parts VII.E and VII.F below, a reduction in non-covered overdraft could also be beneficial to some affected consumers, and covered financial institutions may have incentives to offer other products in place of non-covered overdraft to help consumers cover potential deposit account shortfalls. Covered financial institutions that opt to use the breakeven standard will not have the same incentive to reduce non-covered overdraft credit access.

Some industry commenters, including banks and credit unions, stated that the CFPB's sample of institutions used to determine the benchmark overdraft fees was small and not representative of the broader market. On the contrary, the

CFPB considers its recent relevant data from some major market participants together with the comment record, sufficient to establish a benchmark fee that allows a reasonable number of firms to break even while providing greater transparency and less administrative burden. Some of these commenters stated that each institution should be allowed to determine its own costs of providing overdraft services. The CFPB highlights that the benchmark fee is not a regulatory obligation and that the breakeven standard allows for any institution that prefers not to use the benchmark fee to calculate their own costs and losses to determine the appropriate fee.

2. Comments Concerning the Proposal's Impact on Consumers

Numerous consumer advocates, nonprofits, and academic commenters expressed strong support for the proposal. They felt it would provide important new protections for vulnerable consumers who bear a disproportionate share of overdraft fees. Low-income Americans, communities of color, and students were highlighted as groups that would particularly benefit. Commenters cited statistics showing these populations are substantially more likely to incur multiple overdraft charges. Any resulting lower fees would therefore be seen as beneficial for these populations. The CFPB is in general agreement with these statements.

Many individual commenters and consumer advocates shared personal stories illustrating the financial distress caused by overdraft fees. Examples included people going hungry because an unexpected overdraft charge deprived them of money for food or having to forgo needed medication because of fee-induced cash shortfalls. Several commenters said high overdraft charges had pushed them out of the banking system altogether. Commenters indicated that by curtailing institutions' ability to impose onerous fees, the proposal was seen as promoting greater financial inclusion and access. These comments illustrate some of the consumer benefits the CFPB expects from potentially lower charges for overdraft credit.

However, some industry groups, along with a few academic and individual commenters, stated that significantly lowering overdraft fees could restrict access to short-term liquidity for consumers who need it most. These commenters argued that if banks and credit unions can no longer profitably provide this service, these cash-strapped consumers may be pushed toward predatory payday lenders and other

high-cost credit alternatives. Or they may be cut off from credit entirely and forced to forego the consumption that higher-priced overdraft credit might have funded. Further, some commenters argued that consumers generally value overdraft services because such services allow them to avoid the inconvenience and embarrassment of having transactions declined. The CFPB notes that the impact analysis of the proposal discussed possible effects on credit access in part VIII.D and VIII.G of the proposal and expects that credit is most likely to be withheld in situations where the borrower may be better off not accessing overdraft credit because of risks like default, account closure, collections, losses of future deposit account access, and the availability of cheaper alternative sources of liquidity.

Several industry commenters also expressed concern that the proposal would lead to higher costs for other basic banking services or that institutions may reduce the banking services they provide to low-income households. They predicted that institutions may introduce new maintenance fees or balance requirements on checking accounts to compensate for lost overdraft revenue. Some asserted that this outcome could prompt more low-income consumers to become unbanked. However, consumer advocate commenters generally disagreed, arguing competitive pressures would prevent any drastic increases in account costs. They also noted that underserved consumers would still come out ahead financially even if modest new fees were introduced, given the outside impact that overdraft charges currently have on lower-income consumer households. The CFPB understands that maintenance fees may already be as high as the market can bear (depository institutions are unlikely to be foregoing potential profits from higher deposit account maintenance fee pricing in the current market), but any small increase in the use of maintenance fees would introduce predictable, transparent, equal, and fair pricing for widely used deposit services and would replace a cross-subsidy from supernormal profits on a product used primarily by more resource constrained consumers. The CFPB includes a more detailed discussion of these potential responses by covered financial institutions in part VII.E.1.

3. Comments Concerning the Proposal's Impact on Covered Persons

Several commenters expressed concern that applying Regulation Z to above breakeven overdraft credit would

have a negative impact on the market for financial services, stating, for example, that the proposed changes are a one-size-fits-all approach that would stifle competition and innovation. The CFPB notes that the final rule allows covered financial institutions the flexibility to determine whether providing non-covered overdraft at the benchmark fee, using the breakeven standard, or, alternatively, providing consumers with covered overdraft credit makes the most sense for their institution. To the extent that covered financial institutions elect to substitute towards offering more covered overdraft credit, if anything, market competition should be enhanced by the rule as market participants compete through more transparent prices, and disclosures improve the salience of prices for different available credit options to consumers. Numerous industry commenters strongly objected to the CFPB's calculation of the benchmark fees for non-covered overdraft. They said the proposed benchmarks failed to account for all of the costs institutions incur to maintain overdraft programs. In addition to losses from unpaid overdrafts, banks and credit unions described substantial expenses related to compliance, disclosure, technology, and customer service that would not be recouped under the proposed potential benchmarks. While some portion of such costs may be directly traceable to providing overdraft coverage, generally these costs are more appropriately classified as costs of providing deposit services to consumers as opposed to costs of providing overdraft coverage to deposit account customers. Requiring that the costs of providing deposit accounts be borne primarily by the low-balance consumers most likely to be charged overdraft fees is cross-subsidizing deposit account use for higher-balance accounts through fees assessed primarily on low-balance accounts. The CFPB acknowledges that some covered institutions may have overdraft costs that exceed the \$5 benchmark fee. For this impact analysis, the CFPB reiterates that institutions will be able to break even on non-covered overdraft even if the \$5 benchmark is too low to cover their traceable costs, whether enumerated in the non-exhaustive examples of section 1026.62(d)(2) or not, by resorting to the breakeven standard. Many industry commenters stated that if the rule were finalized as proposed, they would be forced to stop offering overdraft services altogether. Several smaller institutions said it would be impossible for them to profitably provide these services under

market pressure from very large financial institutions. Even if some larger banks continued overdraft programs, commenters anticipated they would significantly tighten eligibility standards. The CFPB notes again that non-covered overdraft will not generate losses to institutions offering it as any covered financial institution has the option to use the breakeven standard, and some other expected responses have been detailed in the sections below. Restricting access to only a subset of customers will not make non-covered overdraft any more profitable for institutions using the breakeven standard. Institutions using the benchmark fee may have a short-term incentive to stop paying overdraft transactions when the expected cost of doing so is higher than the benchmark fee and they choose not to apply the breakeven standard. Some industry groups claimed that shifting current overdrafts to a Regulation Z model (of covered overdraft) would entail significant new compliance costs and restrictions that would make the products unprofitable and impractical. The CFPB disagrees, as mass market credit products offered under Regulation Z are prevalent, including subprime credit cards in particular. The CFPB includes a more detailed discussion of the potential for increased covered overdraft credit access in response to the final rule in part VII.E and VII.H below. Several industry commenters claimed the proposal would disproportionately harm smaller community banks and credit unions, asserting that these institutions often derive a greater share of their overall revenue from overdraft fees compared to large national banks and typically have a higher share of low-income customers who rely on overdraft. If the rule curtails this income stream, commenters warned it could threaten the viability of some smaller institutions, spurring further industry consolidation. The comments stated that this outcome would be detrimental to traditionally underserved communities that depend on local banks and credit unions for access to basic financial services. The CFPB notes that the rule will only apply to very large financial institutions and therefore will not have any direct impact on smaller financial institutions. To the extent that very large financial institutions respond to the rule by offering overdraft credit to consumers at more favorable rates, the rule could generate some competitive pressure that may indirectly affect smaller financial institutions. However, the CFPB notes that some very large financial

institutions already offer overdraft at prices well below the median market price, or without assessing any fee at all. The CFPB does not expect overdraft price reductions in response to the rule to exert different competitive pressures for smaller financial institutions than past price reductions that some very large financial institutions have already implemented. In particular, the CFPB does not expect the final rule to make overdraft prices more salient for consumers at small financial institutions, and thus the final rule is unlikely to increase shopping for deposit accounts based on overdraft prices.

A number of credit unions argued the proposal failed to account for their unique structure and constraints. They argued that as not-for-profit cooperatives, credit unions use overdraft fees to support services and programs that benefit their membership as a whole, and that curtailing this revenue could force them to cut back on financial education, community development efforts, and other initiatives. The CFPB acknowledges that its impact analysis does not attempt to estimate how much of prior supernormal profits were invested in prosocial activities or cross-subsidies to consumers in even greater need than typical overdrafters. Commenters also noted that most credit unions are subject to an 18 percent interest rate cap, which they asserted would make it very difficult to offer overdrafts as a Regulation Z line of credit. They said this limit puts credit unions at a competitive disadvantage to banks, which are not subject to the same restriction. The CFPB acknowledges that the few credit unions among very large financial institutions subject to the rule may face additional constraints on their covered overdraft programs in accordance with the requirements of the Federal Credit Union Act and associated regulations. The CFPB also understands that the nonprofit nature of credit unions makes changes offsetting the lost overdraft revenue more likely, or as much as lower profits will manifest as lower yields on deposits (as dividends to members), even mechanical. There was also widespread concern among industry commenters that while the proposal only directly applies to financial institutions with over \$10 billion in assets, smaller entities would be under pressure to reduce their fees in order to remain competitive. Community banks and credit unions said they simply do not have the economies of scale to absorb the same loss of overdraft income that large

national banks can withstand. Several commenters urged the CFPB to exempt small institutions from the rule entirely in recognition of this dynamic. The CFPB does not expect that applying the rule to very large financial institutions will materially change market conditions for smaller market participants not subject to such constraints, including the large majority of credit unions not subject to this rule. The existence of a wide range of fees and product offerings under the baseline suggests that there are unlikely to be large changes in the rate of consumers that are currently served by small financial institutions not covered by the final rule shopping for or switching between banks due to the rule. To the extent that some consumers become more sensitive to overdraft fees when choosing a financial institution, the CFPB expects that small institutions will find ways to offer these consumers value that convinces them to stay.

E. Potential Benefits and Costs to Consumers and Covered Persons

1. Potential Benefits and Costs to Consumers

In addition to other changes discussed later in this section and the further changes discussed in the following section, the final rule will apply Regulation Z to above breakeven overdraft credit that is currently excepted from the regulation (*i.e.*, it is currently non-covered overdraft credit). Overdraft credit is above breakeven overdraft credit when a very large financial institution imposes a charge or combination of charges for such credit that exceeds the greater of either the average of the institution's costs and losses for providing non-covered overdraft credit (as defined in the final rule) or the benchmark fee published by the CFPB. The CFPB anticipates that its final rule generally will benefit consumers in two ways. First, some very large financial institutions may reduce their fees so that they can continue offering non-covered overdraft credit. In general, lower overdraft fees for non-covered overdraft credit will benefit consumers by reducing the amount they pay through these fees. Second, some financial institutions may continue offering above breakeven overdraft credit and apply the Regulation Z regulatory framework. In general, applying the Regulation Z regulatory framework to above breakeven overdraft credit will benefit consumers by promoting their informed use of such credit and by applying TILA's substantive protections. The CFPB's analysis may underestimate or

overestimate the final rule's benefits to consumers depending on how various market participants, such as financial institutions covered by the final rule, entities not covered by the final rule, and consumers, respond to the final rule. The discussion below begins with an analysis of the final rule's direct benefits to consumers assuming that very large financial institutions comply with the final rule by lowering their fees for non-covered overdraft credit. The discussion then considers how other potential responses by very large financial institutions could impact the final rule's direct benefits to consumers. Next, the discussion considers how the final rule might impact consumer behavior, including demand for both covered and non-covered overdraft credit, demand for alternative credit products, and deposit behavior. Finally, the discussion briefly considers how institutions not covered by the final rule may respond to the final rule.

i. Estimated Savings to Consumers if All Very Large Financial Institutions Use the CFPB's Proposed Benchmark Fee or Breakeven Standard

Under the final rule, overdraft credit offered by very large financial institutions that currently is non-covered overdraft credit could remain non-covered overdraft credit if the per-transaction price for such credit were less than or equal to the \$5 benchmark fee established by the CFPB. Consequently, if all very large financial institutions were to use the benchmark fee to comply with the rule, the final rule's direct benefits to consumers, assuming no change in overdraft frequency, could be as high as the difference between the total fees currently paid by consumers for non-covered overdraft credit and the total fees they will pay if non-covered overdraft credit were priced at the \$5 benchmark fee. Today, fees for non-covered overdraft credit are generally greater than \$30 per transaction.²⁶⁸ Under the final rule, fees for any non-covered overdraft product provided by a very large financial institution will be substantially lower. From Call Report data, the CFPB estimates that consumers paid \$5.98 billion in overdraft fees to very large banks and thrifts in 2022. For this estimate, the CFPB started with

²⁶⁸ In narrative responses to supervisory information requests, financial institutions generally stated that discretionary overdraft fees are set using factors such as: (1) the direct and indirect cost of offering OD services, (2) deterrence effects, (3) positioning with respect to other competitors, (4) customer feedback, experiences, and utility, (5) regulatory requirements and (6) safety and soundness concerns. CFPB 2024 Overdraft NSF Report at 11.

CFPB-supervised banks' total reported consumer overdraft-related service charges levied on those transaction account and non-transaction savings account deposit products intended primarily for individuals for personal, household, or family use.²⁶⁹ This amount was \$6.42 billion in 2022, including fee revenue from both overdraft and NSF transactions. In prior work, the CFPB has estimated that, between January 2011 through June 2012, 18.9 percent of such revenue at several very large financial institutions was NSF fee revenue.²⁷⁰ However, most of the largest banks eliminated NSF fees during 2022; the CFPB estimates that nearly two-thirds of supervised banks had eliminated NSF fees by mid-2023, representing an estimated 97 percent of annual NSF fee revenue earned by those institutions.²⁷¹ For purposes of this analysis, the CFPB estimates that the NSF fee share in 2022 was half as large as the earlier 18.9 percent share, so supervised banks' overdraft fees are an estimated 90.55 percent of the 2022 fee total, or \$5.81 billion. This total does not include fee revenue from credit unions that are very large financial institutions, since credit union call reports did not include data on overdraft fee revenue in 2022.²⁷² To estimate overdraft revenue earned by CFPB-supervised (very large) credit unions, the CFPB estimates the overdraft revenue earned by all credit unions and distributes that estimated revenue to credit unions above and below \$10 billion in assets based on those groups' relative share of member shares and deposits. The CFPB has estimated that overdraft revenue reported by banks with over \$1 billion in assets comprises approximately 77 percent of the total overdraft/NSF revenue earned by banks and credit unions combined, while credit union overdraft/NSF revenue comprises approximately 15 percent of such revenue (overdraft/NSF revenue of banks under \$1 billion in assets comprises approximately 7 percent of

²⁶⁹ This information is reported in Schedule RI, Memorandum item 15.a on the FFIEC 031 and 041 forms, as of September 2023. For most institutions, this definition also includes fees associated with sustained negative balances. Few charges related to overdraft transactions are reported as net interest revenue, if any.

²⁷⁰ CFPB 2014 Data Point at 10 tbl.2.

²⁷¹ CFPB October 2023 Data Spotlight.

²⁷² Some State-chartered credit unions reported substantial overdraft revenue under California's Financial Code sec. 521. See Dep't of Fin. Prot. & Innovation, *Annual Report of Income from Fees on Nonsufficient Funds and Overdraft Charges* (Mar. 2023), https://dfpi.ca.gov/wp-content/uploads/sites/337/2023/04/Annual-Report-of-Income-from-Fees-on-Nonsufficient-Funds-and-Overdraft-Charges_2023.pdf (DFPI 2023 Report).

such revenue).²⁷³ Banks with more than \$1 billion in assets reported \$7.72 billion in overdraft/NSF revenue in 2022, 90.55 percent of \$7 billion of which the CFPB estimates is overdraft revenue for reasons explained above. Assuming this \$7 billion represents 77 percent of the market total overdraft revenue, the CFPB estimates that credit unions earned 15 percent of the total, or \$1.43 billion in overdraft revenue in 2022. At the end of 2022, very large credit unions held 24.1 percent of all member shares and deposits held by federally insured credit unions. Applying this 24.1 percent to \$1.43 billion, the CFPB estimates that very large credit unions earned \$0.34 billion in overdraft fees in 2022, and that very large financial institutions collectively earned \$6.16 billion.²⁷⁴ From information collections by the CFPB, it estimates the average overdraft fee amount to be \$32.50.²⁷⁵ The CFPB

²⁷³ See CFPB 2021 Data Point at 7 (estimating combined overdraft/NSF revenue for credit unions and for banks with less than \$1 billion in assets using 2014 data collected from core processors for the number of accounts by asset size and the overdraft/NSF revenue per account, and from 2014 call report data for distribution of institutions by asset size, and then assuming that overdraft/NSF revenue at small institutions saw the same growth from 2014 to 2019 as at large banks to arrive at the 2019 estimates). For purposes of this analysis, the CFPB assumes that banks with assets over \$1 billion, banks with assets below \$1 billion, and all credit unions represent the same relative portions of total nationwide overdraft/NSF revenue in 2022 as they did in 2019.

²⁷⁴ The CFPB used FFIEC call report data on overdraft and NSF fee revenue from 2022 rather than 2023 to estimate benefits and costs to ensure consistency with the overdraft-related cost data the CFPB collected and used to inform the benchmark fee, which are only available from 2022. Total overdraft and NSF fee revenue paid by consumers at banks with more than \$1 billion in total assets was somewhat lower in 2023 than in 2022—\$5.83 billion in 2023 as compared to \$7.61 billion in 2022 (As in 2022, data on banks below \$1 billion in assets are not available for 2023.) This would suggest that the estimated benefits, costs, and impacts on consumers and covered persons could be somewhat smaller if the analysis relied on data from 2023 rather than 2022. See CFPB Data Spotlight, *Overdraft/NSF Revenue in 2023 down more than 50% versus pre-pandemic levels, saving consumers over \$6 billion annually* (Apr. 2024), <https://www.consumerfinance.gov/data-research/research-reports/data-spotlight-overdraft-nsf-revenue-in-2023-down-more-than-50-versus-pre-pandemic-levels-saving-consumers-over-6-billion-annually/> (2024 CFPB Data Spotlight).

²⁷⁵ The CFPB collected information about some very large financial institutions' 2022 overdraft practices. For those institutions with available data on the number of instances of non-covered overdraft when the institution charged a fee, the reported weighted average fee amount was \$32.50. CFPB 2024 Overdraft NSF Report. Based on the CFPB's review of publicly available information between December 2022 and July 2023, the unweighted median non-covered overdraft fee amount across all very large financial institutions was \$35. Past CFPB research publications have reported the median non-covered overdraft fee as \$35; this median was also based on data from very

initially assumes that a reduction in the fee for non-covered overdraft credit will affect neither the quantity of credit demanded nor the quantity supplied, meaning that the application of the benchmark fee across the entire market will imply mechanical savings for consumers, unaffected by behavioral responses.²⁷⁶ As discussed in part IV.D.3, the CFPB has finalized \$5 as the benchmark fee. Assuming \$5 will be the new average fee across the market, the decline in market total revenue will be proportional to the decline in the average fee amount. Thus, using a 2022 baseline, a \$5 fee will save consumers \$5.2 billion (84.6 percent of the 2022 total) annually. Savings from lower fees will be particularly valuable in cases when they protect liquidity at times when the consumer needs it most. Consumers with low balances may deplete their asset account less frequently if they have paid less in overdraft fees in the past, and thus their asset account recovered to a higher balance after a sufficiently large deposit. Moreover, if fees, in particular multiple or cascading fees, deplete less of the buffer the depository institution is willing to lend to the consumer (*i.e.*, the shadow line of their non-covered overdraft credit), the consumer might be able to cover more or larger transactions with it when they have depleted their

large financial institutions. A \$35 fee is higher than the \$25.77 average fee recently reported by the New York State Department of Financial Services for 2022 based on surveyed entities, most of which would not be subject to this final rule. See N.Y. State Dep't of Fin. Servs., *Consumer Fee Practices in New York* (July 14, 2023), https://www.dfs.ny.gov/system/files/documents/2023/07/rpt_20230714_consumer_fee_practices_nys.pdf. The Department of Financial Protection and Innovation of the State of California annually tabulates State-chartered banks' and credit unions' revenue from overdraft charges but not the fee amounts. See DFPI 2023 Report. Note that to the extent market revenue or fees for very large financial institutions were lower by the effective date of the proposed rule, the proportional drop from a smaller market total would amount to less than these extrapolations from 2022 market revenue totals and fees. Bankrate's 2023 checking account and ATM fee survey reports that the average overdraft fee was 11 percent lower than a year before. See Karen Bennet et al., *Survey: ATM fees reach 26-year high while overdraft fees inch back up*, Bankrate.com (Aug. 21, 2024) <https://www.bankrate.com/banking/checking/checking-account-survey/>.

²⁷⁶ This assumption approximates the situation where overdraft transactions are inadvertent (a fixed quantity demanded) and always met at the prevailing price, even after the supply curve shifts downward with the benchmark fee. As discussed elsewhere, this outcome is unlikely to hold exactly. Consumers might be less attentive to avoid overdraft when it is cheaper, though many might have larger buffers if earlier fees have depleted their account balances less than they would under the baseline. Financial institutions might also meet demand only at higher prices, applying the breakeven standard approach or offering covered overdraft credit instead.

asset account. The same shadow line will permit more consumption. Current users of non-covered overdraft credit will enjoy similar benefits even if they end up with substitute products like covered overdraft credit, or linked asset or credit accounts, as long as the new source of liquidity is cheaper than non-covered overdraft is currently. A large reduction in fees for non-covered overdraft could reduce some operating costs associated with complaints, collections, and account closures. Such benefits to covered persons do not need to reflect an equal but opposite pecuniary cost to consumers. Fewer complaints, collections, or account closures can save money for both the accountholder and the depository institution, who somehow split the value that would have been spent otherwise. These gains will mitigate some losses covered persons suffer from lower fee revenue, so they lose less on net, in total. The CFPB understands from its general monitoring activities that complaints fell by 70 percent or more at depository institutions that radically decreased overdraft fees recently. With lower fees and charges, the CFPB expects more non-covered or covered overdraft credit accounts to recover from negative balance episodes. Very large financial institutions with per-incident costs and losses traceable to overdrawing transactions above the \$5 benchmark fee will have an incentive to set fees for non-covered overdraft using the breakeven standard described at proposed § 1026.62(d)(1)(i). Consumer gains when very large financial institutions with per-incident costs and losses above the benchmark fee use the breakeven standard will be less as their fee will not drop all the way to \$5. The gains for consumers will be even smaller if the application of the breakeven standard imposes additional administrative costs on the institutions who use it, and, in turn, those institutions shift some of these costs to their customers. However, the CFPB expects these administrative costs to be small compared to revenue. Data produced in response to the CFPB's supervisory information collections on 2022 overdraft practices suggest that at least some very large financial institutions will have traceable costs and losses per overdraft fee charged greater than the benchmark fee level, such that they could find it more advantageous to use the breakeven standard. The CFPB has less data on the costs and losses of other very large financial institutions, whose costs and losses (mostly their charge-off losses) may be higher than for some institutions

in its supervisory information collection. However, because the costs and losses of providing non-covered overdraft are driven largely by credit losses, and because these losses depend on underwriting policies, which, as discussed below, very large financial institutions may change in response to the final rule, current cost and loss levels may not be a reliable indicator of future cost and loss levels under the final rule. Overdraft fees are incurred by consumers in an estimated 17 percent of households annually.²⁷⁷ Among these, the consumers who will benefit most from the final rule are those that incur the largest number of overdraft fees. Thus, a change in fee amounts will have an outsized impact on specific groups of consumers. The CFPB collected 2022 calendar year information from entities it supervises (the group that will be affected by the final rule), which reinforced patterns of disparity that prior CFPB research and others have established:²⁷⁸ Overdraft and NSF fees comprised 53 percent of all fees that the institutions charged to consumer checking accounts, nearly three quarters of all fees charged to accounts with an average balance below \$500 (lower balance accounts), and nearly three quarters of all fees charged to accounts where accountholders opted to authorize overdraft fees on debit card and ATM overdraft transactions (opted-in accounts). While overdraft-related fees averaged approximately \$65 per year over all accounts, accountholders of opted-in accounts and accountholders of lower-balance accounts paid over \$165 and \$220, respectively, in total overdraft fees per year on average. Therefore, the benefits of any fee changes driven by the final rule will be predominantly experienced by accountholders who had either opted-in accounts or lower-balance accounts. Indeed, in aggregate, across all institutions represented in the CFPB's Supervisory Information collection, one-fifth of accounts were lower-balance accounts, but these accounts paid 68 percent of per-item overdraft fees assessed. In fact, at least one institution charged over half of per-item overdraft fees to accounts that were both lower-balance accounts and opted-in accounts, even though only five percent of

accounts fell into this category. Furthermore, accounts that paid for overdraft most often (12 or more overdraft fees per year) were nearly five times as prevalent among opted-in accounts than not-opted-in accounts. Overdraft use, and therefore the potential benefit from reduced fees, is also correlated with other consumer characteristics. As lower-income accountholders pay more fees, and minorities pay more fees even after controlling for income, these groups are more likely to benefit from the proposed changes.²⁷⁹

ii. Responses by Very Large Financial Institutions Covered by the Final Rule

Consumer gains will likely differ from the mechanical effect of lower fees on non-covered overdraft as described in the section above if some very large financial institutions tailor their offering to the new environment as the final rule allows. The discussion in this part starts with the possibility that institutions might adjust underwriting standards or overdraft coverage limits for non-covered overdraft credit when the marginal profit on each non-covered overdraft transaction falls. Then the text turns to the decision of whether to waive the fees on some overdraft transactions. Next is the analysis of decisions about whether to instead extend products that substitute for non-covered overdraft, primarily covered overdraft credit but also transfers from linked asset accounts. Finally, this part discusses repricing of financial products, like maintenance fees on the underlying checking account.

Availability of Non-Covered Overdraft Credit

Assuming that very large financial institutions comply with the final rule by lowering their fees for non-covered overdraft credit, these lower fees may change very large financial institutions' decisions about whether to extend non-covered overdraft credit for a given transaction on a given account. Financial institutions generally have discretion in setting overdraft policies.²⁸⁰ When a financial institution decides whether to cover an overdraft

transaction, it generally trades off the revenue from charging a fee against expected marginal costs and charge-off losses, although decisions about extending credit and charging or waiving a fee may also take into account their impact on the lifetime value of the customer as well as the financial institution's reputation.²⁸¹ Lower potential fee revenue could impact the decision to extend non-covered overdraft credit. In addition, very large financial institutions often offer services that are substitutes for non-covered overdraft credit, including covered overdraft credit and the option of linking other asset accounts to a checking account such that those other accounts can, sometimes for a fee, be accessed in the event of a shortfall. If fees for non-covered overdraft credit were limited for very large financial institutions, they could have incentives to limit access to non-covered overdraft credit but encourage consumers to take advantage of these substitute services. Having said that, firms that use the breakeven standard and not the benchmark fee could be disincentivized from reducing overdraft transactions because to do so will necessarily reduce the firms' cost and loss basis for the next year's fee calculation for remaining overdraft customers but not yield profits over the long run. In principle, very large financial institutions could respond to the final rule's changes by underwriting non-covered overdraft credit more conservatively, by reducing credit limits (whether or not disclosed to the accountholder) for accountholders with higher expected credit losses, or even by eliminating access to non-covered overdraft credit for some consumers who currently qualify for such credit, though as discussed, the firms may offer other products instead. To the extent that very large financial institutions opt to reduce access to non-covered overdraft, it could result in an increased likelihood that transactions are declined for some consumers. The CFPB understands that depository institutions rarely charge NSF fees on declined ATM or one-time debit card transactions when there were nonsufficient funds at the time the transaction was attempted. The CFPB expects that this will somewhat

²⁷⁷ FinHealth Spend Research Reports from 2021, 2022 and 2023 have estimated that 17 percent of responding households have paid an overdraft fee in the prior 12 months between November 2021 and January 2023. See generally, FHN, *Market Analysis: FinHealth Spend Research—Latest Research*, <https://finhealthnetwork.org/finhealth-spend-research/> (last visited Dec. 3, 2024).

²⁷⁸ See CFPB Fall 2023 Highlight; see also CFPB 2014 Data; CFPB 2017 Data Point.

²⁷⁹ Oz Shy & Joanna Stavins, *Who Is Paying All These Fees? An Empirical Analysis of Bank Account and Credit Card Fees* (Fed. Rsv. Bank of Bos., Working Paper No. 22-18, 2022), <https://www.bostonfed.org/-/media/Documents/Workingpapers/PDF/2022/wp2218.pdf>.

²⁸⁰ Institutions authorize and pay transactions that they are contractually obligated to, such as "authorize positive, settle negative" (APSN) transactions, since under applicable payment system rules, once a transaction is authorized, the financial institution must pay the transaction. Pursuant to the CFPA, charging an overdraft fee on such transactions can be unfair.

²⁸¹ In response to supervisory information requests, financial institutions said that when setting limits for discretionary overdraft they consider factors that could be relevant both to the risk of charge-off and to the lifetime value of the customer, including (1) age of the account, (2) available balance, (3) account transaction activity and history, (4) standing of the account, and (5) existence of direct deposits. CFPB 2024 Overdraft NSF Report at 8.

attenuate any increase in likelihood that institutions decline these transactions since their expected revenue from the decline is negligible. While assessing NSF fees when declining ATM or one-time debit card transactions may make this response more likely, doing so would harm customers, damage consumer goodwill by charging a fee in return for no service, and, as noted by the Board in its preamble to the 2009 Opt-In Rule, “could raise significant fairness issues” under the Federal Trade Commission (FTC) Act because “the institution bears little, if any, risk or cost to decline authorization of an ATM or one-time debit card transaction.”²⁸²

Limited access to non-covered overdraft could be beneficial to consumers with access to cheaper credit options they mistakenly forgo or who would have preferred that a transaction was declined rather than incurring an overdraft fee. Some consumers who would not have repaid the overdraft credit may avoid the negative effects of default, including account closures, debt collection calls and litigation, and reporting to account screening consumer reporting agencies (which are specialty deposit credit reporting agencies) that can make it difficult to open a checking account at another financial institution. Consumers often overdraw their account when they have liquid funds or available cheaper credit. In these cases, consumers might benefit from using those options instead of overdraft credit. However, there are scenarios, even when there are other credit options available and overdraft is more expensive, that the prompt completion of the transaction would be more valuable to consumers than the fee charged.

The CFPB is aware of an empirical study finding that relaxing restrictions to overdraft fees may result in increased access to deposit accounts with overdraft coverage.²⁸³ Contrary to some

commenters’ claims, the CFPB considered this study carefully in its proposal and reconsidered it for the final rule.²⁸⁴ The work analyzed an episode in 2001 in which national banks’ sudden exemption from State fee caps permitted some banks to increase their fees for non-covered overdraft. The study attempts to identify the effect of the regulatory change by comparing national banks (which became exempt from State fee restrictions) to State banks (which did not), and also comparing banks in States that had such restrictions to States that did not. The authors find that the analyzed change to fee caps seems to have led to higher overdraft fees at national banks in these States, expanded overdraft coverage at these banks, and more low-income households opening deposit accounts. In the survey data the study uses, about 56 percent of consumers in the lowest income quartile did not have checking accounts before the regulatory change, and the authors estimate that this share fell by about five percentage points after the change.²⁸⁵ The estimates are consistent with the regulatory change making it more profitable, in those States affected, for national banks to provide accounts to consumers who maintain low balances. The authors do not find evidence that the newly banked consumers regretted (or at least reverted) their choice or suffered worse financial health, and they suggest that this is consistent with welfare improvements for these consumers in the short run. These estimates do not make the CFPB expect substantial consumer harm from this final rule. As with most modern empirical research in

(Fed. Rsv. Bank of N.Y., Staff Rep. No. 973, June 2021), https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr973.pdf (revised July 2023) (Dlugosz 2021 Study).

²⁸⁴ Comments citing this study generally overlooked the CFPB’s consideration of some negative consequences of unpaid overdraft or declined transactions. The CFPB has not ruled out and does not rule out decreased overdraft credit or checking account access for some consumers, but does not expect consumer harm from such potential outcomes to necessarily outweigh consumer gains from lesser charges, more transparent pricing, and more efficient competition in overdraft credit and deposit account markets.

²⁸⁵ The study cites three possible reasons why the share with checking accounts might be lower in their data than other surveys or administrative records: their focus on checking accounts and exclusion of savings and money market accounts, the nearly 10 year difference in timing between their survey and other available survey evidence, and the known underreporting of bank account ownership in survey data relative to administrative records shown in a 2021 study by Yogo, Cox, and Whitten. See Dlugosz 2021 Study at 17 n.19; see also Yogo et al., *Financial Inclusion Across the United States* (Dec. 6, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3934498 (last revised Nov. 25, 2024) (Cox 2021 Study).

economics, the study focuses attention on the internal validity of the findings, *i.e.*, the measurement of the causal effect of the policy change at the time and place that it took effect. The study’s causal reasoning requires that differential trends at national and State institutions in affected States would have continued to diverge (or converge) at the same linear rate in the absence of the exemption from State fee caps, and evaluating these assumptions is difficult given the five-year window for which the study has data.²⁸⁶ Assuming the internal validity of the findings, differences in both the economic context and the nature of the regulatory change make it unlikely that the study’s findings will apply directly in the context of this final rule. The study authors suggest that relaxing caps may have been beneficial to consumers without bank accounts in 2001, but this is difficult to conclude without strong assumptions about how consumers value deposit account access, overdraft credit, and overdraft fees. In addressing which of the four proposed benchmark fees the CFPB should adopt in this final rule, an academic commenter urged the CFPB to adopt one of the lower proposed benchmarks fees while acknowledging that these would be more likely to result in reduced overdraft credit limits for some consumers. The commenter asserted that ensuring consumers can make better-informed borrowing choices or that they would face substantially lower per-episode non-covered overdraft fees would be preferable to permitting higher non-covered overdraft fees, even if those fees were less than half of the prevailing fees charged in today’s market. The CFPB also notes that the final rule will not impose limits on all overdraft fees but rather will require very large financial institutions to comply with Regulation Z when offering covered overdraft credit.

A prominent precedent for a U.S. policy change affecting overdraft fee revenue was the implementation of the opt-in rule of Regulation E in August 2010. The CFPB is not aware of a careful empirical study that isolates the effect of this change in the market. That said, there was a substantial decrease in marketwide overdraft revenue following the introduction of the opt-in rule and

²⁸⁶ An academic discussant of an earlier draft of the study recommended further analysis to allay similar concerns. See Christopher Palmer, MIT Sloan & NBER, *Who Pays the Price? Overdraft Fee Ceilings and the Unbanked*, Presentation at the Boston Fed Day Ahead Conference, at 9 (Jan. 6, 2022), <https://web.mit.edu/cjpalmer/www/discussions/Palmer%20Discussion%20of%20DMM.pdf>.

²⁸² 74 FR 59033, 59041 (Nov. 17, 2009). In 2010, card issuers reported that their median per-transaction cost of nonsufficient funds handling was one cent. 76 FR 43394, 43398 (July 20, 2011). Since then, the transacted weighted average cost of nonsufficient funds handling has fallen to \$0.005. FRS, *2021 Interchange Fee Revenue, Covered Issuer Costs, and Covered Issuer and Merchant Fraud Losses Related to Debit Card Transactions*, at 39 tbl.14A (Oct. 2023), https://www.federalreserve.gov/paymentsystems/files/debitfees_costs_2021.pdf. Nonsufficient funds handling costs were described in the survey as “[c]osts of handling of events in which an account does not have enough funds to settle an authorized debit card transaction between the time of authorization of that transaction and the settlement of that transaction.” *Id.* at 28 n.25. Based on this description, the cost of handling events in which the debit card transaction was not authorized is likely even lower.

²⁸³ See Jennifer L. Dlugosz et al., *Who Pays the Price? Overdraft Fee Ceilings and the Unbanked*

a smaller decrease in total service charges, which suggests less than fully offsetting price responses.²⁸⁷ However, isolating the effect of the opt-in rule is made more difficult by the fact that the implementation of the cap on very large financial institutions' interchange fees on debit cards came a mere three months later, and the Great Recession might also confound the effects of the opt-in rule alone. The CFPB's market monitoring activities also indicate that some institutions ceased to offer "free checking" after the 2010 changes.²⁸⁸ The downward trend in the share of American adults without a bank account does not seem to have broken around the time of these changes in the long-running series of the Survey of Consumer Finances, and the FDIC's Survey of Household Use of Banking and Financial Services, which started in 2009, shows a small increase in the unbanked share in 2011 before steady declines thereafter.²⁸⁹ According to the CFPB's market monitoring, recent voluntary decreases in overdraft revenue at many large American depository institutions have not coincided with conspicuous restrictions of checking offerings or increases in other fees, though this period corresponded to increases in net interest revenue on deposits resulting from a changing interest rate environment.²⁹⁰ In some cases, in response to the final rule, the above referenced more conservative underwriting may lead lenders to reject transactions they would not have rejected under the baseline where consumers do not have other viable options. In such cases, those consumers will no longer have the option to use non-covered overdraft as credit, which means transactions will be declined, but also, the consumers will

not incur its high cost and potential risks of account closure. Overdraft use can also decrease due to financial institution responses that cause no consumer harm. With smaller profits on each transaction, very large financial institutions could have more of an incentive to educate their depositors and help them avoid negative balance episodes.²⁹¹ Financial institutions will also have less of an incentive to inflate the number of overdraft transactions with transaction posting orders designed to increase the number of overdraft fees.

One industry trade commenter summarized responses from 21 member banks answering its survey about their overdraft practices in 2023 to support its assertion that the CFPB could quantify the impact of the rule on availability of non-covered overdraft, and asserted that the survey results show that the final rule would lead to a significant reduction in the amount of credit available to customers through non-covered overdraft, which the commenter stated was not accounted for in the

proposal. The commenter provided results for 13 of the 21 member banks that responded to the survey, excluding responses for banks that did not offer overdraft or did not meet the definition of a very large financial institution. Among these 13 respondents, the reported average amount of non-covered overdraft credit available to overdraft customers in 2023 was \$756, and on average overdraft consumers "used" about half of the available credit in 2023. Respondents reported that they would reduce the amount of available non-covered overdraft credit under different potential benchmark fee amounts. Furthermore, the survey's methodology provides an insufficient basis to credibly quantify potential impacts of the rule. For example, the study's description of its methodology does not make clear how the measure of credit used is calculated, making it difficult to evaluate if the calculation captures the relevant economic concept.²⁹² In any event, at the \$7 benchmark fee amount, five out of ten respondents reported that the reduction in average available overdraft credit would not exceed 50 percent. Even at the \$3 benchmark, two out of ten claimed the available overdraft credit would be reduced by 50 percent or less. Either scenario is consistent with an expectation that only heavy users of overdraft would face an effective reduction in their overdraft credit available to cover transactions; respondents stated that, on average, overdrafters used only half of their available credit line and currently extended liquidity also covers the excess overdraft fees that the final rule will reduce.²⁹³ The survey thus suggests that many financial institutions will be able to use the \$5 benchmark fee without meaningfully reducing overdraft access or use for many consumers.

Waiver Policies

Currently, a substantial fraction of overdraft fees is waived by financial institutions, either because regulation

²⁸⁷ As discussed in part I.B above, marketwide overdraft revenue (for both banks and credit unions) is estimated at approximately \$25 billion in 2009, and fell to an estimated \$12 billion in 2011. According to bank call report data, total bank deposit service charges fell from \$41.7 billion in 2009 to \$33.1 billion in 2011 and remained at a similar level in following years. While other factors may explain part of the reduction in deposit service charges, the large and persistent decrease suggests that banks did not make up all of the lost overdraft revenue from the 2009 opt-in rule by increasing other prices.

²⁸⁸ See, e.g., E. Scott Reckord, *At many big banks, no more free checking*, L.A. Times (Feb. 4, 2011), <https://www.latimes.com/archives/la-xpm-2011-feb-04-la-fi-free-checking-20110204-story.html>.

²⁸⁹ See Paola Boel & Peter Zimmerman, *Unbanked in America: A Review of the Literature*, Econ. Comment Number 2022-07, Fed. Rsvr. Bank of Clev. (May 26, 2002), <https://www.clevelandfed.org/publications/economic-commentary/2022/ec-202207-unbanked-in-america-a-review-of-the-literature>. Note that the increase in the FDIC measure may have been impacted by the Financial Crisis.

²⁹⁰ See CFPB May 2023 Data Spotlight.

²⁹¹ Various pieces of evidence have bolstered the view that overdraft is a mistake for many. Stango and Zinman document that surveying consumers about overdraft makes them use it less, strongly suggesting that they overuse the service when they are paying less attention. See Victor Stango & Jonathan Zinman, *Limited and Varying Consumer Attention: Evidence from Shocks to the Salience of Bank Overdraft Fees*, 27 Rev. Fin. Stud. 990 (2014), <https://academic.oup.com/rfs/article/27/4/990/1603971>. Alan et al. ran an experiment in Turkey, where overdraft fee discounts lowered use while messages about availability raised it, suggesting that consumers are overdrawing their account without regard to the actual fees and even a discounted price is too high for them when it draws their attention. See Sule Alan et al., *Unshrouding: Evidence from Bank Overdrafts in Turkey*, 73 J. Fin. 481 (2018), <https://onlinelibrary.wiley.com/doi/full/10.1111/jofi.12593>. Grubb modeled the direct and indirect consequences of just-in time "bill-shock alerts" (e.g., for debit card transactions) on consumers and finds that the overdraft market is ripe for such reminders, as people differ in how much attention they pay to their available balance. See Michael D. Grubb, *Consumer Inattention and Bill-Shock Regulation*, 82 Rev. Econ. Stud. 219 (2015), <https://academic.oup.com/restud/article/82/1/219/1543467>. Grubb et al. indeed report on field experiments in the U.K. where timely text message alerts saved consumers 11 to 27 percent of overdraft fees, which also shows that many had available funds elsewhere. See Michael D. Grubb et al., *Sending Out an SOS: Automatic Enrollment Experiments for Overdraft Alerts* (forthcoming in the Journal of Finance, accepted May 8, 2024), <https://sites.google.com/bc.edu/michael-grubb/research>. Heidhues and Köszegi use overdraft as their prime example of markets where providers exploit the mistakes of some consumers. See Paul Heidhues & Botond Köszegi, *Naïveté-Based Discrimination*, 132 The Q. J. Econ. 1019 (2017), <https://academic.oup.com/qje/article/132/2/1019/2724551?searchresult=1>. Gathergood and Olafsson find in granular administrative data some overdraft behaviors impossible to rationalize. See John Gathergood & Arna Olafsson, *The Co-holding Puzzle: New Evidence from Transaction-Level Data* (Oct 10, 2023), <https://ssrn.com/abstract=3607560>.

²⁹² For example, it is not clear if the credit used as calculated in the study reflects the highest overdraft balance a consumer had during the year, the sum of all overdraft transactions during the year, average monthly overdraft balances within the year, or some other measure.

²⁹³ At the commenter's "average amount of overdraft liquidity available per customer" of \$756, this would be expected to cover nine overdraft transactions at an average overdraft transaction amount of \$50 (see FHN Brief 2024) and an average overdraft fee of \$32.50 (see CFPB 2024 Overdraft NSF Report at 13). Under the benchmark fee of \$5, available overdraft liquidity close to half the current average among the survey respondents (\$385) would still cover seven overdraft transactions at the average transaction amount.

does not allow fees on transactions that are paid per contractual obligations (such as debit APSN transactions without opt-in), pursuant to an automatic policy like a daily maximum, or at the discretion of a customer service representative or manager, often called a discretionary waiver or a reversal after the fact. Lower fee amounts will change institutions' incentives related to whether to waive the fee by policy or discretion, which is a subset of overall waivers. For this decision, the depository institution trades off the net revenue from charging the fee against the expected value of a marginally better relationship with the customer. Lower fee amounts will affect both parts of this tradeoff. Lower potential fee revenue will mean that depository institutions will have less to lose by waiving a fee, while they also imply that there is less at stake for the consumer, likely making fee waivers less important to maintaining good customer relationships. As discussed in the Overdraft and NSF Practices Report, the \$5 benchmark fee would not have covered the average charge-off losses across the institutions in the CFPB's data for 2022 if they had applied their current waiver policies (charging \$5 only in instances where they actually charged their current higher fee in 2022).²⁹⁴ This suggests that institutions that currently waive or reverse fees might reconsider their policies if the benchmark fee did not allow them to recoup their costs and losses on their non-covered overdraft credit product, if product-specific profit targets were more important in practice than the marginal incentives for individual waivers. If an institution was to adopt the breakeven standard, it will charge higher fees but may still have an incentive to tailor its waiver policies to foster customer goodwill and retention according to the accountholder's lifetime value to the institution. A decrease in the chance of a waiver will shift the consumer experience from higher overdraft fees (as much as \$35) that might be waived discretionarily, to lower overdraft fees (as low as \$5) that are more predictable. On net, the CFPB expects that this shift will lower costs and create more predictability for consumers. In addition, the discretionary nature of some fee waivers can lead to the potential for disparate treatment of customers, as some customers may be more likely to get an overdraft fee waived than others. This disparate treatment amounts to what has

been called "contractual inequality."²⁹⁵ A substantial decrease in discretionary waivers is likely to move towards more equality of waiver rates across underprivileged and more privileged groups.

Expanding Covered Overdraft Credit or Other Substitutes for Non-Covered Overdraft

Financial institutions may choose to offer covered overdraft credit in addition to or instead of non-covered overdraft credit. Whether consumers will choose to apply for and use covered overdraft products, and whether very large financial institutions will find it profitable to offer them, depends on a number of factors, and available evidence does not permit the CFPB to confidently predict whether or how such products will develop. In particular, it will depend on the price that the market will bear for these products in new segments, as well as the cost and time required to develop reliable underwriting and consumer acquisition systems to support such products.

Lines of credit on any such new covered overdraft product might be smaller than on existing covered overdraft lines of credit, which generally focus on premium market segments. If underwriting these covered overdraft credit lines on the new accounts will require extensions of existing systems or new installations at many institutions, transitioning a new customer base to covered overdraft credit will take time and experimentation, even at institutions with experience underwriting credit cards or extant overdraft lines of credit. The frequent overdrafter population might be profitable to underwrite with small lines, but few financial institutions will have experience underwriting such small lines of credit covered by Regulation Z for this population (either for a credit card or extant overdraft lines of credit). The effective date will leave time for very large financial institutions to experiment before implementation, which could facilitate development of new covered overdraft credit offerings.

If frictions slowed the transition of consumers from non-covered to covered overdraft credit, fewer consumers will receive the new coverage at institutions that try to move some of their overdraft customers into a covered product.

Past experience offers little guidance on the extent to which very large

financial institutions will attempt to transition current non-covered overdraft transactions into a covered product. As depository institutions generally target existing covered overdraft credit as a premium product at customers with low charge-off risks and high expected lifetime value to the institution, inertia might imply that customers who are more likely to struggle to recover from a negative balance episode continue to access a non-covered overdraft product subject to the new breakeven or benchmark limits, keeping non-covered overdraft fees higher under the breakeven standard than otherwise.²⁹⁶ Institutions may find it harder to quickly adjust credit limits for covered overdraft credit than for non-covered overdraft credit, and this difference may be more pronounced when extending overdraft credit that is less likely to be repaid.

The disclosure provisions of Regulation Z might result in more competitive pressure on the pricing of covered overdraft credit products than currently exists for non-covered overdraft credit. An increase in competitive pressure could mean that new covered overdraft products will be less expensive than existing non-covered overdraft products for the same consumers and coverage.²⁹⁷

Consumers will also stand to gain from the availability of covered overdraft credit because meeting periodic minimum payments, which are generally lower than the full balance, will allow them to revolve their overdraft debt and cover more extended needs for liquidity. They could also pay less in per-transaction fees if their asset account, not depleted by full repayment of prior overdrafts, will cover more transactions while the credit account

²⁹⁶ Interest rates are similar on arranged and unarranged overdrafts in the United Kingdom, following recent regulation setting a comparable pricing structure on both. See Danail Vasilev et al., Fin. Conduct Auth., *Evaluation Paper 23/1: An evaluation of our 2019 overdrafts intervention* (Apr. 2023), <https://www.fca.org.uk/publication/corporate/ep23-1.pdf> (FCA 2023). This could suggest similar pricing for covered overdraft credit as for current non-covered overdraft credit, even if it becomes better disclosed and the credit limits are clearer than current shadow lines. However, the same British reform also resulted in expanding arranged overdraft lines and smaller unarranged lines in addition, which suggests that covered overdraft credit could also become competitive or prevalent in the United States.

²⁹⁷ Regulatory constraints may also affect the fees charged for covered overdraft credit. For example, for open-end covered overdraft credit accounts accessible with a hybrid debit-credit card, the fee-harvesting provisions in § 1026.52(a) would limit some fees that very large financial institutions can charge in the first year of a new account to 25 percent of the approved credit line. Section 1026.52(a) does not, however, limit charges that are assessed as periodic rates.

²⁹⁴ CFPB Overdraft and NSF Practices Report at 6.

²⁹⁵ Manisha Padi, *Contractual Inequality*, 120 Mich. L. Rev. 825, 834–40 (2021), <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=8399&context=mlr>.

carries a balance. Periodic repayment saves consumers some per-transaction finance charges at the cost of somewhat higher periodic charges resulting from a credit balance remaining outstanding for longer. Furthermore, consumers who cannot repay the overdrawn amount within 60 days, when non-covered overdraft credit balances are typically charged off, might benefit from revolving their covered overdraft credit balance for a longer period of time.

Consumers who go delinquent on new covered overdraft credit accounts will have their credit negatively impacted if the delinquency is reported to consumer reporting agencies, though not necessarily with more dire consequences than with a negative report to account screening consumer reporting agencies (which are specialty deposit credit reporting agencies) after involuntary account closure due to a negative balance on the original asset account that would have resulted from similar behavior with non-covered overdraft credit in the absence of the final rule.

When consumers at very large financial institutions are offered covered overdraft credit, that covered overdraft credit will not be subject to the Regulation E opt-in requirement for non-covered debit card overdraft. However, it will be subject to Regulation Z's application and solicitation requirements and limitations on the issuance of credit cards if it can be accessed by a hybrid debit-credit card. Financial institutions will not be required to permit consumers to consent separately to overdraft charges on one-time debit card and ATM transactions, versus overdraft on other transaction types, the way Regulation E requires. A very large financial institution will be permitted, instead, to simply give the consumer the choice to apply for covered overdraft credit that will be extended to cover any overdrawing transaction (whether it be check, ACH, debit card, ATM, or any other form). Once the account is established, the CFPB expects those covered overdraft accounts to be presented to consumers as a credit account on phone applications, accounts on websites, and periodic statements, which will call attention to the fact that covered overdraft credit is a credit product.

Consumers who choose to have covered overdraft credit that is accessible by a hybrid debit-credit card might be better off than those who are opted into non-covered overdraft credit on one-time debit card and ATM transactions today if the same amount of credit for the same transactions costs less, as discussed above, or because of

the other protections included in this final rule. Where a financial institution only offers covered overdraft credit bundled for all transaction types, consumers who are not opted in today will gain the right to, effectively, refrain from opting into overdraft on transactions other than one-time debit and ATMs. They will lose, however, the ability to refrain from opting into overdraft for one-time debit and ATMs while intentionally keeping overdraft for other transactions. It is unclear how many consumers would prefer the default of Regulation E, particularly given evidence that consumer understanding of the Regulation E opt-in right is low.²⁹⁸

If very large financial institutions chose to offer closed-end covered overdraft credit, such closed-end covered overdraft credit will not be subject to the substantive protections discussed above. Instead, it will be subject to the disclosure requirements that apply to closed-end credit. The CFPB believes it is unlikely that this product will be provided.

With non-covered overdraft credit less profitable for financial institutions and available to fewer consumers, both institutions and consumers will have greater incentive to take advantage of linked accounts. Institutions might offer and promote more of these opportunities. Transfer fees on linked asset accounts to cover overdrawing checking account debits can result in costs for consumers but protect them from unnecessary borrowing if they indeed have liquid assets elsewhere. Links to existing credit lines like credit cards will not have this benefit but give more control to consumers to shop for rates and decide on repayment, with potentially still lower transfer fees than fees on non-covered overdraft credit under the final rule. Transfer fees for transfers from both savings accounts and credit accounts have been less common among the largest banks in recent years than they were prior.²⁹⁹

Offsetting Changes to Other Deposit Account Prices

As discussed above, the final rule will lead to reductions in non-covered overdraft revenue at many very large financial institutions, and it is uncertain

whether that revenue will be replaced, potentially by revenue from covered overdraft or other substitute products. Overdraft provider responses to this lost revenue will affect both the sum of consumer gains and their distribution across market segments and populations. Total consumer gains will be lower if very large financial institutions make up for lost overdraft fee revenue and any potential increase in costs by raising revenue through increasing other checking account prices or decreasing rates paid on deposit accounts. Whether financial institutions will offset lost overdraft fee revenue in this way for some or all deposit accounts will depend on a number of factors, including overall profitability of deposit accounts and the nature of competition among financial institutions. Without predicting exactly how firms will respond, the CFPB believes a reduction in overdraft fee revenue need not translate into increased maintenance fees, especially for high-balance consumers.³⁰⁰ In addition, as discussed in this section, very large financial institutions will generate revenue by assessing charges on covered overdraft credit or other credit products that substitute for non-covered overdraft.

To give an upper bound on how much lost revenue might be offset on a per-account basis, the CFPB estimates the mechanically lost revenue per account from non-covered overdraft fees without any behavioral responses. While full offset of the revenue loss is not a likely scenario, calculating this upper bound provides some quantitative context for understanding the limits of potential lost revenue and corresponding changes that might result. The CFPB does not have current information on the number of active checking accounts at all very large financial institutions but requested such information for 2022 from eight very large financial institutions in a supervisory capacity. For these institutions, the overall average overdraft fee revenue from any active account-month was \$3.77. Of course, the final rule will not eliminate all non-covered overdraft fee revenue. With the \$5 benchmark (and again, assuming for analytical purposes full adoption of the benchmark), financial institutions will lose approximately 84.6 percent in weighted average fee revenue (from \$32.50 average fees to the \$5 benchmark), totaling a revenue loss of \$3.19 per account per month.

The magnitude of this extreme upper bound on lost revenue per account

²⁹⁸ See Pew 2017 Chartbook at 1, 6 fig. 5 (three out of four consumers do not understand they have a right to not opt-in to overdraft on debit card transactions).

²⁹⁹ Based on the CFPB's review of publicly available information in June 2023, of the 20 banks reporting the most in overdraft/NSF revenue in 2021, 18 were not charging a transfer fee to transfer funds from a savings account to cover an overdraft, and 16 were not charging a fee to transfer funds from a credit account.

³⁰⁰ Today's market features checking accounts with neither maintenance nor overdraft fees.

reassures the CFPB that any potential losses to banking access can remain limited. In fact, there are large financial institutions for which this final rule is unlikely to result in substantial reductions in revenue.³⁰¹ Furthermore, this decrease in overdraft revenue is likely to be on par with, if not lower than, the voluntary decrease in revenue many large financial institutions already absorbed between 2019 and 2022, without apparent disruptions to checking and overdraft access.³⁰² The proposed fee reductions are in some ways similar to new regulations of the overdraft market in the United Kingdom in 2019, whose impacts the Financial Conduct Authority evaluated ex-post with a careful causal analysis. Their findings are generally consistent with the CFPB's expectations about limited disruption to checking and credit access and no complete offset of lost overdraft revenue.³⁰³

Offsetting changes in prices, if any, will limit the benefits to consumers from the final rule (as well as the corresponding costs to covered persons), but also redistribute the burden of paying for consumer checking services in the United States. Those consumers who are currently frequent users of high-cost non-covered overdraft credit will benefit substantially from lower fees even if checking account APY or maintenance fees adjust, as those adjustments are unlikely to be similarly concentrated. Consumers who currently receive cross-subsidies from frequent (or just occasional) overdrafters but might now receive lower net interest or pay higher maintenance fees to their checking provider, will incur only modest losses under the final rule relative to the baseline. Thus, to the extent that covered financial institutions respond to the rule by increasing deposit account maintenance fees or decreasing net interest paid for deposit accounts, this will decrease the total benefit to consumers from the final rule. However, as these prices are likely to be more salient to consumers, the CFPB expects there to be more efficient competition which will limit the extent to which covered financial institutions are able to pass along price increases (or net interest decreases) to consumers. Furthermore, and as mentioned above, any offsetting changes in prices are likely to be less regressive than overdraft fee revenue and thereby would

replace a cross-subsidy from supernormal profits on a product used primarily by more resource constrained consumers.³⁰⁴

Under the baseline scenario for this analysis, very large financial institutions generally do not charge nonsufficient fund fees for transactions that consumers attempt to authorize in close to real time, which could include non-recurring debit card transactions or certain person-to-person transactions. Thus, consumers that end up with less access to overdraft credit due to this final rule (and therefore more declined transactions) are not likely to pay fees on these types of transactions that they attempted but that were not authorized. Other types of declined transactions might trigger NSF fees to the extent those fees are not subject to the penalty fees limitation in § 1026.52(b), although, as noted earlier, a significant majority of supervised entities subject to this final rule eliminated NSF fees during 2022 and early 2023.

iii. Responses by Consumers

A lower price for non-covered overdraft credit will lead some consumers to use the product more on the margin, assuming it remains available to them. For those who are attentive to the price of the product, who are also likely to use the product deliberately and experience liquidity and convenience benefits outweighing the cost, any additional utilization will likely provide net benefits. Inattentive consumers, for whom overdraft has already often been a mistake, will continue to be unlikely to pay attention to and rationally consider the lower cost of overdrawing their balance, and will thus be unlikely to use overdraft more even at a lower price.

Some consumers might keep a lower deposit balance as long as their overdraft protection seems sufficient but is now cheaper. As consumers with checking account balances forgo a net interest margin of 250 basis points³⁰⁵

relative to short-term Treasury bill yields, on average, every \$500 in deposits shifted from a checking account to an account with short-term Treasury bill yields would earn each consumer an additional average \$12.50 over a year. Others might keep higher balances in their checking accounts if the final rule were to reduce their access to overdraft credit or if more salient use of overdraft credit made them try harder to avoid it. The cost-of-credit disclosures required for covered overdraft credit make its use more salient for the switchers than non-covered overdraft used to be. Consumers who keep more in their checking account may forgo more interest on their savings if they would have otherwise kept it in higher-yielding accounts.

While the rate of consumers switching depository institutions is relatively low, some consumers may also choose different depository institutions as account terms change as a result of the final rule. The ability to do so will generally increase consumer benefits and reduce consumer costs. For example, consumers who frequently overdraft at banks that are not very large financial institutions could switch to an account at a very large financial institution if non-covered overdraft credit is available there at lower cost. Conversely, a consumer at a very large financial institution that loses access to non-covered overdraft credit as a result of the rule could switch their account to another institution that is not covered by the final rule.

To the extent that marginal consumers could expect to pay a predictable and lower amount for checking overall, the final rule will encourage unbanked or underbanked customers to return to the banking system and gain access to deposit insurance and the low-cost payments system banks provide.

Overdraft use might also change because very large financial institutions will need to disclose newly covered overdraft credit to consumers as a credit product, which can only help them. For consumers who will use overdraft more because of this, their increased use may suggest that they will be deliberately taking advantage of a product worth its price for them. For consumers who will use overdraft less after these changes, better information might correct prior

rates hit the zero lower bound. For months with four-week Treasury yields below one hundred basis points, the national average (non-jumbo) checking account paid 8.3 basis points less. In other times, partly because checking account APYs have not risen as fast as short-term nominal interest rates, checking accounts paid 251.7 basis points below the four-week Treasury bill yield, on average.

³⁰¹ See CFPB, *Chart of Overdraft/NSF metrics for Top 20 banks based on overdraft/NSF revenue reported* (Feb. 2022), https://files.consumerfinance.gov/f/documents/cfpb_overdraft-chart_2022-02.pdf.

³⁰² See CFPB May 2023 Data Spotlight.

³⁰³ See FCA 2023.

³⁰⁴ Minimum balance requirements typically affect fee waivers and not overall account access. To the extent that fees are introduced for consumers that fail to satisfy minimum balance requirements, the resulting fees will also disproportionately be assessed on more resource-constrained consumers. A discussion on the availability of non-covered overdraft credit is above. Upon opening, some accounts might require a larger balance to limit adverse selection. The CFPB expects non-covered overdraft access to be determined separately from basic checking and deposit account access, with limited changes to the supply of the latter. A discussion on potential demand responses to more transparent price changes is below.

³⁰⁵ The FDIC has been reporting national average interest rates on checking accounts since 2009, separately for non-jumbo and jumbo accounts until 2021. For much of this history, nominal interest

misunderstandings and prevent further mistakes.

Disclosure as a credit product will also help consumers compare the costs of different forms of credit (or other options to delay or forgo transactions), which provides direct benefits to those who are able to make more informed choices, and also provides indirect benefits to other potential users as more intensive comparison shopping will bring down prices among competitors. For example, Regulation Z requires disclosure of annual percentage rates, which aid consumers in comparing the cost of credit across products.

Consumers currently not opting into one-time debit card transaction coverage by their non-covered overdraft service under Regulation E may be more likely to opt into such coverage under lower prices. To the extent these consumers pay particular attention to the fee and how it might affect them, they are less likely to regret when they use non-covered overdraft credit than less attentive consumers and are thus more likely to benefit from the final rule.

iv. Responses by Financial Institutions Not Covered by the Final Rule

The final rule will only apply to very large financial institutions and will not lead to any new compliance costs for financial institutions not covered by the final rule.

The CFPB recognizes that a bank or credit union's demand for deposits (including demand and time deposits) derives from a multitude of factors, including, but not limited to, meeting expected loan demand and liquidity needs. In addition, when consumers select a deposit product, they rely on many factors unrelated to the overdraft pricing, including ATM and branch availability, interest rate, and expected customer service.

As the final rule outlines, many large financial institutions have already substantially reduced overdraft fees. During this time, there was no major shift in the total share of deposits from small financial institutions to very large financial institutions.

The CFPB acknowledges that it is difficult to predict with certainty as to how very large financial institutions will evolve their business models over time. Of course, as with any change in business strategies by market participants with substantial market shares, this may ultimately lead to evolving industry dynamics with uncertain benefits and costs.

2. Potential Benefits and Costs to Covered Persons

This final rule will affect the consumer business of certain depository institutions with more than \$10 billion in assets. At the end of calendar year 2022, used for some tabulations here, this list included 176 depository institutions.

For covered persons, costs and benefits mostly mirror the existence and extent of each respective pecuniary benefit or cost to their customers, as detailed above, net of offsetting changes. As it did for consumers, the CFPB has carefully considered the various causes, mediating channels and modulating responses affecting costs and benefits to covered persons, and much of the discussion of the factors and mechanisms affecting potential consumer pecuniary benefits and costs in the previous section also applies to the potential costs and benefits, respectively, of the final rule for covered persons.

In particular, the final rule will reduce the revenue of very large financial institutions from non-covered overdraft credit, and these institutions may be able to offset this lost revenue in various ways, including expanding their offerings of covered overdraft or other services that substitute for non-covered overdraft credit. The extent to which depository institutions will be able to pass the price changes of checking accounts under the final rule onto input prices depends on the pricing pressures on capital, labor, and intermediary goods, and services that very large financial institutions pay for. Due to their complexity, the CFPB has not modeled them in detail.

The operating cost of offering covered overdraft may be higher than the cost of providing similar non-covered overdraft credit. This arises from the costs of complying with Regulations Z and E, and potentially other laws. Covered persons might bear these costs if market forces do not let them pass some of them on to the consumer.

Very large financial institutions already have to provide disclosures per Regulations DD and E for non-covered overdraft credit. If they chose to continue offering non-covered overdraft credit, they will need to update these systems to make sure they accurately disclose and charge the new lower fees. If they decide to offer covered overdraft credit instead to any customer, then the disclosures will follow Regulation Z. The one-time cost of setting up a new covered overdraft program or transitioning consumers to existing covered overdraft programs could be

substantial. The compulsory use prohibition will impose an administrative burden on the institution to offer another form of payment to the covered overdraft credit customer, as well as the operating cost of collecting the payment.

As discussed in the previous section, mechanical application of the benchmark fee amount to existing non-covered overdraft could reduce revenue of very large financial institutions by \$5.2 billion. This revenue impact on covered persons is limited by the final rule's design, which allows depository institutions to collect their costs and losses in overdraft fees. part IV.D.3 details why the CFPB believes that the \$5 benchmark fee will allow some very large financial institutions to cover their costs and losses. Where the benchmark fee will not allow this, fees set based on the breakeven standard will allow institutions to recover their costs and losses over time. This mechanism ensures that even entities that will see less revenue due to this final rule need not take losses on overdraft credit, unless they charge lower fees than the final rule will allow. And financial institutions whose per-transaction traceable costs and losses are lower than the benchmark fee could charge that fee and thereby make a profit on overdraft.

The CFPB finds it plausible that a different revenue model for checking in the U.S. that may result from the final rule will have broader implications on counterparties, competitors, or new entrants, or elsewhere in the economy. Such considerations are too speculative for this impact analysis.

F. Potential Benefits and Costs to Consumers and Covered Persons of Further Provisions of the Proposed Rule

The final rule will also apply the Regulation E compulsory use prohibition to covered overdraft credit provided by a very large financial institution. The rule does not amend the Regulation Z prohibition against offset, nor the Regulation Z provision permitting periodic deductions. The final rule's approach to these provisions will affect the costs and benefits for consumers and covered persons of consumers potentially switching from non-covered overdraft to covered overdraft. Consumers who have access to covered overdraft credit but consciously avoid pre-authorized EFTs to repay covered overdraft credit are likely to benefit from the compulsory use prohibition, which will give them additional control over their finances, though they might be overoptimistic about their future repayment discipline, and mistakenly turn down automatic

payments, to their detriment. Consumers who forget to repay can incur additional costs, including late fees, default interest rates or negative credit reporting after a period of delinquency. Some consumers might not be able to switch to covered overdraft credit if their depository institution was on the margin of offering it and they deem the consumer too prone to delinquency without a pre-authorized EFT for repayment. It is less likely that existing users of covered overdraft credit will be impacted for the same reason, as they are typically premium customers not on the margin of profitability.

Covered persons should not incur substantial cost from establishing repayment options in addition to a preauthorized EFTs. They can feasibly establish processes for consumers to have the repayment option of authorizing individual EFTs. Covered overdraft credit accounts that are not accessible via a hybrid debit-credit card will not be subject to the no-offset provision of Regulation Z.

Consumers with covered overdraft who do not repay their balance with frequent preauthorized EFTs pay either more interest from debt held longer or the hassle cost of making unscheduled repayments more often.

1. Applying CARD Act Provisions of Regulation Z to Covered Overdraft Credit

On covered overdraft credit accounts accessible via a debit card (a hybrid debit-credit card), financial institutions cannot automatically offset the credit balance against a positive balance on the associated asset account after a deposit. Therefore, consumers will be able to pay new debit transactions from the asset account before they repay the credit account. As discussed above, this flexibility in when to repay debt will generally give consumers better opportunities to manage their finances, although in practice the extent of any benefit to consumers from being able to delay repayment depends on finance charges for the credit and whether delaying repayment out of the asset account allows them to avoid higher additional credit charges for new transactions.

Consumers making purchases using hybrid debit-credit cards that access covered overdraft credit will also benefit from the final rule's effect on dispute resolution for such purchases. The CFPB expects the burden on covered persons from this occasional service to be minimal.

The final rule will also require very large financial institutions that provide

covered overdraft credit to do so through a credit account that is separate from the associated asset account. These provisions will clarify that a very large financial institution must treat existing deposit accounts with above breakeven overdraft credit that is currently non-covered overdraft credit, but that the institution chooses to provide as covered overdraft credit subsequent to the rule, as a new credit account for purposes of Regulation Z. Consumers with hybrid debit-credit cards able to access a covered overdraft credit account, and the very large financial institutions that provide these accounts, will then be subject to the CARD Act protections in subpart G of Regulation Z.

Section 1026.51 will require card issuers to consider consumers' ability to make the required minimum periodic payments under the terms of the account. This could generally reduce the amount of credit available to some consumers, and some consumers may benefit from this requirement if it makes it less likely that they are burdened with covered overdraft debt for which they are unlikely to be able to make required minimum periodic payments. Because benefitting from the ability-to-pay regulation's safe harbor requires lenders to estimate whether consumers can repay the minimum payment and all fees assuming full use of the credit line, this could result in firms setting more concrete and less fluid credit limits, could result in lower credit limits, and firms might institute minimum payment formulas that do not require full payment of overdrawn amounts every month.

Section 1026.52(a) will limit fees charged in the first year a covered overdraft credit account is open to 25 percent of the account's credit limit (Section 1026.52(a) does not restrict charges attributable to periodic interest rates; see comment 1026.52(a)(2)-1.). This could benefit consumers with hybrid debit-credit cards able to access a covered overdraft credit account in the first year the account is open. Any reduction in fees paid by consumers as a result of § 1026.52(a) will result in a corresponding cost to covered persons from decreased fee revenue. Developing and implementing pricing strategies for covered overdraft products that comply with these requirements could impose costs on the covered persons providing these products, though the CFPB does not expect these costs to impose a substantial direct burden.

Penalty fees, like declined transaction fees, for violating the terms of the covered overdraft credit account will be subject to limitations under

§ 1026.52(b), providing further benefits to consumers who would have paid such fees. For example, § 1026.52(b) will restrict NSF fees from being charged on ACH transactions on accounts that have covered overdraft credit that is accessible by a hybrid debit-credit card. Consumers that would have been charged penalty fees, including NSF fees on debit card or ACH transactions, will benefit by not being charged these fees. Similarly, financial institutions that would have received NSF fee revenue from these transactions will see a decrease in revenue. Yet, the CFPB understands that NSF fees are currently rarely charged on debit card transactions and, as discussed above, most of the largest banks have already eliminated all NSF fees. This suggests that the benefits to consumers and costs to covered persons from this restriction are likely to be limited.

Very large financial institutions will be required to provide credit account opening disclosures and comply with other requirements of credit account opening in connection with tying covered overdraft credit to deposit accounts that already exist. Applying new credit account opening requirements in connection with deposit accounts of consumers who already have existing non-covered overdraft credit that the institution chooses to replace with covered overdraft credit under the final rule will impose some costs on the depository institution.

Under the final rule, above breakeven overdraft credit will no longer qualify as "incidental credit" under § 1002.3 and thus will be newly subject to certain requirements under Regulation B, including with respect to providing notice and record-keeping. These obligations will have costs to covered persons which are detailed in the Regulation B Supporting Statement that has been filed with OMB in connection with this final rule and are available as part of its public docket.

2. Potential Interactions With Other Regulations

The final rule, including changes to the definition of finance charge, may affect other legal requirements under various Federal and State laws, including the Military Lending Act, usury limits, capital requirements, and interchange fees. The CFPB acknowledges that some or all of these legal requirements might also affect charges for non-covered and covered overdraft credit indirectly. Under the baseline, covered overdraft will be particularly affordable at Federal credit

unions and whenever MLA caps and other potential usury limits apply. As much as covered overdraft credit remains or becomes available in these scenarios under the final rule, it will be particularly beneficial to consumers and will entail a loss of revenue for covered persons as these regulations will restrict the interest rates at which credit can be extended to covered consumers. Due to the effects of these laws, covered overdraft may be less frequently offered to affected consumers. The CFPB has not attempted to quantify the effects of such changes because the CFPB does not predict the extent to which very large financial institutions will choose to offer covered overdraft credit that is subject to those rules.

G. Potential Impacts on Depository Institutions and Credit Unions With \$10 Billion or Less in Total Assets, as Described in CFPB Section 1026

As this final rule applies only to financial institutions with more than \$10 billion in total assets, the CFPB expects no specific impact on small entities directly. Part VII.D.3 above discusses how the CFPB understands the final rule's indirect impact on these entities.

H. Potential Impacts on Consumer Access to Credit and on Consumers in Rural Areas

As discussed above, the final rule may lead to an increase in overdraft credit regulated by TILA and Regulation Z, and for remaining non-covered overdraft credit, a decrease in the fee. To the extent that consumers in rural areas bank with institutions other than very large financial institutions, the impact of the final rule on these areas will be limited. The CFPB has limited insight into overdraft practices in rural areas specifically. It is not aware of reasons to suggest more adverse or particular impacts in rural areas.

The CFPB has tabulated the share of the unbanked in lowest fifth of the income distribution in ZIP codes that the Census classified as urban, rural, or with a fraction rural.³⁰⁶ With this precise measurement, both fully urban or fully rural areas see 74 percent of those with lowest incomes with a bank account, with slight variations in the ratio for the mixed ZIP codes in between. This makes the CFPB expect that urban and rural areas have similar exposure to overdraft fees and will

likely experience similar impacts from the final rule.

The CFPB has also tabulated the average credit score in each ZIP code, in the latest year available in a public dataset released by researchers at the Board. Fully rural ZIP codes have higher credit scores (719.6 on average) than fully urban ZIP codes (713.7), though with even higher averages scores in mostly urban areas and the lowest averages for fairly rural areas. This again suggests that on average, rural areas will have as much access to newly underwritten covered overdraft credit as the rest of the United States.

VIII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final 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 (SISNOSE). The CFPB is also subject to specific additional procedures under the RFA involving convening a panel to consult with small business representatives before proposing a rule for which an IRFA is required. An IRFA is not required for this final rule because the final rule, if adopted, will not have a SISNOSE.

Small institutions, for the purposes of the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, are defined by the Small Business Administration. Effective March 17, 2023, financial institutions with less than \$850 million in total assets are determined to be small.³⁰⁷

As this final rule only applies to financial institutions with more than \$10 billion in total assets, it affects no small entities. Accordingly, the Director hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Thus, a FRFA is not required for this rule.

In the notice of proposed rulemaking, the Director certified that the final rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Thus, neither an IRFA nor a small business review panel was required for this final rule. The CFPB requested comment on its analysis and any relevant data.

The CFPB received a number of comments on its RFA analysis from

industry trade groups, financial institutions that would not be considered "very large financial institutions," and at least one consumer advocate commenter. The industry trade groups and financial institutions asserted that the CFPB should have convened a SBREFA panel for the rule and that the RFA in the 2024 proposal did not have a sufficient factual basis. These industry commenters generally stated that the rule would substantially affect small and mid-sized financial institutions as they would face competitive market pressure to decrease overdraft prices if very large financial institutions decrease overdraft prices to comply with the rule. The consumer advocate commenter stated that the rule would not have a significant impact on a substantial number of small entities even if the CFPB lowered the threshold to \$850 million or more in assets.

Any change in overdraft pricing by small and mid-sized financial institutions due to competitive pressures would be an indirect effect of this final rule. Indirect effects fall outside the scope of the RFA.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are generally required to seek the Office of Management and Budget's (OMB's) approval for information collection requirements prior to implementation.

Under the PRA, the CFPB may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB.

The final rule amends 12 CFR 1026 (Regulation Z), which implements the Truth in Lending Act and is assigned OMB Control number 3170-0015, which expires 05/31/2025, as well as 12 CFR 1005 (Regulation E), which implements the Electronic Fund Transfer Act, which is assigned OMB control number 3170-0014, which expires 5/31/2025.

However, this final rule may, in addition to the information collection requirements of Regulation Z, affect the information collection requirements contained in 12 CFR part 1002 (Regulation B), which implements ECOA, which is assigned OMB Control number 3170-0013 which expires 08/31/2026. A full description of those changes and the estimated burdens thereof can be found in the Supporting Statements for each affected regulation that have been filed with OMB in connection with this final rule and are available as part of its public docket.

³⁰⁶ Cox et al. (2021) identified the unbanked in the universe of tax records as those not listing an account for rebates or payment over a 10 year period, focusing on the 50–59 age group in 2019. See Cox 2021 Study. The Census links ZCTAs to an urban area (or none).

³⁰⁷ See U.S. Small Bus. Admin., *Table of size standards*, <https://www.sba.gov/document/support-table-size-standards> (last updated June 4, 2024).

The CFPB has a continuing interest in the public's opinions regarding this determination. At any time, comments regarding this determination may be sent to: The Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552, or by email to CFPB_Public_PRA@cfpb.gov.

X. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the CFPB 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 at least 60 days prior to the rule's published effective date. The Office of Information and Regulatory Affairs has designated this rule as a "major rule" as defined by 5 U.S.C. 804(2).

XI. Severability

The CFPB proposed the following statement regarding severability and received no comments. Accordingly, the CFPB is finalizing it as proposed.³⁰⁸

If any provision of this rule, or any application of a provision, is stayed or determined to be invalid, the remaining provisions or applications are severable and shall continue in effect. For example, if the \$5 benchmark in § 1026.62(d)(1)(ii) is overturned, the breakeven method under § 1026.62(d)(1)(i) will remain in effect, meaning very large financial institutions could charge overdraft fees in compliance with TILA, or use the breakeven exemption, but would not be able to use the \$5 safe-harbor benchmark.

List of Subjects

12 CFR Part 1005

Banks, banking, Consumer protection, Credit unions, Electronic fund transfers, National banks, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 1026

Advertising, Banks, banking, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth-in-lending.

Authority and Issuance

For the reasons set forth in the preamble, the CFPB amends 12 parts 1005 and 1026, as set forth below:

PART 1005—ELECTRONIC FUND TRANSFER ACT (REGULATION E)

■ 1. The authority citation for part 1005 continues to read as follows:

Authority: 12 U.S.C. 5512, 5581; 15 U.S.C. 1693b. Subpart B is also issued under 12 U.S.C. 5601 and 15 U.S.C. 1693o–1.

Subpart A—General

■ 2. Section 1005.10 is amended by revising paragraph (e)(1) to read as follows:

§ 1005.10 Preauthorized transfers.

* * * * *

(e) *Compulsory use*—(1) *Credit*. No financial institution or other person may condition an extension of credit to a consumer on the consumer's repayment by preauthorized electronic fund transfers, except for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account. This exception does not apply to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61. This exception also does not apply to covered overdraft credit extended by very large financial institutions as those terms are defined in Regulation Z, 12 CFR 1026.62.

* * * * *

■ 3. In Supplement I to Part 1005—Official Interpretations:

■ a. Under *Section 1005.10—*

Preauthorized Transfers, revise 10(e)(1) *Credit*; and

■ b. Under *Section 1005.17—Requirements for Overdraft Services*, revise 17(a) *Definition*.

The revisions read as follows:

Supplement I to Part 1005—Official Interpretations

* * * * *

Section 1005.10—Preauthorized Transfers

* * * * *

10(e) Compulsory Use

10(e)(1) Credit

1. *General rule for loan payments.*

Creditors may not require repayment of loans by electronic means on a preauthorized, recurring basis.

2. *Overdraft credit plans not accessible by hybrid prepaid-credit cards and covered overdraft credit extended by very large financial institutions.* i. Section 1005.10(e)(1) provides an exception from the general rule for an overdraft credit plan other than for a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61 and for covered overdraft credit extended by very large financial institutions as those terms are defined in Regulation Z, 12 CFR 1026.62. A

financial institution may therefore require the automatic repayment of an overdraft credit plan, other than a covered separate credit feature accessible by a hybrid prepaid-credit card or covered overdraft credit extended by very large financial institutions, even if the overdraft extension is charged to an open-end account that may be accessed by the consumer in ways other than by overdrafts.

ii. Credit extended through a negative balance on the asset feature of a prepaid account that meets the conditions of Regulation Z, 12 CFR 1026.61(a)(4), is considered credit extended pursuant to an overdraft credit plan for purposes of § 1005.10(e)(1). Thus, the exception for overdraft credit plans in § 1005.10(e)(1) applies to this credit.

3. *Applicability to covered separate credit features accessible by hybrid prepaid-credit cards.* i. Under § 1005.10(e)(1), creditors may not require by electronic means on a preauthorized, recurring basis repayment of credit extended under a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in Regulation Z, 12 CFR 1026.61. The prohibition in § 1005.10(e)(1) applies to any credit extended under such a credit feature, including preauthorized checks. See Regulation Z, 12 CFR 1026.61, and comment 61(a)(1)–3.

ii. Under Regulation Z, 12 CFR 1026.12(d)(1), a card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer. Under Regulation Z, 12 CFR 1026.12(d)(3), with respect to covered separate credit features accessible by hybrid prepaid-credit cards as defined in 12 CFR 1026.61, a card issuer generally is not prohibited from periodically deducting all or part of the cardholder's credit card debt from a deposit account (such as a prepaid account) held with the card issuer under a plan that is authorized in writing by the cardholder, so long as the card issuer does not make such deductions to the plan more frequently than once per calendar month. A card issuer is prohibited under Regulation Z, 12 CFR 1026.12(d), from automatically deducting all or part of the cardholder's credit card debt under a covered separate credit feature from a deposit account (such as a prepaid account) held with the card issuer on a daily or weekly basis, or whenever deposits are made to the deposit account. Section 1005.10(e)(1) further restricts the card issuer from requiring payment from a deposit account (such as a prepaid account) of credit card balances of a covered separate credit feature accessible by a hybrid prepaid-credit card by electronic means on a preauthorized, recurring basis.

4. *Incentives.* A creditor may offer a program with a reduced annual percentage rate or other cost-related incentive for an automatic repayment feature, provided the program with the automatic payment feature is not the only loan program offered by the creditor for the type of credit involved. Examples include:

i. Mortgages with graduated payments in which a pledged savings account is

³⁰⁸ The CFPB notes that this severability clause is not codified but forms an operative part of the rule.

automatically debited during an initial period to supplement the monthly payments made by the borrower.

ii. Mortgage plans calling for preauthorized biweekly payments that are debited electronically to the consumer's account and produce a lower total finance charge.

* * * * *

Section 1005.17—Requirements for Overdraft Services

17(a) Definition

1. *Exempt securities- and commodities-related lines of credit.* The definition of “overdraft service” does not include the payment of transactions in a securities or commodities account pursuant to which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.

2. *Covered overdraft credit.* Under § 1005.17(a)(1), a line of credit subject to Regulation Z (12 CFR 1026) is not an overdraft service. Covered overdraft credit as that term is defined in 12 CFR 1026.62, is a line of credit subject to Regulation Z and is therefore not an overdraft service. Covered overdraft credit includes above breakeven overdraft credit extended by a very large financial institution as those terms are defined in 12 CFR 1026.62. Above breakeven overdraft credit extended by a very large financial institution is therefore not an overdraft service under § 1005.17(a).

* * * * *

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 4. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

Subpart A—General

■ 5. Section 1026.2 is amended by revising paragraph (a)(15) to read as follows:

§ 1026.2 Definitions and rules of construction.

(a) * * *

(15)(i) *Credit card* means any card, plate, or other single credit device that may be used from time to time to obtain credit. The term *credit card* includes both a hybrid prepaid-credit card as defined in § 1026.61 and a hybrid debit-credit card as defined in § 1026.62.

(ii) *Credit card account under an open-end (not home-secured) consumer credit plan* means any open-end credit account that is accessed by a credit card, except:

(A) A home-equity plan subject to the requirements of § 1026.40 that is accessed by a credit card; or

(B) A covered overdraft credit account as defined in § 1026.62 offered by a

creditor other than a very large financial institution as defined in § 1026.62 that is accessed by a debit card or account number.

(iii) *Charge card* means a credit card on an account for which no periodic rate is used to compute a finance charge. The term does not include a hybrid debit-credit card as defined in § 1026.62.

(iv) *Debit card* means any card, plate, or other single device that may be used from time to time to access an asset account other than a prepaid account as defined in § 1026.61. The term *debit card* does not include a prepaid card as defined in § 1026.61.

* * * * *

■ 6. Section 1026.4 is amended by revising paragraph (b)(2), adding paragraph (b)(12), and revising paragraph (c)(3) to read as follows:

§ 1026.4 Finance charge.

* * * * *

(b) * * *

(2) Service, transaction, activity, and carrying charges, including any charge imposed on a checking or other transaction account (except a prepaid account as defined in § 1026.61 or a covered asset account as that term is defined in § 1026.62) to the extent that the charge exceeds the charge for a similar account without a credit feature.

* * * * *

(12) With regard to a covered asset account as that term is defined in § 1026.62(b)(2):

(i) Any service, transaction, activity, or carrying charge imposed on the separate credit account required by § 1026.62(c); and

(ii) Any service, transaction, activity, or carrying charge imposed on the covered asset account to the extent that the charge exceeds a comparable charge imposed on a checking or other transaction account that does not have overdraft credit.

(iii) For purposes of paragraph (b)(12)(ii) of this section, a charge or combination of charges, including a per transaction fee, imposed on a covered asset account when overdraft credit is extended is not comparable to the following fees or charges imposed on a checking or other transaction account that does not have overdraft credit:

(A) A charge for authorizing or paying a transaction that overdraws the checking or other transaction account.

(B) A charge for declining to authorize or pay a transaction.

(C) A charge for returning a transaction unpaid.

(D) A charge for transferring funds into the checking or other transaction account from any credit account.

(E) A charge for transferring funds into the checking or other transaction account from any other asset account.

(c) * * *

(3) Charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing. This paragraph (c)(3) does not apply to credit offered in connection with a prepaid account as defined in § 1026.61. This paragraph (c)(3) also does not apply to above breakeven overdraft credit as defined in § 1026.62.

* * * * *

Subpart G—Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students

■ 7. Section 1026.60 is amended by revising paragraph (a)(5) to read as follows:

§ 1026.60 Credit and charge card applications and solicitations.

(a) * * *

(5) *Exceptions.* This section does not apply to:

(i) Home-equity plans accessible by a credit or charge card that are subject to the requirements of § 1026.40;

(ii) Covered overdraft credit as defined in § 1026.62 tied to asset accounts accessed by check-guarantee cards or by debit cards other than hybrid debit-credit cards as defined in § 1026.62;

(iii) Lines of credit accessed by check-guarantee cards or by debit cards, other than covered overdraft credit accessed by hybrid debit-credit cards, that can be used only at automated teller machines;

(iv) Lines of credit accessed solely by account numbers except for a covered separate credit feature solely accessible by an account number that is a hybrid prepaid-credit card as defined in § 1026.61 or covered overdraft credit accessible by an account number that is a hybrid debit-credit card;

(v) Additions of a credit or charge card to an existing open-end plan;

(vi) General purpose applications unless the application, or material accompanying it, indicates that it can be used to open a credit or charge card account; or

(vii) Consumer-initiated requests for applications.

* * * * *

■ 8. Section 1026.62 is added to read as follows:

§ 1026.62 Overdraft credit.

(a) *In general*—(1) Overdraft credit is subject to this section and this part as specified below.

(2) *Overdraft credit* is any consumer credit extended by a financial institution to pay a transaction from a checking or other transaction account (other than a prepaid account as defined in § 1026.61) held at the financial institution when the consumer has insufficient or unavailable funds in that account. The term overdraft credit includes, but is not limited to, any such consumer credit extended through a transfer from a credit card account or overdraft line of credit. The term does not include credit exempt from this part pursuant to § 1026.3.

(b) *Definitions.* For purposes of this section and this part, the following definitions apply:

(1) *Above breakeven overdraft credit* means overdraft credit extended by a very large financial institution to pay a transaction on which, as an incident to or a condition of the overdraft credit, the very large financial institution imposes a charge or combination of charges exceeding the average of its costs and charge-off losses for providing non-covered overdraft credit as described in paragraph (d) of this section.

(2) *Covered asset account* means a checking or other transaction account (other than a prepaid account as defined in § 1026.61) provided by a very large financial institution that is tied to overdraft credit provided by the very large financial institution.

(3) *Covered overdraft credit* means overdraft credit that is subject to a finance charge or is payable by written agreement in more than four installments.

(4) *Covered overdraft credit account* means a credit account through which a financial institution extends or can extend covered overdraft credit. For example, the term includes any line of credit, credit card account, credit feature, credit plan, or credit subaccount through which the financial institution extends or can extend covered overdraft credit.

(5) *Hybrid debit-credit card* means any card, plate, or other single credit device that a consumer may use from time to time to obtain covered overdraft credit from a very large financial institution.

(6) *Non-covered overdraft credit* means overdraft credit that is not subject to a finance charge and is not payable by written agreement in more than four installments.

(7) *Overdraft credit* has the meaning set out in paragraph (a)(2) of this section.

(8) *Very large financial institution* means an insured depository institution or an insured credit union that has total

assets of more than \$10,000,000,000 and any affiliate thereof, as determined under 12 U.S.C. 5515(a).

(c) *Structure of covered overdraft credit.* A very large financial institution shall not structure covered overdraft credit as a negative balance on a checking or other transaction account. The very large financial institution shall structure covered overdraft credit as a separate credit account. The separate credit account is a covered overdraft credit account. The tied checking or other transaction account is a covered asset account.

(d) *Charges exceeding the average of its costs and charge-off losses for providing non-covered overdraft credit—(1) General rule.* For purposes of paragraph (b)(1) of this section, any charge or combination of charges to pay a transaction exceeds the average of a very large financial institution's costs and charge-off losses for providing non-covered overdraft credit if the charge or combination of charges exceeds the greater of:

(i) The pro rata share of the very large financial institution's total direct costs and charge-off losses for providing non-covered overdraft credit in the previous year, calculated in accordance with this paragraph; or

(ii) \$5.

(2) *Cost and loss calculation.* When calculating the pro rata share of the very large financial institution's total direct costs and charge-off losses for providing non-covered overdraft credit in the previous year, a very large financial institution may consider only those costs and charge-off losses specifically traceable to its provision of non-covered overdraft credit in the previous year. Such costs and charge-off losses include, but are not limited to, its cost of funds, its net charge-off losses, and operating expenses for its non-covered overdraft credit program. Such costs and charge-off losses do not include general overhead costs or charge-off losses due to unauthorized use, EFT errors, billing errors, returned deposit items, or rescinded provisional credit.

(3) For purposes of paragraph (d)(2) of this section, a cost or charge-off loss is specifically traceable if it has a direct relationship to the provision of non-covered overdraft services and the very large financial institution can provide evidence to demonstrate that direct relationship.

(4) For purposes of paragraph (d)(1) of this section, a charge or combination of charges includes all revenue received in connection with an overdraft transaction, including, but not limited to, any extended or sustained overdraft fees, any interest charges on outstanding

overdraft balances, and any other payments the very large financial institution receives in connection with an overdraft transaction.

(5) When calculating the pro rata share of its total direct costs and charge-off losses for providing non-covered overdraft credit in the previous year, a very large financial institution must include all non-covered overdraft transactions from the previous year in its calculation.

(6) For purposes of paragraph (d)(1)(i) of this section, the term "previous year" means a period that encompasses, at the very large financial institution's option, any of the following periods:

- (i) The prior calendar year,
- (ii) Any 365-day period that begins within the prior calendar year,
- (iii) The prior four financial quarters, or
- (iv) The very large financial institution's prior accounting year.

■ 9. In Supplement I to Part 1026—Official Interpretations:

■ a. Under Section 1026.2—Definitions and Rules of Construction revise 2(a)(14) *Credit*, Paragraph 2(a)(15), and 2(a)(20) *Open-End Credit*;

■ b. Under Section 1026.4—Finance Charge revise Paragraph 4(b)(2) and 4(c)(3);

■ c. Under Section 1026.12—Special Credit Card Provisions revise the introductory text, and Paragraph 12(a)(1), Paragraph 12(a)(2), 12(c) *Right of Cardholder To Assert Claims or Defenses Against Card Issuer*, and 12(c)(1) *General Rule*;

■ d. Under Section 1026.55—Limitations on Increasing Annual Percentage Rates, Fees, and Charges, revise 55(a) *General Rule*; and

■ e. Under Section 1026.57—Reporting and Marketing Rules for College Student Open-End Credit, revise 57(a)(1) *College student credit card*.

The revisions read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Subpart A—General

* * * * *

Section 1026.2—Definitions and Rules of Construction

* * * * *

2(a)(14) *Credit*

1. *Exclusions.* The following situations are not considered credit for purposes of the regulation:

- i. Layaway plans, unless the consumer is contractually obligated to continue making payments. Whether the consumer is so obligated is a matter to be determined under

applicable law. The fact that the consumer is not entitled to a refund of any amounts paid towards the cash price of the merchandise does not bring layaways within the definition of credit.

ii. Tax liens, tax assessments, court judgments, and court approvals of reaffirmation of debts in bankruptcy. However, third-party financing of such obligations (for example, a bank loan obtained to pay off a tax lien) is credit for purposes of the regulation.

iii. Insurance premium plans that involve payment in installments with each installment representing the payment for insurance coverage for a certain future period of time, unless the consumer is contractually obligated to continue making payments.

iv. Home improvement transactions that involve progress payments, if the consumer pays, as the work progresses, only for work completed and has no contractual obligation to continue making payments.

v. Borrowing against the accrued cash value of an insurance policy or a pension account, if there is no independent obligation to repay.

vi. Letters of credit.

vii. The execution of option contracts. However, there may be an extension of credit when the option is exercised, if there is an agreement at that time to defer payment of a debt.

viii. Investment plans in which the party extending capital to the consumer risks the loss of the capital advanced. This includes, for example, an arrangement with a home purchaser in which the investor pays a portion of the downpayment and of the periodic mortgage payments in return for an ownership interest in the property, and shares in any gain or loss of property value.

ix. Mortgage assistance plans administered by a government agency in which a portion of the consumer's monthly payment amount is paid by the agency. No finance charge is imposed on the subsidy amount, and that amount is due in a lump-sum payment on a set date or upon the occurrence of certain events. (If payment is not made when due, a new note imposing a finance charge may be written, which may then be subject to the regulation.)

2. *Payday loans; deferred presentment.* Credit includes a transaction in which a cash advance is made to a consumer in exchange for the consumer's personal check, or in exchange for the consumer's authorization to debit the consumer's deposit account, and where the parties agree either that the check will not be cashed or deposited, or that the consumer's deposit account will not be debited, until a designated future date. This type of transaction is often referred to as a "payday loan" or "payday advance" or "deferred-presentment loan." A fee charged in connection with such a transaction may be a finance charge for purposes of § 1026.4, regardless of how the fee is characterized under state law. Where the fee charged constitutes a finance charge under § 1026.4 and the person advancing funds regularly extends consumer credit, that person is a creditor and is required to provide disclosures consistent with the requirements of Regulation Z. (See § 1026.2(a)(17).)

3. *Transactions on the asset features of prepaid accounts when there are insufficient or unavailable funds.* Credit includes authorization of a transaction on the asset feature of a prepaid account as defined in § 1026.61 where the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is authorized to cover the amount of the transaction. It also includes settlement of a transaction on the asset feature of a prepaid account where the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is settled to cover the amount of the transaction. This includes a transaction where the consumer has sufficient or available funds in the asset feature of a prepaid account to cover the amount of the transaction at the time the transaction is authorized but insufficient or unavailable funds in the asset feature of the prepaid account to cover the transaction amount at the time the transaction is settled. See § 1026.61 and related commentary on the applicability of this regulation to credit that is extended in connection with a prepaid account.

4. *Overdraft credit.* Credit includes, for example, funds extended by a financial institution to a consumer to pay transactions that overdraw a checking or other transaction account held at the financial institution whenever the consumer has a contractual obligation to repay the funds.

Paragraph 2(a)(15)

1. *Usable from time to time.* A credit card must be usable from time to time. Since this involves the possibility of repeated use of a single device, checks and similar instruments that can be used only once to obtain a single credit extension are not credit cards.

2. *Examples.* i. Examples of credit cards include:

A. A card that guarantees checks or similar instruments, if the asset account is also tied to covered overdraft credit or if the instrument directly accesses a line of credit.

B. A debit card (other than a debit card that is solely an account number) that also accesses a credit account (that is, a debit-credit card or hybrid debit-credit card as defined in § 1026.62). See comment 2(a)(15)–2.ii.C for guidance on whether a debit card that is solely an account number is a credit card.

C. An identification card that permits the consumer to defer payment on a purchase.

D. An identification card indicating loan approval that is presented to a merchant or to a lender, whether or not the consumer signs a separate promissory note for each credit extension.

E. A card or device that can be activated upon receipt to access credit, even if the card has a substantive use other than credit, such as a purchase-price discount card. Such a card or device is a credit card notwithstanding the fact that the recipient must first contact the card issuer to access or activate the credit feature.

F. A prepaid card that is a hybrid prepaid-credit card as defined in § 1026.61.

ii. In contrast, credit card does not include, for example:

A. A check-guarantee or debit card with no credit feature or agreement.

B. Any card, key, plate, or other device that is used in order to obtain petroleum products for business purposes from a wholesale distribution facility or to gain access to that facility, and that is required to be used without regard to payment terms.

C. An account number that accesses a credit account, unless the account number can access an open-end line of credit to purchase goods or services or as provided in § 1026.61 with respect to a hybrid prepaid-credit card. An account number that can access an open-end line of credit to purchase goods or services includes an account number that can access a covered overdraft credit account offered by a very large financial institution. For example, if a creditor provides a consumer with an open-end line of credit that can be accessed by an account number in order to transfer funds into another account (such as an asset account with the same creditor), the account number is not a credit card for purposes of § 1026.2(a)(15)(i). However, if the account number can also access the line of credit to purchase goods or services (such as an account number that can be used to purchase goods or services on the internet), the account number is a credit card for purposes of § 1026.2(a)(15)(i), regardless of whether the creditor treats such transactions as purchases, cash advances, or some other type of transaction. Furthermore, if the line of credit can also be accessed by a card (such as a debit card), that card is a credit card for purposes of § 1026.2(a)(15)(i).

D. A prepaid card that is not a hybrid prepaid-credit card as defined in § 1026.61.

E. A check-guarantee or debit card that can access non-covered overdraft credit as defined in § 1026.62 and cannot access any other form of credit.

3. *Charge card.* i. Charge cards are credit cards where no periodic rate is used to compute the finance charge. The term *charge card* does not include a hybrid debit-credit card as defined in § 1026.62. Thus, covered overdraft credit extended by a very large financial institution through a hybrid debit-credit card is not subject to special charge card rules.

A. Under the regulation, a reference to credit cards generally includes charge cards. In particular, references to credit card accounts under an open-end (not home-secured) consumer credit plan in subparts B and G generally include charge cards.

B. The term *charge card* is, however, distinguished from credit card or credit card account under an open-end (not home-secured) consumer credit plan in §§ 1026.6(b)(2)(xiv), 1026.7(b)(11) (except as described in comment 2(a)(15)–3.ii below), 1026.7(b)(12), 1026.9(e), 1026.9(f), 1026.28(d), 1026.52(b)(1)(ii)(C), 1026.60, and appendices G–10 through G–13.

ii. A hybrid prepaid-credit card as defined in § 1026.61 is a charge card with respect to a covered separate credit feature if no periodic rate is used to compute the finance charge in connection with the covered separate credit feature. Unlike other charge card accounts, the requirements in § 1026.7(b)(11) apply to a covered separate

credit feature accessible by a hybrid prepaid-credit card that is a charge card when that covered separate credit feature is a credit card account under an open-end (not home-secured) consumer credit plan. Thus, under § 1026.5(b)(2)(ii)(A), with respect to a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan, a card issuer of a hybrid prepaid-credit card that meets the definition of a charge card because no periodic rate is used to compute a finance charge in connection with the covered separate credit feature must adopt reasonable procedures for the covered separate credit feature designed to ensure that

(1) periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the statement pursuant to § 1026.7(b)(11)(i)(A); and

(2) the card issuer does not treat as late for any purposes a required minimum periodic payment received by the card issuer within 21 days after mailing or delivery of the periodic statement disclosing the due date for that payment.

4. *Credit card account under an open-end (not home-secured) consumer credit plan.*

i. An open-end consumer credit account is a credit card account under an open-end (not home-secured) consumer credit plan for purposes of § 1026.2(a)(15)(ii) if:

A. The account is accessed by a credit card, as defined in § 1026.2(a)(15)(i); and

B. The account is not excluded under § 1026.2(a)(15)(ii)(A) or (B).

ii. The exclusion from credit card account under an open-end (not home-secured) consumer credit plan provided by § 1026.2(a)(15)(ii)(B) for covered overdraft credit offered by a creditor that is not a very large financial institution does not apply to a covered separate credit feature accessible by a hybrid prepaid-credit card (including a hybrid prepaid-credit card that is solely an account number) as defined in § 1026.61.

* * * * *

2(a)(20) *Open-End Credit*

1. *General.* This definition describes the characteristics of open-end credit (for which the applicable disclosure and other rules are contained in Subpart B), as distinct from closed-end credit. Open-end credit is consumer credit that is extended under a plan and meets *all 3* criteria set forth in the definition.

2. *Existence of a plan.* i. The definition requires that there be a plan, which connotes a contractual arrangement between the creditor and the consumer.

ii. With respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61, a plan means a program where the consumer is obligated contractually to repay any credit extended by the creditor. For example, a plan includes a program under which a creditor routinely extends credit from a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner where the prepaid card can be used from time to time to draw, transfer, or authorize the draw or transfer of credit from the covered separate credit feature in the course of authorizing, settling, or otherwise completing transactions

conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers, and the consumer is obligated contractually to repay those credit transactions. Such a program constitutes a plan notwithstanding that, for example, the creditor has not agreed in writing to extend credit for those transactions, the creditor retains discretion not to extend credit for those transactions, or the creditor does not extend credit for those transactions once the consumer has exceeded a certain amount of credit. See § 1026.61(a) and related commentary for guidance on the applicability of this regulation to credit accessible by hybrid prepaid-credit cards.

iii. Some creditors offer programs containing a number of different credit features. The consumer has a single account with the institution that can be accessed repeatedly via a number of sub-accounts established for the different program features and rate structures. Some features of the program might be used repeatedly (for example, an overdraft line) while others might be used infrequently (such as the part of the credit line available for secured credit). If the program as a whole is subject to prescribed terms and otherwise meets the definition of open-end credit, such a program would be considered a single, multifeatured plan.

iv. With respect to a covered asset account as defined in § 1026.62, a plan includes, for example, a program where the consumer is obligated contractually to repay any credit extended by the creditor. Such a program constitutes a plan notwithstanding that, for example, the creditor has not agreed in writing to extend credit for those transactions, the creditor retains discretion not to extend credit for those transactions, or the creditor does not extend credit for those transactions once the consumer has exceeded a certain amount of credit.

3. *Repeated transactions.* Under this criterion, the creditor must reasonably contemplate repeated transactions. This means that the credit plan must be usable from time to time and the creditor must legitimately expect that there will be repeat business rather than a one-time credit extension. The creditor must expect repeated dealings with consumers under the credit plan as a whole and need not believe a consumer will reuse a particular feature of the plan. The determination of whether a creditor can reasonably contemplate repeated transactions requires an objective analysis. Information that much of the creditor's customer base with accounts under the plan make repeated transactions over some period of time is relevant to the determination, particularly when the plan is opened primarily for the financing of infrequently purchased products or services. A standard based on reasonable belief by a creditor necessarily includes some margin for judgmental error. The fact that particular consumers do not return for further credit extensions does not prevent a plan from having been properly characterized as open-end. For example, if much of the customer base of a clothing store makes repeat purchases, the fact that some consumers use the plan only once would not affect the

characterization of the store's plan as open-end credit. The criterion regarding repeated transactions is a question of fact to be decided in the context of the creditor's type of business and the creditor's relationship with its customers. For example, it would be more reasonable for a bank or depository institution to contemplate repeated transactions with a customer than for a seller of aluminum siding to make the same assumption about its customers.

4. *Finance charge on an outstanding balance.* i. The requirement that a finance charge may be computed and imposed from time to time on the outstanding balance means that there is no specific amount financed for the plan for which the finance charge, total of payments, and payment schedule can be calculated. A plan may meet the definition of open-end credit even though a finance charge is not normally imposed, provided the creditor has the right, under the plan, to impose a finance charge from time to time on the outstanding balance. For example, in some plans, a finance charge is not imposed if the consumer pays all or a specified portion of the outstanding balance within a given time period. Such a plan could meet the finance charge criterion, if the creditor has the right to impose a finance charge, even though the consumer actually pays no finance charges during the existence of the plan because the consumer takes advantage of the option to pay the balance (either in full or in installments) within the time necessary to avoid finance charges.

ii. With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61, any service, transaction, activity, or carrying charges imposed on the covered separate credit feature, and any such charges imposed on the asset feature of the prepaid account to the extent that the amount of the charge exceeds comparable charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card, generally is a finance charge. See § 1026.4(a) and (b)(11). Such charges include a periodic fee to participate in the covered separate credit feature, regardless of whether this fee is imposed on the credit feature or on the asset feature of the prepaid account. With respect to credit from a covered separate credit feature accessible by a hybrid prepaid-credit card, any service, transaction, activity, or carrying charges that are finance charges under § 1026.4 constitute finance charges imposed from time to time on an outstanding unpaid balance as described in § 1026.2(a)(20) if there is no specific amount financed for the credit feature for which the finance charge, total of payments, and payment schedule can be calculated.

iii. Regardless of whether a financial institution assesses such charges on a covered asset account as defined in § 1026.62 or a separate credit account, any service, transaction, activity, or carrying charges imposed by the financial institution for paying a transaction that overdraws a consumer's covered asset account held at the financial institution are generally finance

charges unless they are otherwise addressed by § 1026.4(b)(2), (b)(12), or (c). See § 1026.4(a), (b)(2), (b)(12), and (c).

Additionally, such charges would constitute finance charges imposed from time to time on an outstanding unpaid balance, as described in § 1026.2(a)(20), if there is no specific amount financed for the plan for which the finance charge, total of payments, and payment schedule can be calculated.

5. *Reusable line.* The total amount of credit that may be extended during the existence of an open-end plan is unlimited because available credit is generally replenished as earlier advances are repaid. A line of credit is self-replenishing even though the plan itself has a fixed expiration date, as long as during the plan's existence the consumer may use the line, repay, and reuse the credit. The creditor may occasionally or routinely verify credit information such as the consumer's continued income and employment status or information for security purposes but, to meet the definition of open-end credit, such verification of credit information may not be done as a condition of granting a consumer's request for a particular advance under the plan. In general, a credit line is self-replenishing if the consumer can take further advances as outstanding balances are repaid without being required to separately apply for those additional advances. A credit card account where the plan as a whole replenishes meets the self-replenishing criterion, notwithstanding the fact that a credit card issuer may verify credit information from time to time in connection with specific transactions. This criterion of unlimited credit distinguishes open-end credit from a series of advances made pursuant to a closed-end credit loan commitment. For example:

i. Under a closed-end commitment, the creditor might agree to lend a total of \$10,000 in a series of advances as needed by the consumer. When a consumer has borrowed the full \$10,000, no more is advanced under that particular agreement, even if there has been repayment of a portion of the debt. (See § 1026.2(a)(17)(iv) for disclosure requirements when a credit card is used to obtain the advances.)

ii. This criterion does not mean that the creditor must establish a specific credit limit for the line of credit or that the line of credit must always be replenished to its original amount. The creditor may reduce a credit limit or refuse to extend new credit in a particular case due to changes in the creditor's financial condition or the consumer's creditworthiness. (The rules in § 1026.40(f), however, limit the ability of a creditor to suspend credit advances for home equity plans.) While consumers should have a reasonable expectation of obtaining credit as long as they remain current and within any preset credit limits, further extensions of credit need not be an absolute right in order for the plan to meet the self-replenishing criterion.

6. *Verifications of collateral value.* Creditors that otherwise meet the requirements of § 1026.2(a)(20) extend open-end credit notwithstanding the fact that the creditor must verify collateral values to comply with Federal, state, or other

applicable law or verifies the value of collateral in connection with a particular advance under the plan.

7. *Open-end real estate mortgages.* Some credit plans call for negotiated advances under so-called open-end real estate mortgages. Each such plan must be independently measured against the definition of open-end credit, regardless of the terminology used in the industry to describe the plan. The fact that a particular plan is called an open-end real estate mortgage, for example, does not, by itself, mean that it is open-end credit under the regulation.

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Section 1026.4—Finance Charge

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Paragraph 4(b)(2)

1. *Checking or transaction account charges.* A charge imposed in connection with a credit feature on a checking or transaction account (other than a prepaid account as defined in § 1026.61 or a covered asset account as that term is defined in § 1026.62) is a finance charge under § 1026.4(b)(2) to the extent the charge exceeds the charge for a similar account without a credit feature and the charge is not addressed by § 1026.4(b)(12). If a charge for an account with a credit feature does not exceed the charge for an account without a credit feature, the charge is not a finance charge under § 1026.4(b)(2). To illustrate:

i. A \$5 service charge is imposed on an account with an overdraft line of credit (where the institution has agreed in writing to pay an overdraft), while a \$3 service charge is imposed on an account without a credit feature; the \$2 difference is a finance charge. (If the difference is not related to account activity, however, it may be excludable as a participation fee. See the commentary to § 1026.4(c)(4)).

ii. A \$5 service charge is imposed for each item that results in an overdraft on an account with an overdraft line of credit, while a \$25 service charge is imposed for paying or returning each item on a similar account without a credit feature; the \$5 charge is not a finance charge.

2. *Prepaid accounts.* Fees or charges related to credit offered in connection with prepaid accounts as defined in § 1026.61 are discussed in §§ 1026.4(b)(11) and 1026.61 and related commentary.

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Paragraph 4(c)(3)

1. *Assessing interest on an overdraft balance.* Except with respect to credit offered in connection with a prepaid account as defined in § 1026.61 and above breakeven overdraft credit as defined in § 1026.62(b)(1), a charge on an overdraft balance computed by applying a rate of interest to the amount of the overdraft is not a finance charge, even though the consumer agrees to the charge in the account agreement, unless the financial institution agrees in writing that it will pay such items.

2. *Credit accessed in connection with a prepaid account.* See comment 4(b)(11)–1 for guidance on when fees imposed with regard

to credit accessed in connection with a prepaid account as defined in § 1026.61 are finance charges.

3. *Credit accessed in connection with a covered asset account.* See § 1026.4(b)(12) for guidance on when fees imposed on a covered asset account as defined in § 1026.62 are finance charges.

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Section 1026.12—Special Credit Card Provisions

1. *Scope.* Sections 1026.12(a) and (b) deal with the issuance and liability rules for credit cards, whether the card is intended for consumer, business, or any other purposes. Sections 1026.12(a) and (b) are exceptions to the general rule that the regulation applies only to consumer credit. (See §§ 1026.1 and 1026.3.) Notwithstanding paragraph (g) of this section or Regulation E, 12 CFR 1005.12(a), paragraphs (a) through (f) of this section apply to hybrid debit-credit cards as defined in § 1026.62.

2. *Definition of “accepted credit card”.* For purposes of this section, “accepted credit card” means any credit card that a cardholder has requested or applied for and received, or has signed, used, or authorized another person to use to obtain credit. Any credit card issued as a renewal or substitute in accordance with § 1026.12(a) becomes an accepted credit card when received by the cardholder.

12(a) Issuance of Credit Cards

Paragraph 12(a)(1)

1. *Explicit request.* A request or application for a card must be explicit. For example, a request for an overdraft plan tied to a checking account does not constitute an application for a credit card with overdraft checking features. Therefore, a very large financial institution cannot issue a hybrid debit-credit card to a person without first receiving an oral or written request or application for the hybrid debit-credit card. The term hybrid debit-credit card has the same meaning as provided in § 1026.62.

2. *Addition of credit features.* If the consumer has a non-credit card, including a prepaid card, the addition of a credit feature or plan to the card that would make the card into a credit card under § 1026.2(a)(15)(i) constitutes issuance of a credit card. For example, the following constitute issuance of a credit card:

i. Granting overdraft privileges on a checking account when the consumer already has a check guarantee card; or

ii. Allowing a prepaid card to access a covered separate credit feature that would make the card into a hybrid prepaid-credit card as defined in § 1026.61 with respect to the covered separate credit feature.

iii. Extending covered overdraft credit through a hybrid debit-credit card as defined in § 1026.62.

3. *Variance of card from request.* The request or application need not correspond exactly to the card that is issued. For example:

i. The name of the card requested may be different when issued.

ii. The card may have features in addition to those reflected in the request or application.

4. *Permissible form of request.* The request or application may be oral (in response to a telephone solicitation by a card issuer, for example) or written.

5. *Time of issuance.* A credit card may be issued in response to a request made before any cards are ready for issuance (for example, if a new program is established), even if there is some delay in issuance.

6. *Persons to whom cards may be issued.* A card issuer may issue a credit card to the person who requests it, and to anyone else for whom that person requests a card and who will be an authorized user on the requester's account. In other words, cards may be sent to consumer A on A's request, and also (on A's request) to consumers B and C, who will be authorized users on A's account. In these circumstances, the following rules apply:

i. The additional cards may be imprinted in either A's name or in the names of B and C.

ii. No liability for unauthorized use (by persons other than B and C), not even the \$50, may be imposed on B or C since they are merely users and not cardholders as that term is defined in § 1026.2 and used in § 1026.12(b); of course, liability of up to \$50 for unauthorized use of B's and C's cards may be imposed on A.

iii. Whether B and C may be held liable for their own use, or on the account generally, is a matter of state or other applicable law.

7. *Issuance of non-credit cards.* i. *Issuance of non-credit cards other than prepaid cards.* A. Under § 1026.12(a)(1), a credit card cannot be issued except in response to a request or an application. (See comment 2(a)(15)–2 for examples of cards or devices that are and are not credit cards.) A non-credit card other than a prepaid card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan; a credit feature may be added to a previously issued non-credit card other than a prepaid card only upon the consumer's specific request.

B. *Examples.* A purchase-price discount card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan. An issuer demonstrates that it proposes to connect the card to a credit plan by, for example, including promotional materials about credit features or account agreements and disclosures required by § 1026.6. The issuer will violate the rule against unsolicited issuance if, for example, at the time the card is sent a credit plan can be accessed by the card or the recipient of the unsolicited card has been preapproved for credit that the recipient can access by contacting the issuer and activating the card.

ii. *Issuance of a prepaid card.* Section 1026.12(a)(1) does not apply to the issuance of a prepaid card where an issuer does not connect the card to any covered separate credit feature that would make the prepaid card into a hybrid prepaid-credit card as defined in § 1026.61 at the time the card is issued and only opens a covered separate credit feature, or provides an application or

solicitation to open a covered separate credit feature, or allows an existing credit feature to become a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61 in compliance with § 1026.61(c). A covered separate credit feature may be added to a previously issued prepaid card only upon the consumer's application or specific request and only in compliance with § 1026.61(c). An issuer does not connect a prepaid card to a covered separate credit feature that would make the card into a credit card simply by providing the disclosures required by Regulation E, 12 CFR 1005.18(b)(2)(x), (b)(4)(iv), and (vii), with the prepaid card. See § 1026.12(a)(2) and related commentary for when a hybrid prepaid-credit card as defined in § 1026.61 may be issued as a replacement or substitution for another hybrid prepaid-credit card. See also Regulation E, 12 CFR 1005.5 and 1005.18(a), and related commentary, governing issuance of access devices under Regulation E.

8. *Unsolicited issuance of PINs.* A card issuer may issue personal identification numbers (PINs) to existing credit cardholders without a specific request from the cardholders, provided the PINs cannot be used alone to obtain credit. For example, the PINs may be necessary if consumers wish to use their existing credit cards at automated teller machines or at merchant locations with point of sale terminals that require PINs.

Paragraph 12(a)(2)

1. *Renewal.* Renewal generally contemplates the regular replacement of existing cards because of, for example, security reasons or new technology or systems. It also includes the re-issuance of cards that have been suspended temporarily, but does not include the opening of a new account after a previous account was closed.

2. *Substitution—examples.* Substitution encompasses the replacement of one card with another because the underlying account relationship has changed in some way—such as when the card issuer has:

- i. Changed its name.
- ii. Changed the name of the card.
- iii. Changed the credit or other features available on the account. For example, the original card could be used to make purchases and obtain cash advances at teller windows. The substitute card might be usable, in addition, for obtaining cash advances through automated teller machines. (If the substitute card constitutes an access device, as defined in Regulation E, then the Regulation E issuance rules would have to be followed.) The substitution of one card with another on an unsolicited basis is not permissible, however, where in conjunction with the substitution an additional credit card account is opened and the consumer is able to make new purchases or advances under both the original and the new account with the new card. For example, if a retail card issuer replaces its credit card with a combined retailer/bank card, each of the creditors maintains a separate account, and both accounts can be accessed for new transactions by use of the new credit card, the card cannot be provided to a consumer without solicitation.

iv. Substituted a card user's name on the substitute card for the cardholder's name appearing on the original card.

v. Changed the merchant base, provided that the new card is honored by at least one of the persons that honored the original card. However, unless the change in the merchant base is the addition of an affiliate of the existing merchant base, the substitution of a new card for another on an unsolicited basis is not permissible where the account is inactive. A credit card cannot be issued in these circumstances without a request or application. For purposes of § 1026.12(a), an account is inactive if no credit has been extended and if the account has no outstanding balance for the prior 24 months. (See § 1026.11(b)(2)).

3. *Substitution—successor card issuer.* Substitution also occurs when a successor card issuer replaces the original card issuer (for example, when a new card issuer purchases the accounts of the original issuer and issues its own card to replace the original one). A permissible substitution exists even if the original issuer retains the existing receivables and the new card issuer acquires the right only to future receivables, provided use of the original card is cut off when use of the new card becomes possible.

4. *Substitution—non-credit-card plan.* A credit card that replaces a retailer's open-end credit plan not involving a credit card is not considered a substitute for the retailer's plan—even if the consumer used the retailer's plan. A credit card cannot be issued in these circumstances without a request or application.

5. *One-for-one rule.* An accepted card may be replaced by no more than one renewal or substitute card. For example, the card issuer may not replace a credit card permitting purchases and cash advances with two cards, one for the purchases and another for the cash advances.

6. *One-for-one rule—exceptions.* The regulation does not prohibit the card issuer from:

i. Replacing a single card that is both a debit card and a credit card, such as a hybrid debit-credit card as defined in § 1026.62, with a credit card and a separate debit card with only debit functions (or debit functions plus an associated capability to extend overdraft credit that is not covered overdraft credit as defined in § 1026.62), since the latter card could be issued on an unsolicited basis under Regulation E.

ii. Replacing a single card that is both a prepaid card and a credit card with a credit card and a separate prepaid card where the latter card is not a hybrid prepaid-credit card as defined in § 1026.61.

iii. Replacing an accepted card with more than one renewal or substitute card, provided that:

A. No replacement card accesses any account not accessed by the accepted card;

B. For terms and conditions required to be disclosed under § 1026.6, all replacement cards are issued subject to the same terms and conditions, except that a creditor may vary terms for which no change in terms notice is required under § 1026.9(c); and

C. Under the account's terms the consumer's total liability for unauthorized

use with respect to the account does not increase.

7. *Methods of terminating replaced card.* The card issuer need not physically retrieve the original card, provided the old card is voided in some way, for example:

- i. The issuer includes with the new card a notification that the existing card is no longer valid and should be destroyed immediately.
- ii. The original card contained an expiration date.
- iii. The card issuer, in order to preclude use of the card, reprograms computers or issues instructions to authorization centers.

8. *Incomplete replacement.* If a consumer has duplicate credit cards on the same account (Card A—one type of bank credit card, for example), the card issuer may not replace the duplicate cards with one Card A and one Card B (Card B—another type of bank credit card) unless the consumer requests Card B.

9. *Multiple entities.* Where multiple entities share responsibilities with respect to a credit card issued by one of them, the entity that issued the card may replace it on an unsolicited basis, if that entity terminates the original card by voiding it in some way, as described in comment 12(a)(2)–7. The other entity or entities may not issue a card on an unsolicited basis in these circumstances.

* * * * *

12(c) Right of Cardholder To Assert Claims or Defenses Against Card Issuer

1. *Relationship to § 1026.13.* The § 1026.12(c) credit card “holder in due course” provision deals with the consumer’s right to assert against the card issuer a claim or defense concerning property or services purchased with a credit card, if the merchant has been unwilling to resolve the dispute. Even though certain merchandise disputes, such as non-delivery of goods, may also constitute “billing errors” under § 1026.13, that section operates independently of § 1026.12(c). The cardholder whose asserted billing error involves undelivered goods may institute the error resolution procedures of § 1026.13; but whether or not the cardholder has done so, the cardholder may assert claims or defenses under § 1026.12(c). Conversely, the consumer may pay a disputed balance and thus have no further right to assert claims and defenses, but still may assert a billing error if notice of that billing error is given in the proper time and manner. An assertion that a particular transaction resulted from unauthorized use of the card could also be both a “defense” and a billing error.

2. *Claims and defenses assertible.* Section 1026.12(c) merely preserves the consumer’s right to assert against the card issuer any claims or defenses that can be asserted against the merchant. It does not determine what claims or defenses are valid as to the merchant; this determination must be made under state or other applicable law.

3. *Transactions excluded.* Section 1026.12(c) does not apply to the use of a check guarantee card or a debit card (other than a hybrid debit-credit card) in connection with an overdraft credit plan, or to a check guarantee card used in connection with cash-advance checks.

4. *Method of calculating the amount of credit outstanding.* The amount of the claim or defense that the cardholder may assert shall not exceed the amount of credit outstanding for the disputed transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of the existence of the claim or defense. However, when a consumer has asserted a claim or defense against a creditor pursuant to § 1026.12(c), the creditor must apply any payment or other credit in a manner that avoids or minimizes any reduction in the amount subject to that claim or defense. Accordingly, to determine the amount of credit outstanding for purposes of this section, payments and other credits must be applied first to amounts other than the disputed transaction.

i. For examples of how to comply with §§ 1026.12 and 1026.53 for credit card accounts under an open-end (not home-secured) consumer credit plan, see comment 53–3.

ii. For other types of credit card accounts, creditors may, at their option, apply payments consistent with § 1026.53 and comment 53–3. In the alternative, payments and other credits may be applied to: Late charges in the order of entry to the account; then to finance charges in the order of entry to the account; and then to any debits other than the transaction subject to the claim or defense in the order of entry to the account. In these circumstances, if more than one item is included in a single extension of credit, credits are to be distributed pro rata according to prices and applicable taxes.

5. *Prepaid cards.* i. Section 1026.12(c) applies to property or services purchased with the hybrid prepaid-credit card that accesses a covered separate credit feature as defined in § 1026.61. The following examples illustrate when a hybrid prepaid-credit card is used to purchase property or services:

A. A consumer uses a hybrid prepaid-credit card as defined in § 1026.61 to make a purchase to obtain goods or services from a merchant and credit is drawn directly from a covered separate credit feature accessed by the hybrid prepaid-credit card without transferring funds into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume that the consumer has \$10 of funds in the asset feature of the prepaid account and initiates a transaction with a merchant to obtain goods or services with the hybrid prepaid-credit card for \$25. In this case, \$10 is debited from the asset feature and \$15 of credit is drawn directly from the covered separate credit feature accessed by the hybrid prepaid-credit card without any transfer of funds into the asset feature of the prepaid account to cover the amount of the purchase. In this case, the consumer is using credit accessed by the hybrid prepaid-credit card to purchase property or services where credit is drawn directly from the covered separate credit feature accessed by the hybrid prepaid-credit card to cover the amount of the purchase.

B. A consumer uses a hybrid prepaid-credit card as defined in § 1026.61 to make a purchase to obtain goods or services from a merchant and credit is transferred from a covered separate credit feature accessed by

the hybrid prepaid-credit card into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume the same facts as above, except that the \$15 will be transferred from a covered separate credit feature to the asset feature, and a transaction of \$25 is debited from the asset feature of the prepaid account. In this case, the consumer is using credit accessed by the hybrid prepaid-credit card to purchase property or services because credit is transferred to the asset feature of the prepaid account to cover the amount of a purchase made with the card. This is true even though the \$15 credit transaction is treated as “nonsale credit” under § 1026.8(b). See comments 8(a)–9.ii and 8(b)–1.vi.

ii. For a transaction at point of sale where a hybrid prepaid-credit card is used to obtain goods or services from a merchant and the transaction is partially paid with funds from the asset feature of the prepaid account, and partially paid with credit from the covered separate credit feature, the amount of the purchase transaction that is funded by credit generally would be subject to the requirements of § 1026.12(c). The amount of the transaction funded from the prepaid account would not be subject to the requirements of § 1026.12(c).

12(c)(1) General Rule

1. *Situations excluded and included.* The consumer may assert claims or defenses only when the goods or services are “purchased with the credit card.” This would include when the goods or services are purchased by a consumer using a hybrid prepaid-credit card to access a covered separate credit feature as defined in § 1026.61 or using a hybrid debit-credit card to access a covered overdraft credit account as defined in § 1026.62. This could include mail, the internet or telephone orders, if the purchase is charged to the credit card account. But it would exclude:

i. Use of a credit card to obtain a cash advance, even if the consumer then uses the money to purchase goods or services. Such a transaction would not involve “property or services purchased with the credit card.”

ii. The purchase of goods or services by use of a check accessing an overdraft account and a credit card used solely for identification of the consumer. (On the other hand, if the credit card is used to make partial payment for the purchase and not merely for identification, the right to assert claims or defenses would apply to credit extended via the credit card, although not to credit extended by the overdraft line. If partial payment for the purchase is made with a hybrid prepaid-credit card or a hybrid debit-credit card, the right to assert claims or defenses would apply to credit accessed from a covered separate credit feature or covered overdraft credit account, respectively.)

iii. Purchases made by use of a check guarantee card in conjunction with a cash advance check (or by cash advance checks alone). (See comment 12(c)–3.) A cash advance check is a check that, when written, does not draw on an asset account; instead, it is charged entirely to an open-end credit account.

iv. Purchases effected by use of either a check guarantee card or a debit card (other

than a hybrid debit-credit card) when used to draw on overdraft credit plans. (See comment 12(c)–3.) The debit card exemption applies whether the card accesses an asset account via point of sale terminals, automated teller machines, or in any other way, and whether the card qualifies as an “access device” under Regulation E or is only a paper based debit card. If a card serves both as an ordinary credit card and also as a check guarantee or debit card, a transaction will be subject to this rule on asserting claims and defenses when used as an ordinary credit card (including when used as a hybrid debit-credit card to access a covered overdraft credit account), but not when used as a check guarantee or debit card. For purchases effected by use of a hybrid debit-credit card where the transaction is partially paid with funds from the asset account, and partially paid with covered overdraft credit, the provisions of § 1026.12(c) apply only to the credit portion of the purchase transaction.

* * * * *

Section 1026.55—Limitations on Increasing Annual Percentage Rates, Fees, and Charges

55(a) General Rule

1. *Increase in rate, fee, or charge.* Section 1026.55(a) prohibits card issuers from increasing an annual percentage rate or any fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) on a credit card account unless specifically permitted by one of the exceptions in § 1026.55(b). Except as specifically provided in § 1026.55(b), this prohibition applies even if the circumstances under which an increase will occur are disclosed in advance. The following examples illustrate the general application of § 1026.55(a) and (b). Additional examples illustrating specific aspects of the exceptions in § 1026.55(b) are provided in the commentary to those exceptions.

i. *Account-opening disclosure of non-variable rate for six months, then variable rate.* Assume that, at account opening on January 1 of year one, a card issuer discloses that the annual percentage rate for purchases is a non-variable rate of 15% and will apply for six months. The card issuer also discloses that, after six months, the annual percentage rate for purchases will be a variable rate that is currently 18% and will be adjusted quarterly by adding a margin of 8 percentage points to a publicly-available index not under the card issuer's control. Furthermore, the card issuer discloses that the annual percentage rate for cash advances is the same variable rate that will apply to purchases after six months. Finally, the card issuer discloses that, to the extent consistent with § 1026.55 and other applicable law, a non-variable penalty rate of 30% may apply if the consumer makes a late payment. The payment due date for the account is the twenty-fifth day of the month and the required minimum periodic payments are applied to accrued interest and fees but do not reduce the purchase and cash advance balances.

A. *Change-in-terms rate increase for new transactions after first year.* On January 15 of year one, the consumer uses the account to

make a \$2,000 purchase and a \$500 cash advance. No other transactions are made on the account. At the start of each quarter, the card issuer may adjust the variable rate that applies to the \$500 cash advance consistent with changes in the index (pursuant to § 1026.55(b)(2)). All required minimum periodic payments are received on or before the payment due date until May of year one, when the payment due on May 25 is received by the creditor on May 28. At this time, the card issuer is prohibited by § 1026.55 from increasing the rates that apply to the \$2,000 purchase, the \$500 cash advance, or future purchases and cash advances. Six months after account opening (July 1), the card issuer may begin to accrue interest on the \$2,000 purchase at the previously-disclosed variable rate determined using an 8-point margin (pursuant to § 1026.55(b)(1)). Because no other increases in rate were disclosed at account opening, the card issuer may not subsequently increase the variable rate that applies to the \$2,000 purchase and the \$500 cash advance (except due to increases in the index pursuant to § 1026.55(b)(2)). On November 16, the card issuer provides a notice pursuant to § 1026.9(c) informing the consumer of a new variable rate that will apply on January 1 of year two (calculated using the same index and an increased margin of 12 percentage points). On December 15, the consumer makes a \$100 purchase. On January 1 of year two, the card issuer may increase the margin used to determine the variable rate that applies to new purchases to 12 percentage points (pursuant to § 1026.55(b)(3)). However, § 1026.55(b)(3)(ii) does not permit the card issuer to apply the variable rate determined using the 12-point margin to the \$2,000 purchase balance. Furthermore, although the \$100 purchase occurred more than 14 days after provision of the § 1026.9(c) notice, § 1026.55(b)(3)(iii) does not permit the card issuer to apply the variable rate determined using the 12-point margin to that purchase because it occurred during the first year after account opening. On January 15 of year two, the consumer makes a \$300 purchase. The card issuer may apply the variable rate determined using the 12-point margin to the \$300 purchase.

B. *Account becomes more than 60 days delinquent during first year.* Same facts as above except that the required minimum periodic payment due on May 25 of year one is not received by the card issuer until July 30 of year one. Because the card issuer received the required minimum periodic payment more than 60 days after the payment due date, § 1026.55(b)(4) permits the card issuer to increase the annual percentage rate applicable to the \$2,000 purchase, the \$500 cash advance, and future purchases and cash advances. However, § 1026.55(b)(4)(i) requires the card issuer to first comply with the notice requirements in § 1026.9(g). Thus, if the card issuer provided a § 1026.9(g) notice on July 25 stating that all rates on the account would be increased to the 30% penalty rate, the card issuer could apply that rate beginning on September 8 to all balances and to future transactions.

ii. *Account-opening disclosure of non-variable rate for six months, then increased*

non-variable rate for six months, then variable rate; change-in-terms rate increase for new transactions after first year. Assume that, at account opening on January 1 of year one, a card issuer discloses that the annual percentage rate for purchases will increase as follows: A non-variable rate of 5% for six months; a non-variable rate of 10% for an additional six months; and thereafter a variable rate that is currently 15% and will be adjusted monthly by adding a margin of 5 percentage points to a publicly-available index not under the card issuer's control. The payment due date for the account is the fifteenth day of the month and the required minimum periodic payments are applied to accrued interest and fees but do not reduce the purchase balance. On January 15 of year one, the consumer uses the account to make a \$1,500 purchase. Six months after account opening (July 1), the card issuer may begin to accrue interest on the \$1,500 purchase at the previously-disclosed 10% non-variable rate (pursuant to § 1026.55(b)(1)). On September 15, the consumer uses the account for a \$700 purchase. On November 16, the card issuer provides a notice pursuant to § 1026.9(c) informing the consumer of a new variable rate that will apply on January 1 of year two (calculated using the same index and an increased margin of 8 percentage points). One year after account opening (January 1 of year two), the card issuer may begin accruing interest on the \$2,200 purchase balance at the previously-disclosed variable rate determined using a 5-point margin (pursuant to § 1026.55(b)(1)). Section 1026.55 does not permit the card issuer to apply the variable rate determined using the 8-point margin to the \$2,200 purchase balance. Furthermore, § 1026.55 does not permit the card issuer to subsequently increase the variable rate determined using the 5-point margin that applies to the \$2,200 purchase balance (except due to increases in the index pursuant to § 1026.55(b)(2)). The card issuer may, however, apply the variable rate determined using the 8-point margin to purchases made on or after January 1 of year two (pursuant to § 1026.55(b)(3)).

iii. *Change-in-terms rate increase for new transactions after first year; penalty rate increase after first year.* Assume that, at account opening on January 1 of year one, a card issuer discloses that the annual percentage rate for purchases is a variable rate determined by adding a margin of 6 percentage points to a publicly-available index outside of the card issuer's control. The card issuer also discloses that, to the extent consistent with § 1026.55 and other applicable law, a non-variable penalty rate of 28% may apply if the consumer makes a late payment. The due date for the account is the fifteenth of the month. On May 30 of year two, the account has a purchase balance of \$1,000. On May 31, the card issuer provides a notice pursuant to § 1026.9(c) informing the consumer of a new variable rate that will apply on July 16 for all purchases made on or after June 15 (calculated by using the same index and an increased margin of 8 percentage points). On June 14, the consumer makes a \$500 purchase. On June 15, the consumer makes a \$200 purchase. On July 1, the card issuer has not received the payment

due on June 15 and provides the consumer with a notice pursuant to § 1026.9(g) stating that the 28% penalty rate will apply as of August 15 to all transactions made on or after July 16 and that, if the consumer becomes more than 60 days late, the penalty rate will apply to all balances on the account. On July 17, the consumer makes a \$300 purchase.

A. *Account does not become more than 60 days delinquent.* The payment due on June 15 of year two is received on July 2. On July 16, § 1026.55(b)(3)(ii) permits the card issuer to apply the variable rate determined using the 8-point margin disclosed in the § 1026.9(c) notice to the \$200 purchase made on June 15 but does not permit the card issuer to apply this rate to the \$1,500 purchase balance. On August 15, § 1026.55(b)(3)(ii) permits the card issuer to apply the 28% penalty rate disclosed at account opening and in the § 1026.9(g) notice to the \$300 purchase made on July 17 but does not permit the card issuer to apply this rate to the \$1,500 purchase balance (which remains at the variable rate determined using the 6-point margin) or the \$200 purchase (which remains at the variable rate determined using the 8-point margin).

B. *Account becomes more than 60 days delinquent after provision of § 1026.9(g) notice.* Same facts as above except the payment due on June 15 of year two has not been received by August 15. Section 1026.55(b)(4) permits the card issuer to apply the 28% penalty rate to the \$1,500 purchase balance and the \$200 purchase because it has not received the June 15 payment within 60 days after the due date. However, in order to do so, § 1026.55(b)(4)(i) requires the card issuer to first provide an additional notice pursuant to § 1026.9(g). This notice must be sent no earlier than August 15, which is the first day the account became more than 60 days' delinquent. If the notice is sent on August 15, the card issuer may begin accruing interest on the \$1,500 purchase balance and the \$200 purchase at the 28% penalty rate beginning on September 29.

2. *Relationship to grace period.* Nothing in § 1026.55 prohibits a card issuer from assessing interest due to the loss of a grace period to the extent consistent with § 1026.5(b)(2)(ii)(B) and § 1026.54. In addition, a card issuer has not reduced an annual percentage rate on a credit card account for purposes of § 1026.55 if the card issuer does not charge interest on a balance

or a portion thereof based on a payment received prior to the expiration of a grace period. For example, if the annual percentage rate for purchases on an account is 15% but the card issuer does not charge any interest on a \$500 purchase balance because that balance was paid in full prior to the expiration of the grace period, the card issuer has not reduced the 15% purchase rate to 0% for purposes of § 1026.55.

3. *Fees in connection with covered separate credit features accessible by hybrid prepaid-credit cards.* With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, § 1026.55(a) prohibits card issuers from increasing an annual percentage rate or any fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (iii), or (xii) on a credit card account unless specifically permitted by one of the exceptions in § 1026.55(b). This is true regardless of whether these fees or annual percentage rates are imposed on the asset feature of the prepaid account or on the credit feature.

4. *Fees imposed on the asset feature of a prepaid account that are not charges imposed as part of the plan.* Section 1026.55(a) does not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under § 1026.6(b)(3). See § 1026.6(b)(3)(iii)(D) and (E) and related commentary regarding fees imposed on the asset feature of the prepaid account that are not charges imposed as part of the plan under § 1026.6(b)(3) with respect to covered separate credit features accessible by hybrid prepaid-credit cards and non-covered separate credit features as those terms are defined in § 1026.61.

5. *Fees in connection with covered overdraft credit.* With regard to covered overdraft credit accessible by a hybrid debit-credit card, § 1026.55(a) prohibits card issuers from increasing an annual percentage rate or any fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (iii), or (xii) on a credit card account unless specifically permitted by one of the exceptions in § 1026.55(b). This is true regardless of whether these fees or annual percentage rates are imposed on the covered

asset account associated with the covered overdraft credit or on the covered overdraft credit account.

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Section 1026.57—Reporting and Marketing Rules for College Student Open-End Credit

57(a) Definitions

57(a)(1) College Student Credit Card

1. *Definition.* The definition of college student credit card excludes home-equity lines of credit accessed by credit cards and covered overdraft credit accounts as defined in 1026.62 offered by a creditor other than a very large financial institution as defined in 1026.62 that is accessed by a debit card or account number. A college student credit card includes a college affinity card within the meaning of TILA section 127(r)(1)(A). In addition, a card may fall within the scope of the definition regardless of the fact that it is not intentionally targeted at or marketed to college students. For example, an agreement between a college and a card issuer may provide for marketing of credit cards to alumni, faculty, staff, and other non-student consumers who have a relationship with the college, but also contain provisions that contemplate the issuance of cards to students. A credit card issued to a student at the college in connection with such an agreement qualifies as a college student credit card. The definition of college student credit card includes a hybrid prepaid-credit card as defined by § 1026.61 that is issued to any college student where the card can access a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan. The definition of college student credit card also includes a prepaid account as defined in § 1026.61 that is issued to any college student where a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined by § 1026.61 may be added in the future to the prepaid account.

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Rohit Chopra,

Director, Consumer Financial Protection Bureau.

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Part III

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1, 5, 301, et al.

Revising Consolidated Return Regulations and Controlled Group of Corporations Regulations to Reflect Statutory Changes, Modernize Language, and Enhance Clarity; Final Rule and Proposed Rule

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Parts 1, 5, 301, and 602**

[TD 10018]

RIN 1545–BJ87

Revising Consolidated Return Regulations and Controlled Group of Corporations Regulations to Reflect Statutory Changes, Modernize Language, and Enhance Clarity**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Final regulations.

SUMMARY: This document contains final regulations that affect affiliated groups of corporations that file consolidated Federal income tax returns. These regulations modify the consolidated return regulations and the controlled group of corporations regulations to reflect statutory changes, update language to remove antiquated or regressive terminology, and enhance clarity. Additionally, this document withdraws certain temporary regulations.

DATES: *Effective date:* These final regulations are effective on December 30, 2024.

Applicability date: For dates of applicability, see §§ 1.52–1(i), 1.414(c)–6(g), 1.1502–0, 1.1502–5(e), 1.1502–45(f), 1.1552–1(g), 1.1562–1(e), 1.1563–2(d), and 1.1563–3(e).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations under section 52, Christopher Dellana of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) at (202) 317–5500; concerning the regulations under section 414, Jessica Weinberger of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) at (202) 317–4148; concerning the regulations under all other sections, William W. Burhop or Kelton P. Frye of the Office of Associate Chief Counsel (Corporate) at (202) 317–5363 or (202) 317–6975, respectively (not toll-free numbers).

SUPPLEMENTARY INFORMATION:**Authority**

Section 1502 of the Internal Revenue Code (Code) authorizes the Secretary of the Treasury or her delegate (Secretary) to prescribe consolidated return regulations for an affiliated group of corporations that join in filing (or that are required to join in filing) a

consolidated return (consolidated group) to clearly reflect the Federal income tax liability of the consolidated group and to prevent avoidance of such tax liability. See § 1.1502–1(h) (defining the term “consolidated group”). For purposes of carrying out those objectives, section 1502 also permits the Secretary to prescribe rules that may be different from the provisions of chapter 1 of the Code (chapter 1) that would apply if the corporations composing the consolidated group filed separate returns. Additionally, section 7805(a) of the Code authorizes the Secretary to “prescribe all needful rules and regulations for the enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.”

Background*I. Overview*

This Treasury decision contains final regulations under sections 52, 414, 1502, 1503, 1552, and 1563 of Code. These regulations primarily revise the Income Tax Regulations (26 CFR part 1) issued under section 1502 (consolidated return regulations). Terms used in the consolidated return regulations generally are defined in § 1.1502–1.

II. 2023 Proposed Regulations

On August 7, 2023, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG–134420–10) in the **Federal Register** (88 FR 52057) under sections 1502, 1503, 1552, and 1563 (2023 proposed regulations). The 2023 proposed regulations would revise the consolidated return regulations (i) to eliminate obsolete or otherwise outdated provisions, (ii) to modernize the language and improve the clarity of the regulations, and (iii) to facilitate taxpayer compliance.

The 2023 proposed regulations also would revise the consolidated return regulations and the regulations under section 1563 to eliminate antiquated or regressive terminology. For example, the 2023 proposed regulations (i) would replace gender-specific pronouns and other identifiers with gender-neutral pronouns and identifiers, and (ii) would identify (A) American Samoa, (B) the Commonwealth of the Northern Mariana Islands, (C) the Commonwealth of Puerto Rico, (D) Guam, and (E) the U.S. Virgin Islands as “territories” of the United States rather than “possessions” in §§ 1.1502–4(d)(1) and 1.1503(d)–1(b)(7). These revisions are consistent with, and in furtherance of, the Treasury Department’s Equity Action Plan, as

well as Executive Order 13985 of January 20, 2021, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, 86 FR 7009 (January 25, 2021).

The 2023 proposed regulations also would revise or remove other regulations under the Code. These regulations are set forth in (i) the Income Tax Regulations (26 CFR part 1), (ii) the Temporary Income Tax Regulations under the Revenue Act of 1978 (26 CFR part 5), (iii) the Regulations on Procedure and Administration (26 CFR part 301), and (iv) the OMB Control Numbers under the Paperwork Reduction Act Regulations (26 CFR part 602).

The notice of proposed rulemaking (NPRM) containing the 2023 proposed regulations also withdrew or partially withdrew numerous earlier NPRMs, including: (i) NPRMs that previously had been incorporated into final regulations in revised form or that were incorporated into the 2023 proposed regulations in revised form; (ii) an NPRM that became obsolete when proposed regulations provided in a subsequent, discrete NPRM were adopted as final regulations; and (iii) NPRMs that cross-referenced temporary regulations (the text of which served as the text for those proposals) that were removed, have expired, or otherwise have become obsolete. Additionally, the 2023 proposed regulations proposed to withdraw temporary regulations that (i) no longer have practical applicability to taxpayers, or (ii) would be replaced by final regulations provided by this Treasury decision.

Finally, the 2023 proposed regulations would remove numerous provisions that cross-reference prior-law editions of the Code of Federal Regulations (CFR).

III. Correction to 2023 Proposed Regulations

The 2023 proposed regulations contained amendments to the regulations under section 1563. A correction to the 2023 proposed regulations was published in the **Federal Register** (88 FR 84770–02) on December 6, 2023, and provided an additional opportunity for public comment (2023 correction), to make parallel amendments to similar regulations under sections 52 and 414 to avoid creating inconsistencies.

IV. Comments Received

The Treasury Department and the IRS requested comments on the 2023 proposed regulations. The comments received are described in further detail

in the Summary of Comments and Explanation of Revisions. No public hearing was requested or held.

Summary of Comments and Explanation of Revisions

I. Withdrawal of Proposed or Temporary Regulations

A commenter expressed concern that the withdrawal or partial withdrawal of old proposed or temporary regulations in the 2023 proposed regulations could lead to confusion or uncertainty for consolidated groups if the withdrawn regulations contain substantive provisions on which consolidated groups continue to rely. The commenter recommended either retaining or revising the withdrawn proposed or temporary regulations or providing guidance on how to apply the existing final regulations in light of the withdrawals.

The Treasury Department and the IRS are of the view that, with the exception of the proposed consolidated return regulations under § 1.1502–80(d) relating to the non-applicability of section 357(c) discussed in part VII of this Summary of Comments and Explanation of Revisions, the withdrawn or partially withdrawn regulations do not contain substantive provisions on which taxpayers continue to rely. Accordingly, these final regulations do not adopt the commenter's recommendation.

II. Section 1.1502–5 (Consolidated Estimated Tax)

Section 10101 of Public Law 117–169, 136 Stat. 1818 (August 16, 2022), commonly referred to as the Inflation Reduction Act of 2022, amended section 55 of the Code to impose a new corporate alternative minimum tax (commonly referred to as the corporate alternative minimum tax, or CAMT) based on adjusted financial statement income. To reflect this change, the 2023 proposed regulations would modify the definition of the term “tax” in § 1.1502–5(b)(5) by adding a reference to section 55(a). Because the amount of tax imposed under section 55 is determined in part by reference to the amount of tax imposed under section 59A of the Code (that is, the base erosion anti-abuse tax, or BEAT), the 2023 proposed regulations also would modify the definition of the term “tax” in § 1.1502–5(b)(5) by adding a reference to section 59A.

A commenter recommended adding the foregoing references not only in § 1.1502–5(b)(5), but also in other sections of the consolidated return regulations that use the word “tax”.

However, these changes in the 2023 proposed regulations were necessary to implement the recently enacted CAMT. The Treasury Department and the IRS have determined that similar changes to other provisions in the consolidated return regulations are beyond the scope of this guidance. Accordingly, these final regulations do not adopt the commenter's recommendation.

III. Revisions To Remove Obsolete or Outdated References or Terms

As noted in part II of the Background, the 2023 proposed regulations would make nonsubstantive changes to the consolidated return regulations and the regulations under section 1563 to replace gender-specific pronouns and other identifiers with gender-neutral pronouns and identifiers, and to replace the term “possession” with the defined term “U.S. territory” in §§ 1.1502–4(d)(1) and 1.1503(d)–1(b)(7). A commenter welcomed the removal of gender-specific pronouns and identifiers but suggested that the gender-neutral pronouns and identifiers are not entirely clear or consistent throughout the consolidated return regulations (for example, some provisions use “its” as a singular possessive pronoun, whereas others use “their” as a singular possessive pronoun). The commenter recommending either using a consistent set of gender-neutral pronouns and identifiers throughout the regulations or providing a glossary or explanation of these pronouns and identifiers.

The Treasury Department and the IRS have determined that revising all gender-neutral pronouns throughout the consolidated return regulations and the section 1563 regulations is beyond the scope of this guidance. However, the Treasury Department and the IRS will continue to consider the revision of particular pronouns when modifying the consolidated return regulations in future guidance.

The commenter also requested clarification that the replacement of the term “possessions” with the term “territories” is purely terminological and is not intended to affect the tax treatment of these jurisdictions under the consolidated return regulations. The Treasury Department and the IRS agree with the commenter that this change was intended to be purely terminological. See <https://www.doi.gov/oia/islands/politicatypes>.

IV. Revisions to §§ 1.1502–13, 1.1502–32, and 1.1502–36

A commenter raised questions about amendments to §§ 1.1502–13(c)(2)(ii) and (c)(6)(ii)(A), 1.1502–32(b)(2)(iv) and (b)(4)(i), and 1.1502–36(d)(3)(ii)(B) and

(d)(6)(ii)(B) in the 2023 proposed regulations. However, neither the 2023 proposed regulations nor these final regulations would amend these provisions. Accordingly, no revisions have been made in response to this comment.

V. Definition of “Consolidated Return Regulations”

The 2023 proposed regulations would add “consolidated return regulations” as a new defined term in § 1.1502–1. As defined in proposed § 1.1502–1(g), this term would mean the regulations issued under section 1502. A commenter noted that certain consolidated return regulations issued under the authority of section 1502 were not actually placed under section 1502 (for example, see § 1.163(j)–4 and § 1.385–4). Accordingly, these final regulations revise the term “consolidated return regulations” to mean the regulations issued under the authority of section 1502. These final regulations also amend §§ 1.1502–47(a)(3), (k), and (l) and 1.1504–3(d)(1)(ii) to replace the cited range of sections with the defined term “consolidated return regulations.”

VI. Sections 52 and 414

Sections 52(a) and 414(b) provide rules for controlled groups of corporations that incorporate the definitions and rules in section 1563(a), with modifications. Sections 52(b) and 414(c)(1) authorize regulations applying principles similar to the principles that apply in the case of sections 52(a) and 414(b), respectively, to trades or businesses under common control.

A controlled group of corporations under section 52(a) or section 414(b), which cross-reference section 1563(a), is determined based on the constructive ownership rules of section 1563(e), including section 1563(e)(2) and (3) (but not section 1563(e)(3)(C)). A group of trades or businesses under common control under sections 52(b) and 414(c) is determined by taking into account the constructive ownership rules in §§ 1.52–1(b) and (c) and 1.414(c)–2(b)(1), respectively, that mirror the rules under section 1563.

As discussed in the preamble to the 2023 proposed regulations, the 2023 proposed regulations would revise § 1.1563–1(a)(2)(i)(A) and (B) to reflect an amendment to section 1563(d)(1)(B) by the Technical and Miscellaneous Revenue Act of 1988, Public Law 100–647, 102 Stat. 3342 (November 10, 1988). That amendment expanded the constructive ownership rules of section 1563(e) that apply for purposes of section 1563(d)(1) to include section 1563(e)(2) (relating to attribution from

partnerships) and section 1563(e)(3) (relating to attribution from estates or trusts). The 2023 proposed regulations generally would apply to consolidated return years for which the due date of the return (without regard to extensions) is after the date of publication of the Treasury Decision adopting the regulations as final regulations in the **Federal Register**.

The 2023 correction does not specify an applicability date for the proposed revisions to §§ 1.52–1(c)(1) and 1.414(c)–2(b)(1). In addition, the Treasury Department and the IRS are of the view that applying the general applicability date in the 2023 proposed regulations to the proposed revisions to §§ 1.52–1(c)(1) and 1.414(c)–2(b)(1) may cause confusion, because the rules in §§ 1.52–1(c)(1) and 1.414(c)–2(b)(1) apply to taxpayers who may not file consolidated returns.

Accordingly, these final regulations clarify that the amendment to § 1.52–1(c)(1) applies to taxable years beginning on or after January 1, 2025, and that the amendment to § 1.414(c)–2(b)(1) applies to plan years beginning on or after January 1, 2025. The final regulations add new paragraph (i) to § 52–1 to provide that § 52–1, as amended by this Treasury decision, applies to taxable years beginning on or after January 1, 2025. Section 1.414(c)–6, which provides the effective date and various applicability dates for the regulations under sections 414(b) and (c), is amended to reflect the applicability date of the amendment to § 1.414(c)–2(b)(1); *see also* the Applicability Date section of this preamble. The amendment to section 1563(d)(1)(B) by the Technical and Miscellaneous Revenue Act of 1988 was not incorporated into the regulations under sections 52(b) and 414(c)(1) with respect to taxable years and plan years, respectively, that began prior to the applicability date for the regulations specified in this Treasury decision. Accordingly, the IRS will not challenge the application of §§ 1.52–1(c)(1) and 1.414(c)–2(b) as previously in effect or taking into account the amendment to section 1563(d)(1)(B) with respect to taxable years that began prior to January 1, 2025, for the regulations under section 52(b) or plan years that began prior to January 1, 2025, for the regulations under section 414(c)(1).

VII. Section 357(c) and § 1.1502–80(d)

A commenter raised concerns about the withdrawal of proposed consolidated return regulations under § 1.1502–80(d) relating to the non-applicability of section 357(c). The comment has led the Treasury

Department and the IRS to reconsider that withdrawal. For a discussion of the comment, *see* the notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

VIII. Other Non-Substantive Revisions

To make the reading of these regulations more user-friendly, these final regulations generally restate the revised paragraphs in the regulations under sections 52, 414, 1502, 1503, 1552, and 1563. Additionally, the formatting changes to the examples in § 1.1502–13(j) in the 2023 proposed regulations were adopted by T.D. 10016, published in the **Federal Register** on December 11, 2024 (89 FR 100138).

Applicability Date

Pursuant to section 1503(a) of the Code, the regulations issued under the authority of section 1502 apply to consolidated return years for which the due date of the return (without regard to extensions) is after December 30, 2024.

In addition, § 1.52–1(c)(1) applies to taxable years beginning on or after January 1, 2025, and § 1.414(c)–2(b)(1) applies to plan years beginning on or after January 1, 2025. The amendments to §§ 1.1552–1(g), 1.1562–1(e), 1.1563–2(d), and 1.1563–3(e) apply to taxable years beginning after December 30, 2024.

Special Analyses

I. Regulatory Planning and Review

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

II. Paperwork Reduction Act

These final regulations update the consolidated return regulations by revising and removing outdated and obsolete provisions, such as cross-references to temporary regulations, regulations, and statutes that have been repealed, removed, expired, renumbered, or otherwise have become obsolete. Therefore, these final regulations would not impose an additional reporting burden beyond what is otherwise required by existing statutes, regulations, and forms. The total burden associated with these final regulations is \$0.

III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby

certified that these final regulations would not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these final regulations would apply only to corporations that file consolidated Federal income tax returns, and that such corporations tend to be larger businesses. Specifically, based on data available to the IRS, corporations that file consolidated Federal income tax returns represent only approximately two percent of all filers of Forms 1120 (U.S. Corporation Income Tax Return). However, these consolidated Federal income tax returns account for approximately 95 percent of the aggregate amount of receipts reported on all Forms 1120. Therefore, these final regulations would not create significant additional obligations for, or impose an economic impact on, a substantial number of small entities. Accordingly, the Secretary certifies that these final regulations will not have significant economic impact on a significant number of small entities.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded these final regulations was submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received from the Chief Counsel for the Office of Advocacy of the Small Business Administration.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. [In 2024, that threshold is approximately \$190 million.] These final regulations do not include any rule that would include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These final regulations

do not propose rules that would have federalism implications, impose substantial direct compliance costs on State and local governments, or preempt State law within the meaning of the Executive order.

VI. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Drafting Information

The principal authors of this document are Kelton P. Frye and William W. Burhop of the Office of Associate Chief Counsel (Corporate). Other personnel from the Treasury Department and the IRS participated in its development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 5

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 5, 301, and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by removing the entries for §§ 1.1503–2, 1.1502–9A, 1.1502–15A, 1.1502–21A, 1.1502–22A, 1.1502–23A, 1.1502–41A, 1.1502–79A, 1.1502–91A, 1.1502–92A, 1.1502–93A, 1.1502–94A, 1.1502–95A, 1.1502–96A, 1.1502–98A, and 1.1502–99A to read in part as follows:

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

■ **Par. 2.** Section 1.52–1 is amended by revising paragraphs (c)(1)(i) and (ii) and adding paragraph (i) to read as follows:

§ 1.52–1 Trades or businesses that are under common control.

* * * * *

- (c) * * *
(1) * * *

(i) A controlling interest in each of the organizations, except the common

parent organization, is owned (directly and with the application of § 1.414(c)–4(b)(1), (2), and (3)) by one or more of the other organizations; and

(ii) The common parent organization owns (directly and with the application of § 1.414(c)–4(b)(1), (2), and (3)) a controlling interest in at least one of the other organizations, excluding, in computing the controlling interest, any direct ownership interest by the other organizations.

* * * * *

(i) **Applicability date.** This section applies to taxable years beginning on or after January 1, 2025. *See* 26 CFR 1.52–1, as revised April 1, 2024, for taxable years beginning before January 1, 2025.

■ **Par. 3.** Section 1.57–1 is amended by revising paragraph (b)(4)(ii) to read as follows:

§ 1.57–1 Items of tax preference defined.

* * * * *

(b) * * *

(4) * * *

(ii) Where the taxpayer acquires property in a transaction to which section 381(a) applies or from another member of an affiliated group during a consolidated return year and an “accelerated” method of depreciation as described in section 167(b)(2), (3), or (4) or section 167(j)(1)(B) or (C) is permitted (*see* § 1.381(c)(6)–1), the depreciation which would have been allowable under the straight line method is determined as if the property had been depreciated under the straight line method since depreciation was first taken on the property by the transferor of such property. In such cases, references in this paragraph to the period for which the property is held or useful life of the property are treated as including the period beginning with the commencement of the original use of the property.

* * * * *

■ **Par. 4.** Section 1.167(c)–1 is amended by revising paragraph (a)(5) to read as follows:

§ 1.167(c)–1 Limitations on methods of computing depreciation under section 167(b)(2), (3), and (4).

(a) * * *

(5) *See* §§ 1.1502–13 and 1.1502–68 for provisions dealing with depreciation of property received by a member of an affiliated group from another member of the group during a consolidated return period.

* * * * *

■ **Par. 5.** Section 1.279–6 is amended by revising and republishing paragraph (d) to read as follows:

§ 1.279–6 Application of section 279 to certain affiliated groups.

* * * * *

(d) **Aggregate projected earnings.** In the case of an affiliated group of corporations (whether or not such group files a consolidated return under section 1501), the aggregate projected earnings of such group is computed by separately determining the projected earnings of each member of such group under paragraph (d) of § 1.279–5, and then adding together such separately determined amounts, except that—

(1) A dividend (a distribution which is described in section 301(c)(1) other than a distribution described in section 243(c)(1)) distributed by one member to another member is eliminated;

(2) In determining the earnings and profits of any member of an affiliated group, there is eliminated any amount of interest income received or accrued, and of interest expense paid or incurred, which is attributable to intercompany indebtedness; and

(3) No gain or loss is recognized in any transaction between members of the affiliated group.

* * * * *

§ 1.382–8 [Amended]

■ **Par. 6.** Section 1.382–8 is amended by removing and reserving paragraph (i).

■ **Par. 7.** Section 1.414(c)–2 is amended by revising paragraphs (b)(1)(i) and (ii) to read as follows:

§ 1.414(c)–2 Two or more trades or businesses under common control.

* * * * *

(b) * * *

(1) * * *

(i) A controlling interest in each of the organizations, except the common parent organization, is owned (directly and with the application of § 1.414(c)–4(b)(1), (2), and (3)) by one or more of the other organizations; and

(ii) The common parent organization owns (directly and with the application of § 1.414(c)–4(b)(1), (2), and (3)) a controlling interest in at least one of the other organizations, excluding, in computing such controlling interest, any direct ownership interest by such other organizations.

* * * * *

■ **Par. 8.** Section 1.414(c)–6 is amended by revising and republishing paragraph (a) and adding paragraph (g) to read as follows:

§ 1.414(c)–6 Effective date.

(a) **General rule.** Except as provided in paragraph (b), (c), (e), (f), or (g) of this section, the provisions of § 1.414(b)–1 and §§ 1.414(c)–1 through 1.414(c)–4

apply for plan years beginning after September 2, 1974.

* * * * *

(g) *Special rule.* Notwithstanding paragraph (a), (b), or (c) of this section, § 1.414(c)-2(b)(1) applies to plan years beginning on or after January 1, 2025.

■ **Par. 9.** Section 1.1502-0 is revised to read as follows:

§ 1.1502-0 Effective/applicability dates.

(a) *In general.* Except as provided in paragraph (b) of this section, the consolidated return regulations (as defined in § 1.1502-1(g)) are applicable to taxable years beginning after December 31, 1965.

(b) *Exceptions.* The applicability date described in paragraph (a) of this section does not apply to any provision of the consolidated return regulations with an applicability or effective date different than the date provided by paragraph (a) of this section.

■ **Par. 10.** Section 1.1502-1 is amended by:

- a. Adding introductory text;
- b. Revising and republishing paragraphs (f)(2) and (3) and (g);
- c. Redesignating paragraph (l) as paragraph (m); and
- d. Adding a new paragraph (l).

The additions and revisions read as follows:

§ 1.1502-1 Definitions.

For purposes of the consolidated return regulations (and any provision of this chapter that refers to the consolidated return regulations):

* * * * *

(f) * * *

(2) *Exceptions.* The term *separate return limitation year* (or SRLY) does not include:

(i) A separate return year of the corporation which is the common parent for the consolidated return year to which the tax attribute is to be carried (except as provided in § 1.1502-75(d)(2)(ii) and paragraph (f)(3) of this section);

(ii) A separate return year of any corporation which was a member of the group for each day of such year; or

(iii) A separate return year of a predecessor of any member if such predecessor was a member of the group for each day of such year.

(3) *Reverse acquisitions.* In the event of an acquisition to which § 1.1502-75(d)(3) applies, all taxable years of the first corporation and of each of its subsidiaries ending on or before the date of the acquisition are treated as separate return limitation years, and the separate return years (if any) of the second corporation and each of its subsidiaries

are not treated as separate return limitation years (unless they were so treated immediately before the acquisition). For example, if corporation P merges into corporation T, and the persons who were stockholders of P immediately before the merger, as a result of owning the stock of P, own more than 50 percent of the fair market value of the outstanding stock of T, then a loss incurred before the merger by T (even though it is the common parent), or by a subsidiary of T, is treated as having been incurred in a separate return limitation year. Conversely, a loss incurred before the merger by P, or by a subsidiary of P in a separate return year during all of which such subsidiary was a member of the group of which P was the common parent, is treated as having been incurred in a year which is not a separate return limitation year.

(g) *Consolidated return regulations.* The term *consolidated return regulations* means the regulations issued under the authority of section 1502.

* * * * *

(l) *U.S. territory.* The term *U.S. territory* means—

- (1) American Samoa;
- (2) The Commonwealth of the Northern Mariana Islands;
- (3) The Commonwealth of Puerto Rico;
- (4) Guam; and
- (5) The U.S. Virgin Islands.

* * * * *

§ 1.1502-3 [Amended]

■ **Par. 11.** Section 1.1502-3 is amended by removing and reserving paragraph (e).

■ **Par. 12.** Section 1.1502-4 is amended by revising paragraph (d)(1) to read as follows:

§ 1.1502-4 Consolidated foreign tax credit.

* * * * *

(d) * * *

(1) *Allowance of unused foreign tax as consolidated carryover or carryback.*

The consolidated group's carryovers and carrybacks of unused foreign tax (as defined in § 1.904-2(c)(1)) to the taxable year is determined on a consolidated basis under the principles of section 904(c) and § 1.904-2 and is deemed to be paid or accrued to a foreign country or U.S. territory (as defined in § 1.1502-1(l)) for that year. The consolidated group's unused foreign tax carryovers and carrybacks to the taxable year consist of any unused foreign tax of the consolidated group, plus any unused foreign tax of members for separate return years, which may be carried over or back to the taxable year under the

principles of section 904(c) and § 1.904-2. The consolidated group's unused foreign tax carryovers and carrybacks do not include any unused foreign taxes apportioned to a corporation for a separate return year pursuant to § 1.1502-79(d). A consolidated group's unused foreign tax in each separate category is the excess of the foreign taxes paid, accrued or deemed paid under section 960 by the consolidated group over the limitation in the applicable separate category for the consolidated return year. See paragraph (c) of this section.

* * * * *

■ **Par. 13.** Section 1.1502-5 is revised to read as follows:

§ 1.1502-5 Estimated tax.

(a) *General rule.*—(1) *Consolidated estimated tax.* If a group files a consolidated return for two consecutive taxable years, it must make payments of estimated tax on a consolidated basis for each subsequent taxable year until separate returns are filed. When filing on a consolidated basis, the group is generally treated as a single corporation for purposes of section 6655 (relating to payment of estimated tax by corporations). If separate returns are filed by the members for a taxable year, the amount of any estimated tax payments made with respect to a consolidated estimated tax for the year is credited against the separate tax liabilities of the members in any reasonable manner designated by the common parent.

(2) *First two consolidated return years.* For its first two consolidated return years, a group may make payments of estimated tax on either a consolidated or a separate member basis. The amount of any separate estimated tax payments is credited against the consolidated tax liability of the group.

(b) *Addition to tax for failure to pay estimated tax under section 6655.*—(1) *Consolidated return filed.* For its first two consolidated return years, a group may compute the amount of the penalty (if any) under section 6655 on a consolidated basis or a separate member basis, regardless of the method of payment. Thereafter, the group must compute the penalty for any consolidated return year on a consolidated basis.

(2) *Computation of penalty on consolidated basis.*—(i) *In general.* This paragraph (b)(2) provides rules for computing the penalty under section 6655 on a consolidated basis.

(ii) *Preceding taxable year.* The tax shown on the return for the preceding

taxable year referred to in section 6655(d)(1)(B)(ii) is, if a consolidated return was filed for that preceding year, the tax shown on the consolidated return for that preceding year or, if a consolidated return was not filed for that preceding year, the aggregate of the taxes shown on the separate returns of the common parent and any other corporation that was a member of the same affiliated group as the common parent for that preceding year.

(iii) *Aggregate of payments made by all members.* If estimated tax was not paid on a consolidated basis, the amount of the group's payments of estimated tax for the taxable year is the aggregate of the payments made by all members for the year.

(iv) *Required annual payment rule.* If the common parent is otherwise eligible to use the section 6655(d)(1)(B)(ii) required annual payment rule, that rule applies only if the group's consolidated return, or each member's separate return if the group did not file a consolidated return, for the preceding taxable year was a taxable year of 12 months.

(3) *Computation of penalty on separate member basis.* To compute any penalty under section 6655 on a separate member basis, for purposes of section 6655(d)(1)(B)(i), the "tax shown on the return" for the taxable year is the portion of the tax shown on the consolidated return allocable to the member under paragraph (b)(6) of this section. If the member was included in the consolidated return filed by the group for the preceding taxable year, for purposes of section 6655(d)(1)(B)(ii), the "tax shown on the return" for the preceding taxable year for any member is the portion of the tax shown on the consolidated return for the preceding year allocable to the member under paragraph (b)(6) of this section.

(4) *Consolidated payments if separate returns filed.* If the group does not file a consolidated return for the taxable year but makes payments of estimated tax on a consolidated basis, for purposes of section 6655(b)(1)(B), the "amount (if any) of the installment paid" by any member is an amount apportioned to the member in any reasonable manner designated by the common parent. If a member was included in the consolidated return filed by the group for the preceding taxable year, the amount of the member's penalty under section 6655 is computed on the separate member basis described in paragraph (b)(3) of this section.

(5) *Tax defined.* For purposes of this section, the term *tax* means the excess of—

(i) The sum of—

(A) The consolidated tax imposed by section 11 or subchapter L of chapter 1, whichever applies;

(B) The tax imposed by section 55(a); plus

(C) The tax imposed by section 59A; over

(ii) The credits against tax provided by part IV of subchapter A of chapter 1 of the Internal Revenue Code.

(6) *Allocation of consolidated tax liability for determining earnings and profits.* For purposes of this section, the tax shown on a consolidated return is allocated to the members of the group by allocating any tax described in paragraph (b)(5)(i) of this section, net of allowable credits under paragraph (b)(5)(ii) of this section, under the method that the group has elected pursuant to section 1552 and § 1.1502–33(d).

(c) *Examples.* The provisions of this section are illustrated by the following examples.

(1) *Example 1.* Corporations P and S1 file a consolidated return for the first time for calendar year 2021. P and S1 also file consolidated returns for calendar year 2022 and calendar year 2023. Under paragraph (a)(2) of this section, for the 2021 and 2022 taxable years, P and S1 may pay estimated tax on either a separate or consolidated basis. Under paragraph (a)(1) of this section, for the 2023 taxable year, the group must pay its estimated tax on a consolidated basis. In determining whether P and S1 come within the exception provided in section 6655(d)(1)(B)(ii) for 2023, the "tax shown on the return" is the tax shown on the consolidated return for the 2022 taxable year.

(2) *Example 2.* Corporations P, S1, and S2 file a consolidated return for the first time for calendar year 2021 and file their second consolidated return for calendar year 2022. S2 ceases to be a member of the group on September 15, 2023. Under paragraph (b)(2) of this section, in determining whether the group (which no longer includes S2) comes within the exception provided in section 6655(d)(1)(B)(ii) for 2023, the "tax shown on the return" is the tax shown on the consolidated return for calendar year 2022.

(3) *Example 3.* Corporations P and S1 file a consolidated return for the first time for calendar year 2021 and file their second consolidated return for calendar year 2022. Corporation S2 becomes a member of the group on July 1, 2023, and joins in the filing of the consolidated return for calendar year 2023. Under paragraph (b)(2) of this section, in determining whether the group (which now includes S2) comes

within the exception provided in section 6655(d)(1)(B)(ii) for 2023, the "tax shown on the return" is the tax shown on the consolidated return for calendar year 2022. Any tax of S2 for any separate return year is not included as a part of the "tax shown on the return" for purposes of applying section 6655(d)(1)(B)(ii).

(4) *Example 4.* Corporations X and Y file consolidated returns for the calendar years 2021 and 2022 and separate returns for calendar year 2023. Under paragraph (b)(3) of this section, in determining whether X or Y comes within the exception provided in section 6655(d)(1)(B)(ii) for 2023, the "tax shown on the return" is the amount of tax shown on the consolidated return for 2022 allocable to X and to Y in accordance with paragraph (b)(6) of this section.

(d) *Cross-references.*—(1) For provisions relating to quick refunds of corporate estimated tax payments, see §§ 1.1502–78 and 1.6425–1 through 1.6425–3.

(2) For provisions relating to depositing estimated taxes, see § 1.6302–1(b).

(e) *Applicability date.* This section applies to any taxable year for which the due date of the income tax return (without regard to extensions) is after December 30, 2024. For prior years, see § 1.1502–5 (as contained in the 26 CFR edition revised as of April 1, 2024).

■ **Par. 14.** Section 1.1502–6 is amended by revising paragraph (b) to read as follows:

§ 1.1502–6 Liability for tax.

* * * * *

(b) *Liability of subsidiary after withdrawal.* If a subsidiary has ceased to be a member of the group and in such cessation resulted from a bona fide sale or exchange of its stock for fair value and occurred prior to the date upon which any deficiency is assessed, the Commissioner may, if the Commissioner believes that the assessment or collection of the balance of the deficiency will not be jeopardized, make assessment and collection of such deficiency from such former subsidiary in an amount not exceeding the portion of such deficiency which the Commissioner may determine to be allocable to it. If the Commissioner makes assessment and collection of any part of a deficiency from such former subsidiary, then for purposes of any credit or refund of the amount collected from such former subsidiary the agency of the common parent under the provisions of § 1.1502–77 does not apply.

* * * * *

■ **Par. 15.** Section 1.1502–9 is amended by revising and republishing paragraphs (a), (b)(1), and (c)(2)(ii) and (iii) to read as follows:

§ 1.1502–9 Consolidated overall foreign losses, separate limitation losses, and overall domestic losses.

(a) *In general.* This section provides rules for applying section 904(f) and (g) (including its definitions and nomenclature) to a group and its members. Generally, section 904(f) concerns rules relating to overall foreign losses (OFLs) and separate limitation losses (SLLs) and the consequences of such losses. Under section 904(f)(5), losses are computed separately in each category of income described in section 904(d)(1) or § 1.904–5(a)(4)(v) (separate category). Section 904(g) concerns rules relating to overall domestic losses (ODLs) and the consequences of such losses. Paragraph (b) of this section defines terms and provides computational and accounting rules, including rules regarding recapture. Paragraph (c) of this section provides rules that apply to OFLs, SLLs, and ODLs when a member becomes or ceases to be a member of a group. Paragraph (d) of this section provides a predecessor and successor rule. Paragraph (e) of this section provides effective dates.

(b) * * *

(1) *Computation of CSLI or CSLL and consolidated U.S.-source taxable income or CDL.* The group computes its consolidated separate limitation income (CSLI) or consolidated separate limitation loss (CSLL) for each separate category under the principles of § 1.1502–11 by aggregating each member's foreign-source taxable income or loss in such separate category computed under the principles of § 1.1502–12, and taking into account the foreign portion of the consolidated items described in § 1.1502–11(a)(2) through (a)(6) for such separate category. The group computes its consolidated U.S.-source taxable income or consolidated domestic loss (CDL) under similar principles.

* * * * *

(c) * * *

(2) * * *

(ii) *Departing member's portion of group's account.* A departing member's portion of a group's COFL, CSLL or CODL account for a loss category is computed based upon the member's share of the group's assets that generate income subject to recapture at the time that the member ceases to be a member. Under the characterization principles of §§ 1.861–9T(g)(3), 1.861–12, and 1.861–13, the group identifies the assets of the

departing member and the remaining members that generate U.S.-source income (domestic assets) and foreign-source income (foreign assets) in each separate category. The assets are characterized based upon the income that the assets are reasonably expected to generate after the member ceases to be a member. The member's portion of a group's COFL or CSLL account for a loss category is the group's COFL or CSLL account, respectively, multiplied by a fraction, the numerator of which is the value of the member's foreign assets for the loss category and the denominator of which is the value of the foreign assets of the group (including the departing member) for the loss category. The member's portion of a group's CODL account for each income category is the group's CODL account multiplied by a fraction, the numerator of which is the value of the member's domestic assets and the denominator of which is the value of the domestic assets of the group (including the departing member). The value of the domestic and foreign assets is determined under the asset valuation rules of § 1.861–9(g)(1) and (2) using either tax book value or alternative tax book value under the method chosen by the group for purposes of interest apportionment as provided in § 1.861–9(g)(1)(ii). For purposes of this paragraph (c)(2)(ii), § 1.861–9T(g)(2)(iv) (assets in intercompany transactions) applies, but § 1.861–9T(g)(2)(iii) (adjustments for directly allocated interest) does not apply. The member's portions of COFL, CSLL, and CODL accounts are limited by paragraph (c)(2)(iii) of this section. In addition, for purposes of this paragraph (c)(2)(ii), the tax book value of assets transferred in intercompany transactions is determined without regard to previously deferred gain or loss that is taken into account by the group as a result of the transaction in which the member ceases to be a member. The assets should be valued at the time the member ceases to be a member, but values on other dates may be used unless this creates substantial distortions. For example, if a member ceases to be a member in the middle of the group's consolidated return year, an average of the values of assets at the beginning and end of the year (as provided in § 1.861–9(g)(2)) may be used or, if a member ceases to be a member in the early part of the group's consolidated return year, values at the beginning of the year may be used, unless this creates substantial distortions.

(iii) *Limitation on member's portion.* If the aggregate of a member's portions

of COFL and CSLL accounts for a loss category (with respect to one or more income categories) determined under paragraph (c)(2)(ii) of this section exceeds 150 percent of the actual fair market value of the member's foreign assets in the loss category, the member's portion of the COFL or CSLL accounts for the loss category is reduced (proportionately, in the case of multiple accounts) by such excess. In addition, if the aggregate of a member's portions of CODL accounts (with respect to one or more income categories) determined under paragraph (c)(2)(ii) of this section exceeds 150 percent of the actual fair market value of the member's domestic assets, the member's portion of the CODL accounts is reduced (proportionately, in the case of multiple accounts) by such excess. This rule does not apply in the case of COFL or CSLL accounts if the departing member and all other members that cease to be members as part of the same transaction own all (or substantially all) the foreign assets in the loss category. In the case of CODL accounts, this rule does not apply if the departing member and all other members that cease to be members as part of the same transaction own all (or substantially all) the domestic assets.

* * * * *

■ **Par. 16.** Section 1.1502–11 is amended by:

■ 1. Revising and republishing paragraph (a).

■ 2. In paragraph (b)(2)(iii), redesignating *Examples 1* through 3 as paragraphs (b)(2)(iii)(A) through (C), respectively.

■ 3. In newly redesignated paragraphs (b)(2)(iii)(A) through (C), further redesignating the paragraphs in the first column as the paragraphs in the second column:

Old paragraphs	New paragraphs
(b)(2)(iii)(A)(a), (b), and (c).	(b)(2)(iii)(A)(1), (2), and (3).
(b)(2)(iii)(B)(a), (b), (c), and (d).	(b)(2)(iii)(B)(1), (2), (3), and (4).
(b)(2)(iii)(C)(a), (b), (c), (d), and (e).	(b)(2)(iii)(C)(1), (2), (3), (4), and (5).

■ 4. Revising newly redesignated paragraphs (b)(2)(iii)(A)(3) and (b)(2)(iii)(B)(4).

■ 5. Revising and republishing paragraph (c)(7).

The revisions read as follows:

§ 1.1502–11 Consolidated taxable income.

(a) *In general.* The consolidated taxable income (CTI) for a consolidated return year is determined by taking into account:

(1) The separate taxable income of each member of the group (*see* § 1.1502–

12 for the computation of separate taxable income);

(2) Any consolidated net operating loss (CNOL) deduction (*see* § 1.1502–21 for the computation of the CNOL deduction);

(3) Any consolidated capital gain net income (*see* § 1.1502–22 for the computation of consolidated capital gain net income);

(4) Any consolidated section 1231 net loss (*see* § 1.1502–23 for the computation of consolidated section 1231 net loss);

(5) Any consolidated charitable contributions deduction (*see* § 1.1502–24 for the computation of the consolidated charitable contributions deduction); and

(6) Any consolidated dividends received deduction (*see* § 1.1502–26 for the computation of the consolidated dividends received deduction).

(b) * * *

(2) * * *

(iii) * * *

(A) * * *

(3) Because \$30 of S's loss is absorbed in the determination of consolidated taxable income under paragraph (b)(2)(ii) of this section, P's basis in S's stock is reduced under § 1.1502–32(b) from \$500 to \$470 immediately before the disposition. Consequently, P recognizes a \$50 gain from the sale of S's stock and the group has consolidated taxable income of \$50 for Year 1 (P's \$30 of ordinary income and \$50 gain from the sale of S's stock, less the \$30 of S's loss). In addition, S's limited loss of \$50 is treated as a separate net operating loss attributable to S and, because S ceases to be a member, the loss is apportioned to S under § 1.1502–21 and carried to its first separate return year.

(B) * * *

(4) Under paragraph (b)(2)(ii) of this section, S's \$40 ordinary loss from Year 2 that is limited under this paragraph (b) is treated as a separate net operating loss arising in Year 2. Similarly, \$40 of the consolidated net capital loss from Year 1 attributable to S is treated as a separate net capital loss carried over from Year 1. Because S ceases to be a member, the \$40 net operating loss from Year 2 and the \$40 consolidated net capital loss from Year 1 are allocated to S under §§ 1.1502–21 and 1.1502–22, respectively and are carried to S's first separate return year.

* * * * *

(c) * * *

(7) *Effective date.* This paragraph (c) applies to dispositions of subsidiary stock that occur after March 22, 2005.

* * * * *

■ **Par. 17.** Section 1.1502–12 is amended by:

■ a. Revising paragraph (b);

■ b. Removing and reserving paragraphs (e), (g), and (m);

■ c. Revising paragraph (n); and

■ d. Removing and reserving paragraph (q).

The revisions read as follows:

§ 1.1502–12 Separate taxable income.

* * * * *

(b) Any deduction that is disallowed under § 1.1502–15 must be taken into account as provided in that section.

* * * * *

(n) No deduction under section 243(a)(1) or section 245 (relating to deductions with respect to dividends received) is taken into account;

* * * * *

■ **Par. 18.** Section 1.1502–13 is amended by:

■ a. Revising and republishing paragraphs (a)(3)(i), (a)(6)(ii), (c)(4)(i)(B), (c)(5), (d)(3), (e)(1)(v), (f)(5)(ii)(B)(2), (f)(5)(ii)(F), (f)(6)(ii) and (v), (f)(7), and (g)(7)(ii). b. Redesignating paragraphs (h)(2)(v)(a) and (b) as paragraphs (h)(2)(v)(A) and (B).

■ c. Revising paragraph (l)(6).

■ d. Adding paragraphs (l)(8) through (10).

■ e. Removing paragraph (m).

The revisions and additions read as follows:

§ 1.1502–13 Intercompany transactions.

(a) * * *

(3) * * *

(i) *In general.* The timing rules of this section are a method of accounting for intercompany transactions, to be applied by each member in addition to the member's other methods of accounting. *See* §§ 1.1502–17 and 1.446–1(c)(2)(iii). To the extent the timing rules of this section are inconsistent with a member's otherwise applicable methods of accounting, the timing rules of this section control. For example, if S sells property to B in exchange for B's note, the timing rules of this section apply instead of the installment sale rules of section 453. S's or B's application of the timing rules of this section to an intercompany transaction clearly reflects income only if the effect of that transaction as a whole (including, for example, related costs and expenses) on consolidated taxable income is clearly reflected.

* * * * *

(6) * * *

(ii) *Table of examples.* This section contains the following examples:

Rule	General location	Paragraph	Example
(A) Matching rule	§ 1.1502–13(c)(7)(ii)	(A)	Example 1. Intercompany sale of land followed by sale to a nonmember.
		(B)	Example 2. Dealer activities.
		(C)	Example 3. Intercompany section 351 transfer.
		(D)	Example 4. Depreciable property.
		(E)	Example 5. Intercompany sale followed by installment sale.
		(F)	Example 6. Intercompany sale of installment obligation.
		(G)	Example 7. Performance of services.
		(H)	Example 8. Rental of property.
		(I)	Example 9. Intercompany sale of a partnership interest.
		(J)	Example 10. Net operating losses subject to section 382 or the SRLY rules.
		(K)	Example 11. Section 475.
		(L)	Example 12. Section 1092.
		(M)	Example 13. [Reserved]
		(N)	Example 14. Source of income under section 863.
		(O)	Example 15. Section 1248.
		(P)	Example 16. Intercompany stock distribution followed by section 332 liquidation.

Rule	General location	Paragraph	Example
(B) Acceleration rule	§ 1.1502–13(d)(3)	(Q)	Example 17. Intercompany stock sale followed by section 355 distribution.
		(R)	Example 18. Redetermination of attributes for section 250 purposes.
		(i)	Example 1. Becoming a nonmember—timing.
		(ii)	Example 2. Becoming a nonmember—attributes.
		(iii)	Example 3. Selling member's disposition of installment note.
(C) Simplifying rules—inventory	§ 1.1502–13(e)(1)(v)	(iv)	Example 4. Cancellation of debt and attribute reduction under section 108(b).
		(v)	Example 5. Section 481.
		(A)	Example 1. Increment averaging method.
(D) Stock of members	§ 1.1502–13(f)(7)	(B)	Example 2. Increment valuation method.
		(C)	Example 3. Other reasonable inventory methods.
		(i)	Example 1. Dividend exclusion and property distribution.
(E) Obligations of members	§ 1.1502–13(g)(7)(ii)	(ii)	Example 2. Excess loss accounts.
		(iii)	Example 3. Intercompany reorganization.
		(iv)	Example 4. All cash intercompany reorganization under section 368(a)(1)(D).
		(v)	Example 5. Stock redemptions and distributions.
		(vi)	Example 6. Intercompany stock sale followed by section 332 liquidation.
		(vii)	Example 7. Intercompany stock sale followed by section 355 distribution.
		(A)	Example 1. Interest on intercompany obligation.
		(B)	Example 2. Intercompany obligation becomes nonintercompany obligation.
		(C)	Example 3. Loss or bad debt deduction with respect to intercompany obligation.
		(D)	Example 4. Intercompany nonrecognition transactions.
		(E)	Example 5. Assumption of intercompany obligation.
		(F)	Example 6. Extinguishment of intercompany obligation.
		(G)	Example 7. Exchange of intercompany obligations.
		(H)	Example 8. Tax benefit rule.
		(I)	Example 9. Issuance at off-market rate of interest.
(F) Anti-avoidance rules	§ 1.1502–13(h)(2)	(J)	Example 10. Nonintercompany obligation becomes intercompany obligation.
		(K)	Example 11. Notional principal contracts.
		(i)	Example 1. Sale of a partnership interest.
		(ii)	Example 2. Transitory status as an intercompany obligation.
		(iii)	Example 3. Corporate mixing bowl.
(G) Miscellaneous operating rules	§ 1.1502–13(j)(10)	(iv)	Example 4. Partnership mixing bowl.
		(v)	Example 5. Sale and leaseback.
		(vi)	Example 6. Section 163(j) interest limitation.
		(i)	Example 1. Intercompany sale followed by section 351 transfer to member.
		(ii)	Example 2. Intercompany sale of member stock followed by recapitalization.
		(iii)	Example 3. Back-to-back intercompany transactions—matching.
		(iv)	Example 4. Back-to-back intercompany transactions—acceleration.
		(v)	Example 5. Successor group.
		(vi)	Example 6. Liquidation—80% distributee.
		(vii)	Example 7. Liquidation—no 80% distributee.
		(viii)	Example 8. Loan by section 987 QBU.
		(ix)	Example 9. Sale of property by section 987 QBU.

* * * * *

(c) * * *

(4) * * *

(i) * * *

(B) *B controls unreasonable*. To the extent the results under paragraph (c)(4)(i)(A) of this section are inconsistent with treating S and B as divisions of a single corporation, the

attributes of the offsetting items must be redetermined in a manner consistent with treating S and B as divisions of a single corporation. To the extent, however, that B's corresponding item on a separate entity basis is excluded from gross income, is a noncapital, nondeductible amount, or is otherwise permanently disallowed or eliminated,

the attributes of B's corresponding item always control the attributes of S's offsetting intercompany item.

* * * * *

(5) *Special status*. Notwithstanding the general rule of paragraph (c)(1)(i) of this section, to the extent an item's attributes determined under this section

are permitted or not permitted to a member under the Internal Revenue Code or regulations by reason of the member's special status, the attributes required under the Internal Revenue Code or regulations apply to that member's items (but not the other member). For example, if S is a bank to which section 582(c) applies, and sells debt securities at a gain to B, a nonbank, the character of S's intercompany gain is ordinary as required under section 582(c), but the character of B's corresponding item as capital or ordinary is determined under paragraph (c)(1)(i) of this section without the application of section 582(c). For other special status issues, *see*, for example, sections 818(b) (life insurance company treatment of capital gains and losses) and 1503(c) (limitation on absorption of certain losses).

* * * * *

(d) * * *

(3) *Examples.* The acceleration rule of this paragraph (d) is illustrated by the following examples.

(i) *Example 1. Becoming a nonmember—timing—(A) Facts.* S owns land with a basis of \$70. On January 1 of Year 1, S sells the land to B for \$100. On July 1 of Year 3, P sells 60% of S's stock to X for \$60 and, as a result, S becomes a nonmember.

(B) *Matching rule.* Under the matching rule, none of S's \$30 gain is taken into account in Years 1 through 3 because there is no difference between B's \$0 gain or loss taken into account and the recomputed gain or loss.

(C) *Acceleration of S's intercompany items.* Under the acceleration rule of paragraph (d) of this section, S's \$30 gain is taken into account in computing consolidated taxable income (and consolidated tax liability) immediately before the effect of treating S and B as divisions of a single corporation cannot be produced. Because the effect cannot be produced once S becomes a nonmember, S takes its \$30 gain into account in Year 3 immediately before becoming a nonmember. S's gain is reflected under § 1.1502–32 in P's basis in the S stock immediately before P's sale of the stock. Under § 1.1502–32, P's basis in the S stock is increased by \$30, and therefore P's gain is reduced (or loss is increased) by \$18 (60% of \$30). *See also* §§ 1.1502–33 and 1.1502–76(b). (The results would be the same if S sold the land to B in an installment sale to which section 453 would otherwise apply, because S must take its intercompany gain into account under this section.)

(D) *B's corresponding items.* Notwithstanding the acceleration of S's

gain, B continues to take its corresponding items into account under its accounting method. Thus, B's items from the land are taken into account based on subsequent events (for example, its sale of the land).

(E) *Sale of B's stock.* The facts are the same as in paragraph (d)(3)(i)(A) of this section (*Example 1*), except that P sells 60% of B's stock (rather than S stock) to X for \$60 and, as a result, B becomes a nonmember. Because the effect of treating S and B as divisions of a single corporation cannot be produced once B becomes a nonmember, S takes its \$30 gain into account under the acceleration rule immediately before B becomes a nonmember. (The results would be the same if S sold the land to B in an installment sale to which section 453 would otherwise apply, because S must take its intercompany gain into account under this section.)

(F) *Discontinue filing consolidated returns.* The facts are the same as in paragraph (d)(3)(i)(A) of this section (*Example 1*), except that the P group receives permission under § 1.1502–75(c) to discontinue filing consolidated returns beginning in Year 3. Under the acceleration rule, S takes its \$30 gain into account on December 31 of Year 2.

(G) *No subgroups.* The facts are the same as in paragraph (d)(3)(i)(A) of this section (*Example 1*), except that P simultaneously sells all of the stock of both S and B to X (rather than 60% of S's stock), and S and B become members of the X consolidated group. Because the effect of treating S and B as divisions of a single corporation in the P group cannot be produced once S and B become nonmembers, S takes its \$30 gain into account under the acceleration rule immediately before S and B become nonmembers. (Paragraph (j)(5) of this section does not apply to treat the X consolidated group as succeeding to the P group because the X group acquired only the stock of S and B.) However, so long as S and B continue to join with each other in the filing of consolidated returns, B continues to treat S and B as divisions of a single corporation for purposes of determining the attributes of B's corresponding items from the land.

(ii) *Example 2. Becoming a nonmember—attributes—(A) Facts.* S holds land for investment with a basis of \$70. On January 1 of Year 1, S sells the land to B for \$100. B holds the land for sale to customers in the ordinary course of business, and expends substantial resources over a two-year period subdividing, developing, and marketing the land. On July 1 of Year 3, before B has sold any of the land, P sells

60% of S's stock to X for \$60 and, as a result, S becomes a nonmember.

(B) *Attributes.* Under the acceleration rule, the attributes of S's gain are redetermined under the principles of the matching rule as if B sold the land to an affiliated corporation that is not a member of the group for a cash payment equal to B's adjusted basis in the land (because the land continues to be held within the group). Thus, whether S's gain is capital gain or ordinary income depends on the activities of both S and B. Because S and B no longer join with each other in the filing of consolidated returns, the attributes of B's corresponding items (for example, from its subsequent sale of the land) are redetermined under the principles of the matching rule as if the S division (but not the B division) were transferred by the single corporation to an unrelated person at the time of P's sale of the S stock. Thus, B continues to take into account the activities of S with respect to the land before the intercompany transaction.

(C) *Depreciable property.* The facts are the same as in paragraph (d)(3)(ii)(A) of this section (*Example 2*), except that the property sold by S to B is depreciable property. Section 1239 applies to treat all of S's gain as ordinary income because it is taken into account as a result of B's deemed sale of the property to an affiliated corporation that is not a member of the group (a related person within the meaning of section 1239(b)).

(iii) *Example 3. Selling member's disposition of installment note—(A) Facts.* S owns land with a basis of \$70. On January 1 of Year 1, S sells the land to B in exchange for B's \$110 note. The note bears a market rate of interest in excess of the applicable Federal rate, and provides for principal payments of \$55 in Year 4 and \$55 in Year 5. On July 1 of Year 3, S sells B's note to X for \$110.

(B) *Timing.* S's intercompany gain is taken into account under this section, and not under the rules of section 453. Consequently, S's sale of B's note does not result in its intercompany gain from the land being taken into account (for example, under section 453B). The sale does not prevent S's intercompany items and B's corresponding items from being taken into account in determining the group's consolidated taxable income under the matching rule, and X does not reflect any aspect of the intercompany transaction (X has its own cost basis in the note). S will take the intercompany gain into account under the matching rule or acceleration rule based on subsequent events (for example, B's sale of the land). *See also* paragraph (g) of this section for additional rules

applicable to B's note as an intercompany obligation.

(iv) *Example 4. Cancellation of debt and attribute reduction under section 108(b)*—(A) *Facts.* S holds land for investment with a basis of \$0. On January 1 of Year 1, S sells the land to B for \$100. B also holds the land for investment. During Year 3, B is insolvent and B's nonmember creditors discharge \$60 of B's indebtedness. Because of insolvency, B's \$60 discharge is excluded from B's gross income under section 108(a), and B reduces the basis of the land by \$60 under sections 108(b) and 1017.

(B) *Acceleration rule.* As a result of B's basis reduction under section 1017, \$60 of S's intercompany gain will not be taken into account under the matching rule (because there is only a \$40 difference between B's \$40 basis in the land and the \$0 basis the land would have if S and B were divisions of a single corporation). Accordingly, S takes \$60 of its gain into account under the acceleration rule in Year 3. S's gain is long-term capital gain, determined under paragraph (d)(1)(ii) of this section as if B sold the land to an affiliated corporation that is not a member of the group for \$100 immediately before the basis reduction.

(C) *Purchase price adjustment.* Assume instead that S sells the land to B in exchange for B's \$100 purchase money note, B remains solvent, and S subsequently agrees to discharge \$60 of the note as a purchase price adjustment to which section 108(e)(5) applies. Under applicable principles of tax law, \$60 of S's gain and \$60 of B's basis in the land are eliminated and never taken into account. Similarly, the note is not treated as satisfied and reissued under paragraph (g) of this section.

(v) *Example 5. Section 481*—(A) *Facts.* S operates several trades or businesses, including a manufacturing business. S receives permission to change its method of accounting for valuing inventory for its manufacturing business. S increases the basis of its ending inventory by \$100, and the related \$100 positive section 481(a) adjustment is to be taken into account ratably over six taxable years, beginning in Year 1. During Year 3, S sells all of the assets used in its manufacturing business to B at a gain. Immediately after the transfer, B does not use the same inventory valuation method as S. On a separate entity basis, S's sale results in an acceleration of the balance of the section 481(a) adjustment to Year 3.

(B) *Timing and attributes.* Under paragraph (b)(2) of this section, the balance of S's section 481(a) adjustment

accelerated to Year 3 is intercompany income. However, S's \$100 basis increase before the intercompany transaction eliminates the related difference for this amount between B's corresponding items taken into account and the recomputed corresponding items in subsequent periods. Because the accelerated section 481(a) adjustment will not be taken into account in determining the group's consolidated taxable income (and consolidated tax liability) under the matching rule, the balance of S's section 481 adjustment is taken into account under the acceleration rule as ordinary income at the time of the intercompany transaction. (If S's sale had not resulted in accelerating S's section 481(a) adjustment on a separate entity basis, S would have no intercompany income to be taken into account under this section.)

* * * * *

(e) * * *

(1) * * *

(v) *Examples.* The inventory rules of this paragraph (e)(1) are illustrated by the following examples.

(A) *Example 1. Increment averaging method*—(1) *Facts.* Both S and B use a double-extension, dollar-value LIFO inventory method, and both value inventory increments using the earliest acquisitions cost valuation method. During Year 2, S sells 25 units of product Q to B on January 15 at \$10/unit. S sells another 25 units on April 15, on July 15, and on September 15, at \$12/unit. S's earliest cost of product Q is \$7.50/unit and S's most recent cost of product Q is \$8.00/unit. Both S and B have an inventory increment for the year. B's total inventory costs incurred during Year 2 are \$6,000 and the LIFO value of B's Year 2 layer of increment is \$600.

(2) *Intercompany inventory income.* Under paragraph (e)(1)(iii) of this section, S must use a reasonable method of allocating its LIFO inventory costs to intercompany transactions. Because S has an inventory increment for Year 2 and uses the earliest acquisitions cost method, a reasonable method of determining its intercompany cost of goods sold for product Q is to use its most recent costs. Thus, its intercompany cost of goods sold is \$800 (\$8.00 most recent cost, multiplied by 100 units sold to B), and its intercompany inventory income is \$350 (\$1,150 sales proceeds from B minus \$800 cost).

(3) *Timing.* (i) Under the increment averaging method of paragraph (e)(1)(ii)(B) of this section, \$35 of S's \$350 of intercompany inventory income

is not taken into account in Year 2, computed as follows: LIFO value of B's Year 2 layer of increment/B's total inventory costs for year 2, or \$600/\$6,000 = 10%. 10% × S's \$350 intercompany inventory income = \$35.

(ii) Thus, \$315 of S's intercompany inventory income is taken into account in Year 2 (\$350 of total intercompany inventory income minus \$35 not taken into account).

(4) *S incurs a decrement.* The facts are the same as in paragraph (e)(1)(v)(A)(1) of this section (*Example 1*), except that in Year 2, S incurs a decrement equal to 50% of its Year 1 layer. Under paragraph (e)(1)(iii) of this section, S must reasonably allocate the LIFO cost of the decrement to the cost of goods sold to B to determine S's intercompany inventory income.

(5) *B incurs a decrement.* The facts are the same as in paragraph (e)(1)(v)(A)(1) of this section (*Example 1*), except that B incurs a decrement in Year 2. S must take into account the entire \$350 of Year 2 intercompany inventory income because all 100 units of product Q are deemed sold by B in Year 2.

(B) *Example 2. Increment valuation method*—(1) *Facts.* The facts are the same as in paragraph (e)(1)(v)(A)(1) of this section (*Example 1*). In addition, B's use of the earliest acquisition's cost method of valuing its increments results in B valuing its year-end inventory using costs incurred from January through March. B's costs incurred during the year are: \$1,428 in the period January through March; \$1,498 in the period April through June; \$1,524 in the period July through September; and \$1,550 in the period October through December. S's intercompany inventory income for these periods is: \$50 in the period January through March ((25 × \$10) – (25 × \$8)); \$100 in the period April through June ((25 × \$12) – (25 × \$8)); \$100 in the period July through September ((25 × \$12) – (25 × \$8)); and \$100 in the period October through December ((25 × \$12) – (25 × \$8)).

(2) *Timing.* (i) Under the increment valuation method of paragraph (e)(1)(ii)(C) of this section, \$21 of S's \$350 of intercompany inventory income is not taken into account in Year 2, computed as follows: LIFO value of B's Year 2 layer of increment/B's total inventory costs from January through March of Year 2, or \$600/\$1,428 = 42%. 42% × S's \$50 intercompany inventory income for the period from January through March = \$21.

(ii) Thus, \$329 of S's intercompany inventory income is taken into account in Year 2 (\$350 of total intercompany inventory income minus \$21 not taken into account).

(3) *B incurs a subsequent decrement.* The facts are the same as in paragraph (e)(1)(v)(B)(1) of this section (*Example 2*). In addition, assume that in Year 3, B experiences a decrement in its pool that receives intercompany purchases from S. B's decrement equals 20% of the base-year costs for its Year 2 layer. The fact that B has incurred a decrement means that all of its inventory costs incurred for Year 3 are included in cost of goods sold. As a result, S takes into account its entire amount of intercompany inventory income from its Year 3 sales. In addition, S takes into account \$4.20 of its Year 2 layer of intercompany inventory income not already taken into account (20% of \$21).

(C) *Example 3. Other reasonable inventory methods—(1) Facts.* Both S and B use a dollar-value LIFO inventory method for their inventory transactions. During Year 1, S sells inventory to B and to X. Under paragraph (e)(1)(iv) of this section, to compute its intercompany inventory income and the amount of this income not taken into account, S computes its intercompany inventory income using the transfer price of the inventory items less a FIFO cost for the goods, takes into account these items based on a FIFO cost flow assumption for B's corresponding items, and the LIFO methods used by S and B are ignored for these computations. These computations are comparable to the methods used by S and B for financial reporting purposes, and the book methods and results are used for tax purposes. S adjusts the amount of intercompany inventory items not taken into account as required by section 263A.

(2) *Reasonable method.* The method used by S is a reasonable method under paragraph (e)(1)(iv) of this section if the cumulative amount of intercompany inventory items not taken into account by S is not significantly greater than the cumulative amount that would not be taken into account under the methods specifically described in paragraph (e)(1) of this section. If, for any year, the method results in a cumulative amount of intercompany inventory items not taken into account by S that significantly exceeds the cumulative amount that would not be taken into account under the methods specifically provided, S must take into account for that year the amount necessary to eliminate the excess. The method is thereafter applied with appropriate adjustments to reflect the amount taken into account (for example, to prevent the amount from being taken into account more than once).

(f) * * *
(5) * * *
(ii) * * *
(B) * * *

(2) *Time limitation and adjustments.* The transfer of old T's assets to new T qualifies under paragraph (f)(5)(ii)(B)(1) of this section only if B has entered into a written plan, on or before the due date of the group's consolidated income tax return (including extensions) for the tax year that includes the date of old T's liquidation, to transfer the old T assets to new T, and the statement described in paragraph (f)(5)(ii)(E) of this section is included on or with a timely filed consolidated income tax return (including extensions) for the tax year that includes the date of the liquidation. The transfer of substantially all of T's assets to new T must be completed within 12 months of the filing of the return. Appropriate adjustments are made to reflect any events occurring before the formation of new T and to reflect any assets not transferred to new T, or liabilities not assumed by new T. For example, if B retains an asset of old T, the asset is treated under paragraph (f)(3) of this section as acquired by new T but distributed to B immediately after the reorganization.

* * * * *

(F) *Applicability date.* Paragraphs (f)(5)(ii)(B)(1) and (2) of this section apply to transactions in which old T's liquidation into B occurs on or after October 25, 2007.

(6) * * *

(ii) *Gain stock.* For dispositions of P stock, see § 1.1032–3.

* * * * *

(v) *Applicability date.* This paragraph (f)(6) applies to gain or loss taken into account on or after July 12, 1995, and to transactions occurring on or after July 12, 1995.

(7) *Examples—In general.* The application of this section to intercompany transactions with respect to stock of members is illustrated by the following examples.

(i) *Example 1. Dividend exclusion and property distribution—(A) Facts.* S owns land with a \$70 basis and \$100 value. On January 1 of Year 1, P's basis in S's stock is \$100. During Year 1, S declares and makes a dividend distribution of the land to P. Under section 311(b), S has a \$30 gain. Under section 301(d), P's basis in the land is \$100. On July 1 of Year 3, P sells the land to X for \$110.

(B) *Dividend elimination and stock basis adjustments.* Under paragraph (b)(1) of this section, S's distribution to P is an intercompany distribution. Under paragraph (f)(2)(ii) of this section, P's \$100 of dividend income is not

included in gross income. Under § 1.1502–32, P's basis in S's stock is reduced from \$100 to \$0 in Year 1.

(C) *Matching rule and stock basis adjustments.* Under the matching rule (treating P as the buying member and S as the selling member), S takes its \$30 gain into account in Year 3 to reflect the \$30 difference between P's \$10 gain taken into account and the \$40 recomputed gain. Under § 1.1502–32, P's basis in S's stock is increased from \$0 to \$30 in Year 3.

(D) *Loss property.* The facts are the same as in paragraph (f)(7)(i)(A) of this section (*Example 1*), except that S has a \$130 (rather than \$70) basis in the land. Under paragraph (f)(2)(iii) of this section, the principles of section 311(b) apply to S's loss from the intercompany distribution. Thus, S has a \$30 loss that is taken into account under the matching rule in Year 3 to reflect the \$30 difference between P's \$10 gain taken into account and the \$20 recomputed loss. (The results are the same under section 267(f).) Under § 1.1502–32, P's basis in S's stock is reduced from \$100 to \$0 in Year 1, and from \$0 to a \$30 excess loss account in Year 3. (If P had distributed the land to its shareholders, rather than selling the land to X, P would take its \$10 gain under section 311(b) into account, and S would take its \$30 loss into account under the matching rule with \$10 offset by P's gain and \$20 recharacterized as a noncapital, nondeductible amount.)

(E) *Entitlement rule.* The facts are the same as in paragraph (f)(7)(i)(A) of this section (*Example 1*), except that, after P becomes entitled to the distribution but before the distribution is made, S issues additional stock to the public and becomes a nonmember. Under paragraph (f)(2)(i) of this section, the determination of whether a distribution is an intercompany distribution is made under the entitlement rule of paragraph (f)(2)(iv) of this section. Treating S's distribution as made when P becomes entitled to it results in the distribution being an intercompany distribution. Under paragraph (f)(2)(ii) of this section, the distribution is not included in P's gross income. S's \$30 gain from the distribution is intercompany gain that is taken into account under the acceleration rule immediately before S becomes a nonmember. Thus, there is a net \$70 decrease in P's basis in its S stock under § 1.1502–32 (\$100 decrease for the distribution and a \$30 increase for S's \$30 gain). Under paragraph (f)(2)(iv) of this section, P does not take the distribution into account again under separate return rules when received, and P is not entitled to a dividends received deduction.

* * * * *

(ii) *Example 2. Excess loss accounts—*(A) *Facts.* S owns all of T's only class of stock with a \$10 basis and \$100 value. S has substantial earnings and profits, and T has \$10 of earnings and profits. On January 1 of Year 1, S declares and distributes a dividend of all of the T stock to P. Under section 311(b), S has a \$90 gain. Under section 301(d), P's basis in the T stock is \$100. During Year 3, T borrows \$90 and declares and makes a \$90 distribution to P to which section 301 applies, and P's basis in the T stock is reduced under § 1.1502–32 from \$100 to \$10. During Year 6, T has \$5 of earnings that increase P's basis in the T stock under § 1.1502–32 from \$10 to \$15. On December 1 of Year 9, T issues additional stock to X and, as a result, T becomes a nonmember.

(B) *Dividend exclusion.* Under paragraph (f)(2)(ii) of this section, P's \$100 of dividend income from S's distribution of the T stock, and its \$10 of dividend income from T's \$90 distribution, are not included in gross income.

(C) *Matching and acceleration rules.* Under § 1.1502–19(b)(1), when T becomes a nonmember P must include in income the amount of its excess loss account (if any) in T stock. P has no excess loss account in the T stock. Therefore P's corresponding item from the deconsolidation of T is \$0. Treating S and P as divisions of a single corporation, the T stock would continue to have a \$10 basis after the distribution, and the adjustments under § 1.1502–32 for T's \$90 distribution and \$5 of earnings would result in a \$75 excess loss account. Thus, the recomputed corresponding item from the deconsolidation is \$75. Under the matching rule, S takes \$75 of its \$90 gain into account in Year 9 as a result of T becoming a nonmember, to reflect the difference between P's \$0 gain taken into account and the \$75 recomputed gain. S's remaining \$15 of gain is taken into account under the matching and acceleration rules based on subsequent events (for example, under the matching rule if P subsequently sells its T stock, or under the acceleration rule if S becomes a nonmember).

(D) *Reverse sequence.* The facts are the same as in paragraph (f)(7)(ii)(A) of this section (*Example 2*), except that T borrows \$90 and makes its \$90 distribution to S before S distributes T's stock to P. Under paragraph (f)(2)(ii) of this section, T's \$90 distribution to S (\$10 of which is a dividend) is not included in S's gross income. The corresponding negative adjustment under § 1.1502–32 reduces S's basis in the T stock from \$10 to an \$80 excess

loss account. Under section 311(b), S has a \$90 gain from the distribution of T stock to P. Under section 301(d) P's initial basis in the T stock is \$10 (the stock's fair market value), and the basis increases to \$15 under § 1.1502–32 as a result of T's earnings in Year 6. The timing and attributes of S's gain are determined in the manner provided in paragraph (f)(7)(ii)(C) of this section (*Example 2*). Thus, \$75 of S's gain is taken into account under the matching rule in Year 9 as a result of T becoming a nonmember, and the remaining \$15 is taken into account under the matching and acceleration rules based on subsequent events.

(E) *Partial stock sale.* The facts are the same as in paragraph (f)(7)(ii)(A) of this section (*Example 2*), except that P sells 10% of T's stock to X on December 1 of Year 9 for \$1.50 (rather than T's issuing additional stock and becoming a nonmember). Under the matching rule, S takes \$9 of its gain into account to reflect the difference between P's \$0 gain taken into account (\$1.50 sale proceeds minus \$1.50 basis) and the \$9 recomputed gain (\$1.50 sale proceeds plus \$7.50 excess loss account).

(F) *Loss, rather than cash distribution.* The facts are the same as in paragraph (f)(7)(ii)(A) of this section (*Example 2*), except that T retains the loan proceeds and incurs a \$90 loss in Year 3 that is absorbed by the group. The timing and attributes of S's gain are determined in the same manner provided in paragraph (f)(7)(ii)(C) of this section (*Example 2*). Under § 1.1502–32, the loss in Year 3 reduces P's basis in the T stock from \$100 to \$10, and T's \$5 of earnings in Year 6 increase the basis to \$15. Thus, \$75 of S's gain is taken into account under the matching rule in Year 9 as a result of T becoming a nonmember, and the remaining \$15 is taken into account under the matching and acceleration rules based on subsequent events. (The timing and attributes of S's gain would be determined in the same manner provided in paragraph (f)(7)(ii)(D) of this section (*Example 2*) if T incurred the \$90 loss before S's distribution of the T stock to P.)

(G) *Stock sale, rather than stock distribution.* The facts are the same as in paragraph (f)(7)(ii)(A) of this section (*Example 2*), except that S sells the T stock to P for \$100 (rather than distributing the stock). The timing and attributes of S's gain are determined in the same manner provided in paragraph (f)(7)(ii)(C) of this section (*Example 2*). Thus, \$75 of S's gain is taken into account under the matching rule in Year 9 as a result of T becoming a nonmember, and the remaining \$15 is taken into account under the matching

and acceleration rules based on subsequent events.

(iii) *Example 3. Intercompany reorganization—*(A) *Facts.* P forms S and B by contributing \$200 to the capital of each. During Years 1 through 4, S and B each earn \$50, and under § 1.1502–32 P adjusts its basis in the stock of each to \$250. (See § 1.1502–33 for adjustments to earnings and profits.) On January 1 of Year 5, the fair market value of S's assets and its stock is \$500, and S merges into B in a tax-free reorganization. Pursuant to the plan of reorganization, P receives B stock with a fair market value of \$350 and \$150 of cash.

(B) *Treatment as a section 301 distribution.* The merger of S into B is a transaction to which paragraph (f)(3) of this section applies. P is treated as receiving additional B stock with a fair market value of \$500 and, under section 358, a basis of \$250. Immediately after the merger, \$150 of the stock received is treated as redeemed, and the redemption is treated under section 302(d) as a distribution to which section 301 applies. Because the \$150 distribution is treated as not received as part of the merger, section 356 does not apply and no basis adjustments are required under section 358(a)(1)(A) and (B). Because B is treated under section 381(c)(2) as receiving S's earnings and profits and the redemption is treated as occurring after the merger, \$100 of the distribution is treated as a dividend under section 301 and P's basis in the B stock is reduced correspondingly under § 1.1502–32. The remaining \$50 of the distribution reduces P's basis in the B stock. Section 301(c)(2) and § 1.1502–32. Under paragraph (f)(2)(ii) of this section, P's \$100 of dividend income is not included in gross income. Under § 1.302–2(c), proper adjustments are made to P's basis in its B stock to reflect its basis in the B stock redeemed, with the result that P's basis in the B stock is reduced by the entire \$150 distribution.

(C) *Depreciated property.* The facts are the same as in paragraph (f)(7)(iii)(A) of this section (*Example 3*), except that property of S with a \$200 basis and \$150 fair market value is distributed to P (rather than cash of B). As in paragraph (f)(7)(iii)(B) of this section (*Example 3*), P is treated as receiving additional B stock in the merger and a \$150 distribution to which section 301 applies immediately after the merger. Under paragraph (f)(2)(iii) of this section, the principles of section 311(b) apply to B's \$50 loss and the loss is taken into account under the matching and acceleration rules based on subsequent events (for example, under

the matching rule if P subsequently sells the property, or under the acceleration rule if B becomes a nonmember). The results are the same under section 267(f).

(D) *Divisive transaction.* Assume instead that, pursuant to a plan, S distributes the stock of a lower-tier subsidiary in a spin-off transaction to which section 355 applies together with \$150 of cash. The distribution of stock is a transaction to which paragraph (f)(3) of this section applies. P is treated as receiving the \$150 of cash immediately before the section 355 distribution, as a distribution to which section 301 applies. Section 356(b) does not apply and no basis adjustments are required under section 358(a)(1) (A) and (B). Because the \$150 distribution is treated as made before the section 355 distribution, the distribution reduces P's basis in the S stock under § 1.1502–32, and the basis allocated under section 358(c) between the S stock and the lower-tier subsidiary stock received reflects this basis reduction.

(iv) *Example 4. All cash intercompany reorganization under section 368(a)(1)(D).*—(A) *Facts.* P owns all of the stock of M and B. M owns all of the stock of S with a basis of \$25. On January 1 of Year 2, the fair market value of S's assets and its stock is \$100, and S sells all of its assets to B for \$100 cash and liquidates. The transaction qualifies as a reorganization described in section 368(a)(1)(D). Pursuant to § 1.368–2(l), B will be deemed to issue a nominal share of B stock to S in addition to the \$100 of cash actually exchanged for the S assets, and S will be deemed to distribute all of the consideration to M. M will be deemed to distribute the nominal share of B stock to P.

(B) *Treatment as a section 301 distribution.* The sale of S's assets to B is a transaction to which paragraph (f)(3) of this section applies. In addition to the nominal share issued by B to S under § 1.368–2(l), S is treated as receiving additional B stock with a fair market value of \$100 (in lieu of the \$100) and, under section 358, a basis of \$25 which S distributes to M in liquidation. Immediately after the sale, the B stock (with the exception of the nominal share which is still held by M) received by M is treated as redeemed for \$100, and the redemption is treated under section 302(d) as a distribution to which section 301 applies. M's basis of \$25 in the B stock is reduced under § 1.1502–32(b)(3)(v), resulting in an excess loss account of \$75 in the nominal share. (See § 1.302–2(c)). M's deemed distribution of the nominal share of B stock to P under § 1.368–2(l) will result

in M generating an intercompany gain under section 311(b) of \$75, to be subsequently taken into account under the matching and acceleration rules.

(v) *Example 5. Stock redemptions and distributions.*—(A) *Facts.* Before becoming a member of the P group, S owns P stock with a \$30 basis. On January 1 of Year 1, P buys all of S's stock. On July 1 of Year 3, P redeems the P stock held by S for \$100 in a transaction to which section 302(a) applies.

(B) *Gain under section 302.* Under paragraph (f)(4) of this section, P's basis in the P stock acquired from S is treated as eliminated. As a result of this elimination, S's intercompany item will never be taken into account under the matching rule because P's basis in the stock does not reflect S's intercompany item. Therefore, S's \$70 gain is taken into account under the acceleration rule in Year 3. The attributes of S's item are determined under paragraph (d)(1)(ii) of this section by applying the matching rule as if P had sold the stock to an affiliated corporation that is not a member of the group at no gain or loss. Although P's corresponding item from a sale of its stock would have been excluded from gross income under section 1032, paragraph (c)(6)(ii) of this section prevents S's gain from being treated as excluded from gross income; instead S's gain is capital gain.

(C) *Gain under section 311.* The facts are the same as in paragraph (f)(7)(v)(A) of this section (*Example 5*), except that S distributes the P stock to P in a transaction to which section 301 applies (rather than the stock being redeemed), and S has a \$70 gain under section 311(b). The timing and attributes of S's gain are determined in the manner provided in paragraph (f)(7)(v)(B) of this section (*Example 5*).

(D) *Loss stock.* The facts are the same as in paragraph (f)(7)(v)(A) of this section (*Example 5*), except that S has a \$130 (rather than \$30) basis in the P stock and has a \$30 loss under section 302(a). The limitation under paragraph (c)(6)(ii) of this section does not apply to intercompany losses. Thus, S's loss is taken into account in Year 3 as a noncapital, nondeductible amount.

(vi) *Example 6. Intercompany stock sale followed by section 332 liquidation.*—(A) *Facts.* S owns all of the stock of T, with a \$70 basis and \$100 value, and T's assets have a \$10 basis and \$100 value. On January 1 of Year 1, S sells all of T's stock to B for \$100. On July 1 of Year 3, when T's assets are still worth \$100, T distributes all of its assets to B in an unrelated complete liquidation to which section 332 applies.

(B) *Timing and attributes.* Under paragraph (b)(3)(ii) of this section, B's unrecognized gain or loss under section 332 is a corresponding item for purposes of applying the matching rule. In Year 3 when T liquidates, B has \$0 of unrecognized gain or loss under section 332 because B has a \$100 basis in the T stock and receives a \$100 distribution with respect to its T stock. Treating S and B as divisions of a single corporation, the recomputed corresponding item would have been \$30 of unrecognized gain under section 332 because B would have succeeded to S's \$70 basis in the T stock. Thus, under the matching rule, S's \$30 intercompany gain is taken into account in Year 3 as a result of T's liquidation. Under paragraph (c)(1)(i) of this section, the attributes of S's gain and B's corresponding item are redetermined as if S and B were divisions of a single corporation. Although S's gain ordinarily would be redetermined to be treated as excluded from gross income to reflect the nonrecognition of B's gain under section 332, S's gain remains capital gain because B's unrecognized gain under section 332 is not permanently and explicitly disallowed under the Code. See paragraph (c)(6)(ii) of this section. However, relief may be elected under paragraph (f)(5)(ii) of this section.

(C) *Intercompany sale at a loss.* The facts are the same as in paragraph (f)(7)(vi)(A) of this section (*Example 6*), except that S has a \$130 (rather than \$70) basis in the T stock. The limitation under paragraph (c)(6)(ii) of this section does not apply to intercompany losses. Thus, S's intercompany loss is taken into account in Year 3 as a noncapital, nondeductible amount. However, relief may be elected under paragraph (f)(5)(ii) of this section.

(vii) *Example 7. Intercompany stock sale followed by section 355 distribution.*—(A) *Facts.* S owns all of the stock of T with a \$70 basis and a \$100 value. On January 1 of Year 1, S sells all of T's stock to M for \$100. On June 1 of Year 6, M distributes all of its T stock to its nonmember shareholders in a transaction to which section 355 applies. At the time of the distribution, M has a basis in T stock of \$100 and T has a value of \$150.

(B) *Timing and attributes.* Under paragraph (b)(3)(ii) of this section, M's \$50 gain not recognized on the distribution under section 355 is a corresponding item. Treating S and M as divisions of a single corporation, the recomputed corresponding item would be \$80 of unrecognized gain under section 355 because M would have succeeded to S's \$70 basis in the T

stock. Thus, under the matching rule, S's \$30 intercompany gain is taken into account in Year 6 as a result of the distribution. Under paragraph (c)(1)(i) of this section, the attributes of S's intercompany item and M's corresponding item are redetermined to produce the same effect on consolidated taxable income as if S and M were divisions of a single corporation.

Although S's gain ordinarily would be redetermined to be treated as excluded from gross income to reflect the nonrecognition of M's gain under section 355(c), S's gain remains capital gain because M's unrecognized gain under section 355(c) is not permanently and explicitly disallowed under the Code. See paragraph (c)(6)(ii) of this section. Because M's distribution of the T stock is not an intercompany transaction, relief is not available under paragraph (f)(5)(ii) of this section.

(C) *Section 355 distribution within the group.* The facts are the same as under paragraph (f)(7)(vii)(A) of this section (*Example 7*), except that M distributes the T stock to B (another member of the group), and B takes a \$75 basis in the T stock under section 358. Under paragraph (j)(2) of this section, B is a successor to M for purposes of taking S's intercompany gain into account, and therefore both M and B might have corresponding items with respect to S's intercompany gain. To the extent it is possible, matching with respect to B's corresponding items produces the result most consistent with treating S, M, and B as divisions of a single corporation. See paragraphs (j)(3) and (j)(4) of this section. However, because there is only \$5 difference between B's \$75 basis in the T stock and the \$70 basis the stock would have if S, M, and B were divisions of a single corporation, only \$5 can be taken into account under the matching rule with respect to B's corresponding items. (This \$5 is taken into account with respect to B's corresponding items based on subsequent events.) The remaining \$25 of S's \$30 intercompany gain is taken into account in Year 6 under the matching rule with respect to M's corresponding item from its distribution of the T stock. The attributes of S's remaining \$25 of gain are determined in the same manner as in paragraph (f)(7)(vii)(B) of this section (*Example 7*).

(D) *Relief elected.* The facts are the same as in paragraph (f)(7)(vii)(C) of this section (*Example 7*) except that P elects relief pursuant to paragraph (f)(5)(ii)(D) of this section. As a result of the election, M's distribution of the T stock is treated as subject to sections 301 and 311 instead of section 355. Accordingly, M recognizes \$50 of intercompany gain

from the distribution, B takes a basis in the stock equal to its fair market value of \$150, and S and M take their intercompany gains into account with respect to B's corresponding items based on subsequent events. (None of S's gain is taken into account in Year 6 as a result of M's distribution of the T stock.)

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(g) * * *

(7) *Examples*—(i) *In general.* For purposes of the examples in this paragraph (g), unless otherwise stated, interest is qualified stated interest under § 1.1273–1(c), and the intercompany obligations are capital assets and are not subject to section 475.

(ii) The application of this section to obligations of members is illustrated by the following examples:

(A) *Example 1. Interest on intercompany obligation*—(1) *Facts.* On January 1 of year 1, B borrows \$100 from S in return for B's note providing for \$10 of interest annually at the end of each year, and repayment of \$100 at the end of year 5. B fully performs its obligations. Under their separate entity methods of accounting, B accrues a \$10 interest deduction annually under section 163, and S accrues \$10 of interest income annually under section 61(a)(4) and § 1.446–2.

(2) *Matching rule.* Under paragraph (b)(1) of this section, the accrual of interest on B's note is an intercompany transaction. Under the matching rule, S takes its \$10 of income into account in each of years 1 through 5 to reflect the \$10 difference between B's \$10 of interest expense taken into account and the \$0 recomputed expense. S's income and B's deduction are ordinary items. (Because S's intercompany item and B's corresponding item would both be ordinary on a separate entity basis, the attributes are not redetermined under paragraph (c)(1)(i) of this section.)

(3) *Original issue discount.* The facts are the same as in paragraph (g)(7)(ii)(A)(1) of this section (*Example 1*), except that B borrows \$90 (rather than \$100) from S in return for B's note providing for \$10 of interest annually and repayment of \$100 at the end of year 5. The principles described in paragraph (g)(7)(ii)(A)(2) of this section (*Example 1*) for stated interest also apply to the \$10 of original issue discount. Thus, as B takes into account its corresponding expense under section 163(e), S takes into account its intercompany income under section 1272. S's income and B's deduction are ordinary items.

(4) *Tax-exempt income.* The facts are the same as in paragraph (g)(7)(ii)(A)(1) of this section (*Example 1*), except that

B's borrowing from S is allocable under section 265 to B's purchase of state and local bonds to which section 103 applies. The timing of S's income is the same as in paragraph (g)(7)(ii)(A)(2) of this section (*Example 1*). Under paragraph (c)(4)(i) of this section, the attributes of B's corresponding item of disallowed interest expense control the attributes of S's offsetting intercompany interest income. Paragraph (c)(6) of this section does not prevent the redetermination of S's intercompany item as excluded from gross income because section 265(a)(2) permanently and explicitly disallows B's corresponding deduction and because, under paragraph (g)(4)(i)(B) of this section, paragraph (c)(6)(ii) of this section does not apply to prevent any intercompany income from the B note from being excluded from gross income. Accordingly, S's intercompany income is treated as excluded from gross income.

(B) *Example 2. Intercompany obligation becomes nonintercompany obligation*—(1) *Facts.* On January 1 of year 1, B borrows \$100 from S in return for B's note providing for \$10 of interest annually at the end of each year, and repayment of \$100 at the end of year 5. As of January 1 of year 3, B has paid the interest accruing under the note and S sells B's note to X for \$70, reflecting an increase in prevailing market interest rates. B is never insolvent within the meaning of section 108(d)(3).

(2) *Deemed satisfaction and reissuance.* Because the B note becomes an obligation that is not an intercompany obligation, the transaction is a triggering transaction under paragraph (g)(3)(i)(A)(2) of this section. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued for its fair market value of \$70 immediately before S's sale to X. As a result of the deemed satisfaction of the note for less than its adjusted issue price, B takes into account \$30 of discharge of indebtedness income under § 1.61–12. On a separate entity basis, S's \$30 loss would be a capital loss under section 1271(a)(1). Under the matching rule, however, the attributes of S's intercompany item and B's corresponding item must be redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of B's \$30 of discharge of indebtedness income control the attributes of S's loss. Thus, S's loss is treated as ordinary loss. B is also treated as reissuing, immediately after the satisfaction, a new note to S with a \$70 issue price, a \$100 stated

redemption price at maturity, and a \$70 basis in the hands of S. S is then treated as selling the new note to X for the \$70 received by S in the actual transaction. Because S has a basis of \$70 in the new note, S recognizes no gain or loss from the sale to X. After the sale, the new note held by X is not an intercompany obligation, it has a \$70 issue price, a \$100 stated redemption price at maturity, and a \$70 basis. The \$30 of original issue discount will be taken into account by B and X under sections 163(e) and 1272.

(3) *Creditor deconsolidation.* The facts are the same as in paragraph (g)(7)(ii)(B)(1) of this section (*Example 2*), except that P sells S's stock to X (rather than S selling B's note to X). Because the B note becomes an obligation that is not an intercompany obligation, the transaction is a triggering transaction under paragraph (g)(3)(i)(A)(2) of this section. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued for its \$70 fair market value immediately before S becomes a nonmember. The treatment of S's \$30 of loss and B's \$30 of discharge of indebtedness income is the same as in paragraph (g)(7)(ii)(B)(2) of this section (*Example 2*). The new note held by S upon deconsolidation is not an intercompany obligation, it has a \$70 issue price, a \$100 stated redemption price at maturity, and a \$70 basis. The \$30 of original issue discount will be taken into account by B and S under sections 163(e) and 1272.

(4) *Debtor deconsolidation.* The facts are the same as in paragraph (g)(7)(ii)(B)(1) of this section (*Example 2*), except that P sells B's stock to X (rather than S selling B's note to X). The results to S and B are the same as in paragraph (g)(7)(ii)(B)(3) of this section (*Example 2*).

(5) *Subgroup exception.* The facts are the same as in paragraph (g)(7)(ii)(B)(1) of this section (*Example 2*), except that P owns all of the stock of S, S owns all of the stock of B, and P sells all of the S stock to X, the parent of another consolidated group. Because B and S, members of an intercompany obligation subgroup, cease to be members of the P group in a transaction that does not cause either member to recognize an item with respect to the B note, and such members constitute an intercompany obligation subgroup in the X group, P's sale of S stock is not a triggering transaction under paragraph (g)(3)(i)(B)(8) of this section, and the note is not treated as satisfied and reissued under paragraph (g)(3)(ii) of this section. After the sale, the note held by S has a \$100 issue price, a \$100

stated redemption price at maturity, and a \$100 basis. The results are the same if the S stock is sold to an individual and the S-B affiliated group elects to file a consolidated return for the period beginning on the day after S and B cease to be members of the P group.

(6) *Section 338 election.* The facts are the same as in paragraph (g)(7)(ii)(B)(1) of this section (*Example 2*), except that P sells S's stock to X and a section 338 election is made with respect to the stock sale. Under section 338, S is treated as selling all of its assets to new S, including the B note, at the close of the acquisition date. The aggregate deemed sales price (within the meaning of § 1.338-4) allocated to the B note is \$70. Because the B note becomes an obligation that is not an intercompany obligation, the transaction is a triggering transaction under paragraph (g)(3)(i)(A)(2) of this section. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued immediately before S's deemed sale to new S for \$70, the amount realized with respect to the note (the aggregate deemed sales price allocated to the note under § 1.338-6). The results to S and B are the same as in paragraph (g)(7)(ii)(B)(2) of this section (*Example 2*).

(7) *Appreciated note.* The facts are the same as in paragraph (g)(7)(ii)(B)(1) of this section (*Example 2*), except that S sells B's note to X for \$130 (rather than \$70), reflecting a decline in prevailing market interest rates. Because the B note becomes an obligation that is not an intercompany obligation, the transaction is a triggering transaction under paragraph (g)(3)(i)(A)(2) of this section. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued for its fair market value of \$130 immediately before S's sale to X. As a result of the deemed satisfaction of the note for more than its adjusted issue price, B takes into account \$30 of repurchase premium under § 1.163-7(c). On a separate entity basis, S's \$30 gain would be a capital gain under section 1271(a)(1). Under the matching rule, however, the attributes of S's intercompany item and B's corresponding item must be redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of B's premium deduction control the attributes of S's gain. Accordingly, S's gain is treated as ordinary income. B is also treated as reissuing, immediately after the satisfaction, a new note to S with a \$130 issue price, \$100 stated redemption price at maturity, and \$130

basis in the hands of S. S is then treated as selling the new note to X for the \$130 received by S in the actual transaction. Because S has a basis of \$130 in the new note, S recognizes no gain or loss from the sale to X. After the sale, the new note held by X is not an intercompany obligation, it has a \$130 issue price, a \$100 stated redemption price at maturity, and a \$130 basis. The treatment of B's \$30 of bond issuance premium under the new note is determined under § 1.163-13.

(8) *Deferral of loss or deduction with respect to nonmember indebtedness acquired in debt exchange.* The facts are the same as in paragraph (g)(7)(ii)(B)(1) of this section (*Example 2*), except that S sells B's note to X for a non-publicly traded X note with an issue price and face amount of \$100 and a fair market value of \$70, and that, subsequently, S sells the X note for \$70. Because the B note becomes an obligation that is not an intercompany obligation, the transaction is a triggering transaction under paragraph (g)(3)(i)(A)(2) of this section. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued immediately before S's sale to X for \$100, the amount realized with respect to the note (determined under section 1274). As a result of the deemed satisfaction, neither S nor B take into account any items of income, gain, deduction, or loss. S is then treated as selling the new B note to X for the X note received by S in the actual transaction. Because S has a basis of \$100 in the new note, S recognizes no gain or loss from the sale to X. After the sale, the new B note held by X is not an intercompany obligation, it has a \$100 issue price, a \$100 stated redemption price at maturity, and a \$100 basis. S also holds an X note with a basis of \$100 but a fair market value of \$70. When S disposes of the X note, S's loss on the disposition is deferred under paragraph (g)(4)(iv) of this section, until B retires its note (the former intercompany obligation in the hands of X).

(C) *Example 3. Loss or bad debt deduction with respect to intercompany obligation—(1) Facts.* On January 1 of year 1, B borrows \$100 from S in return for B's note providing for \$10 of interest annually at the end of each year, and repayment of \$100 at the end of year 5. On January 1 of year 3, the fair market value of the B note has declined to \$60 and S sells the B note to P for property with a fair market value of \$60. B is never insolvent within the meaning of section 108(d)(3). The B note is not a security within the meaning of section 165(g)(2).

(2) *Deemed satisfaction and reissuance.* Because S realizes an amount of loss from the assignment of the B note, the transaction is a triggering transaction under paragraph (g)(3)(i)(A)(1) of this section. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued for its fair market value of \$60 immediately before S's sale to P. As a result of the deemed satisfaction of the note for less than its adjusted issue price (\$100), B takes into account \$40 of discharge of indebtedness income under § 1.61–12. On a separate entity basis, S's \$40 loss would be a capital loss under section 1271(a)(1). Under the matching rule, however, the attributes of S's intercompany item and B's corresponding item must be redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of B's \$40 of discharge of indebtedness income control the attributes of S's loss. Thus, S's loss is treated as ordinary loss. B is also treated as reissuing, immediately after the satisfaction, a new note to S with a \$60 issue price, \$100 stated redemption price at maturity, and \$60 basis in the hands of S. S is then treated as selling the new note to P for the \$60 of property received by S in the actual transaction. Because S has a basis of \$60 in the new note, S recognizes no gain or loss from the sale to P. After the sale, the note is an intercompany obligation, it has a \$60 issue price and a \$100 stated redemption price at maturity, and the \$40 of original issue discount will be taken into account by B and P under sections 163(e) and 1272.

(3) *Partial bad debt deduction.* The facts are the same as in paragraph (g)(7)(ii)(C)(1) of this section (*Example 3*), except that S claims a \$40 partial bad debt deduction under section 166(a)(2) (rather than selling the note to P). Because S realizes a deduction from a transaction comparable to an assignment of the B note, the transaction is a triggering transaction under paragraph (g)(3)(i)(A)(1) of this section. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued for its fair market value of \$60 immediately before section 166(a)(2) applies. The treatment of S's \$40 loss and B's \$40 of discharge of indebtedness income are the same as in paragraph (g)(7)(ii)(C)(2) of this section (*Example 3*). After the reissuance, S has a basis of \$60 in the new note. Accordingly, the application of section 166(a)(2) does not result in any additional deduction for S. The \$40 of

original issue discount on the new note will be taken into account by B and S under sections 163(e) and 1272.

(4) *Insolvent debtor.* The facts are the same as in paragraph (g)(7)(ii)(C)(1) of this section (*Example 3*), except that B is insolvent within the meaning of section 108(d)(3) at the time that S sells the note to P. As explained in paragraph (g)(7)(ii)(C)(2) of this section (*Example 3*), the transaction is a triggering transaction and the B note is treated as satisfied and reissued for its fair market value of \$60 immediately before S's sale to P. On a separate entity basis, S's \$40 loss would be capital, B's \$40 income would be excluded from gross income under section 108(a), and B would reduce attributes under section 108(b) or section 1017 (*see also* § 1.1502–28). However, under paragraph (g)(4)(i)(C) of this section, section 108(a) does not apply to characterize B's income as excluded from gross income. Accordingly, the attributes of S's loss and B's income are redetermined in the same manner as in paragraph (g)(7)(ii)(C)(2) of this section (*Example 3*).

(D) *Example 4. Intercompany nonrecognition transactions—(1) Facts.* On January 1 of year 1, B borrows \$100 from S in return for B's note providing for \$10 of interest annually at the end of each year, and repayment of \$100 at the end of year 5. As of January 1 of year 3, B has fully performed its obligations, but the note's fair market value is \$130, reflecting a decline in prevailing market interest rates. On January 1 of year 3, S transfers the note and other assets to a newly formed corporation, Newco, for all of Newco's common stock in an exchange to which section 351 applies.

(2) *No deemed satisfaction and reissuance.* Because the assignment of the B note is an exchange to which section 351 applies and neither S nor B recognize gain or loss, the transaction is not a triggering transaction under paragraph (g)(3)(i)(B)(1) of this section, and the note is not treated as satisfied and reissued under paragraph (g)(3)(ii) of this section.

(3) *Receipt of other property.* The facts are the same as in paragraph (g)(7)(ii)(D)(1) of this section (*Example 4*), except that the other assets transferred to Newco have a basis of \$100 and a fair market value of \$260, and S receives, in addition to Newco common stock, \$15 of cash. Because S would recognize \$15 of gain under section 351(b), the assignment of the B note is a triggering transaction under paragraph (g)(3)(i)(A)(1) of this section. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued for its fair market value of

\$130 immediately before the transfer to Newco. As a result of the deemed satisfaction of the note for more than its adjusted issue price, B takes into account \$30 of repurchase premium under § 1.163–7(c). On a separate entity basis, S's \$30 gain would be a capital gain under section 1271(a)(1). Under the matching rule, however, the attributes of S's intercompany item and B's corresponding item must be redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of B's premium deduction control the attributes of S's gain. Accordingly, S's gain is treated as ordinary income. B is also treated as reissuing, immediately after the satisfaction, a new note to S with a \$130 issue price, \$100 stated redemption price at maturity, and \$130 basis in the hands of S. S is then treated as transferring the new note to Newco for the Newco stock and cash received by S in the actual transaction. Because S has a basis of \$130 in the new B note, S recognizes no gain or loss with respect to the transfer of the note in the section 351 exchange, and S recognizes \$10 of gain with respect to the transfer of the other assets under section 351(b). After the transfer, the note has a \$130 issue price and a \$100 stated redemption price at maturity. The treatment of B's \$30 of bond issuance premium under the new note is determined under § 1.163–13.

(4) *Transferee loss subject to limitation.* The facts are the same as in paragraph (g)(7)(ii)(D)(1) of this section (*Example 4*), except that T is a member with a loss from a separate return limitation year that is subject to limitation under § 1.1502–21(c) (a SRLY loss), and on January 1 of year 3, S transfers the assets and the B note to T in an exchange to which section 351 applies. Because the transferee, T, has a loss that is subject to a limitation, the assignment of the B note is a triggering transaction under paragraph (g)(3)(i)(A)(1) of this section (the exception in paragraph (g)(3)(i)(B)(1) of this section does not apply). Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued for its fair market value, immediately before S's transfer to T. As a result of the deemed satisfaction of the note for more than its adjusted issue price, B takes into account \$30 of repurchase premium under § 1.163–7(c). On a separate entity basis, S's \$30 gain would be a capital gain under section 1271(a)(1). Under the matching rule, however, the attributes of S's intercompany item and B's

corresponding item must be redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of B's premium deduction control the attributes of S's gain. Accordingly, S's gain is treated as ordinary income. B is also treated as reissuing, immediately after the satisfaction, a new note to S with a \$130 issue price, \$100 stated redemption price at maturity, and \$130 basis in the hands of S. The treatment of B's \$30 of bond issuance premium under the new note is determined under § 1.163-13. S is then treated as transferring the new note to T as part of the section 351 exchange. Because T will have a fair market value basis in the reissued B note immediately after the exchange, T's intercompany item from the subsequent retirement of the B note will not reflect any of S's built-in gain (and the amount of T's SRLY loss that may be absorbed by such item will be limited to any appreciation in the B note accruing after the exchange).

(5) *Intercompany obligation transferred in section 332 transaction.* The facts are the same as paragraph (g)(7)(ii)(D)(1) of this section (*Example 4*), except that S transfers the B note to P in complete liquidation under section 332. Because the transaction is an exchange to which section 332 and section 337(a) applies, and neither S nor B recognize gain or loss, the transaction is not a triggering transaction under paragraph (g)(3)(i)(B)(1) of this section, and the note is not treated as satisfied and reissued under paragraph (g)(3)(ii) of this section.

(E) *Example 5. Assumption of intercompany obligation—(1) Facts.* On January 1 of year 1, B borrows \$100 from S in return for B's note providing for \$10 of interest annually at the end of each year, and repayment of \$100 at the end of year 5. The note is fully recourse and is incurred for use in Business Z. As of January 1 of year 3, B has fully performed its obligations, but the note's fair market value is \$110 reflecting a decline in prevailing market interest rates. Business Z has a fair market value of \$95. On January 1 of year 3, B transfers all of the assets of Business Z and \$15 of cash (substantially all of B's assets) to member T in exchange for the assumption by T of all of B's obligations under the note in a transaction in which gain or loss is recognized under section 1001. The terms and conditions of the note are not modified in connection with the sales transaction, the transaction does not result in a change in payment expectations, and no

amount of income, gain, deduction, or loss is recognized by S, B, or T with respect to the note.

(2) *No deemed satisfaction and reissuance.* Because all of B's obligations under the B note are assumed by T in connection with the sale of the Business Z assets, the assignment of B's obligations under the note is not a triggering transaction under paragraph (g)(3)(i)(B)(2) of this section, and the note is not treated as satisfied and reissued under paragraph (g)(3)(ii) of this section.

(F) *Example 6. Extinguishment of intercompany obligation—(1) Facts.* On January 1 of year 1, B borrows \$100 from S in return for B's note providing for \$10 of interest annually at the end of each year, and repayment of \$100 at the end of year 20. The note is a security within the meaning of section 351(d)(2). As of January 1 of year 3, B has fully performed its obligations, but the fair market value of the B note is \$130, reflecting a decline in prevailing market interest rates, and S transfers the note to B in exchange for \$130 of B stock in a transaction to which both section 351 and section 354 applies.

(2) *No deemed satisfaction and reissuance.* As a result of the satisfaction of the note for more than its adjusted issue price, B takes into account \$30 of repurchase premium under § 1.163-7(c). Although the transfer of the B note is a transaction to which both section 351 and section 354 applies, under paragraph (g)(4)(i)(C) of this section, any gain or loss from the intercompany obligation is not subject to either section 351(a) or section 354, and therefore, S has a \$30 gain under section 1001. Because the note is extinguished in a transaction in which the adjusted issue price of the note is equal to the creditor's basis in the note, and the debtor's and creditor's items offset in amount, the transaction is not a triggering transaction under paragraph (g)(3)(i)(B)(5) of this section, and the note is not treated as satisfied and reissued under paragraph (g)(3)(ii) of this section. On a separate entity basis, S's \$30 gain would be a capital gain under section 1271(a)(1). Under the matching rule, however, the attributes of S's intercompany item and B's corresponding item must be redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of B's premium deduction control the attributes of S's gain. Accordingly, S's gain is treated as ordinary income. Under paragraph (g)(4)(i)(D) of this section, section 108(e)(7) does not apply

upon the extinguishment of the B note, and therefore, the B stock received by S in the exchange will not be treated as section 1245 property.

(G) *Example 7. Exchange of intercompany obligations—(1) Facts.* On January 1 of year 1, B borrows \$100 from S in return for B's note providing for \$10 of interest annually at the end of each year, and repayment of \$100 at the end of year 20. As of January 1 of year 3, B has fully performed its obligations and, pursuant to a recapitalization to which section 368(a)(1)(E) applies, B issues a new note to S in exchange for the original B note. The new B note has an issue price, stated redemption price at maturity, and stated principal amount of \$100, but contains terms that differ sufficiently from the terms of the original B note to cause a realization event under § 1.1001-3. The original B note and the new B note are both securities (within the meaning of section 354(a)(1)).

(2) *No deemed satisfaction and reissuance.* Because the original B note is extinguished in exchange for a newly issued B note and the issue price of the new B note is equal to both the adjusted issue price of the original B note and S's basis in the original B note, the transaction is not a triggering transaction under paragraph (g)(3)(i)(B)(6) of this section, and the note is not treated as satisfied and reissued under paragraph (g)(3)(ii) of this section. B has neither income from discharge of indebtedness under section 108(e)(10) nor a deduction for repurchase premium under § 1.163-7(c). Although the exchange of the original B note for the new B note is a transaction to which section 354 applies, under paragraph (g)(4)(i)(C) of this section, any gain or loss from the intercompany obligation is not subject to section 354. Under section 1001, S has no gain or loss from the exchange of notes.

(H) *Example 8. Tax benefit rule—(1) Facts.* On January 1 of year 1, B borrows \$100 from S in return for B's note providing for \$10 of interest annually at the end of each year, and repayment of \$100 at the end of year 5. As of January 1 of year 3, B has fully performed its obligations, but the note's fair market value has depreciated, reflecting an increase in prevailing market interest rates. On that date, S transfers the B note to member T as part of an exchange for T common stock which is intended to qualify for nonrecognition treatment under section 351 but with a view to sell the T stock at a reduced gain. On February 1 of year 4, all of the stock of T is sold at a reduced gain.

(2) *Deemed satisfaction and reissuance.* Because the assignment of

the B note does not occur within 12 months of the sale of T stock, paragraph (g)(3)(i)(B)(1)(vi) of this section does not apply to treat the assignment as a triggering transaction. However, because the assignment of the B note was engaged in with a view to shift built-in loss from the obligation in order to secure a tax benefit that the group or its members would not otherwise enjoy, under paragraph (g)(3)(i)(C) of this section, the assignment of the B note is a triggering transaction to which paragraph (g)(3)(ii) of this section applies. Under paragraph (g)(3)(ii) of this section, B's note is treated as satisfied and reissued for its fair market value, immediately before S's transfer to T. As a result of the deemed satisfaction of the note for less than its adjusted issue price, B takes into account discharge of indebtedness income and S has a corresponding loss which is treated as ordinary loss. B is also treated as reissuing, immediately after the deemed satisfaction, a new note to S with an issue price and basis equal to its fair market value. S is then treated as transferring the new note to T as part of the section 351 exchange. Because S's basis in the T stock received with respect to the transferred B note is equal to its fair market value, S's gain with respect to the T stock will not reflect any of the built-in loss attributable to the B note. (This example does not address common law doctrines or other authorities that might apply to recharacterize the transaction or to otherwise affect the tax treatment of the transaction.)

(I) *Example 9. Issuance at off-market rate of interest—(1) Facts.* T is a member with a SRLY loss. T's sole shareholder, P, borrows an amount of cash from T in return for a P note that provides for a materially above market rate of interest. The P note is issued with a view to generate additional interest income to T over the term of the note to facilitate the absorption of T's SRLY loss.

(2) *With a view.* Because the P note is issued with a view to shift interest income from the off-market obligation in order to secure a tax benefit that the group or its members would not otherwise enjoy, under paragraph (g)(4)(iii) of this section, the intercompany obligation is treated, for all Federal income tax purposes, as originally issued for its fair market value so T is treated as purchasing the note at a premium. The difference between the amount loaned and the fair market value of the obligation is treated as transferred from P to T as a capital contribution at the time the note is issued. Throughout the term of the note, T takes into account interest income and bond

premium and P takes into account interest deduction and bond issuance premium under generally applicable Internal Revenue Code sections. The adjustment under paragraph (g)(4)(iii) of this section is made without regard to the application of, and in lieu of any adjustment under, section 482 or 1274.

(J) *Example 10. Nonintercompany obligation becomes intercompany obligation—(1) Facts.* On January 1 of year 1, B borrows \$100 from X in return for B's note providing for \$10 of interest annually at the end of each year, and repayment of \$100 at the end of year 5. As of January 1 of year 3, B has fully performed its obligations, but the note's fair market value is \$70, reflecting an increase in prevailing market interest rates. On January 1 of year 3, P buys all of X's stock. B is solvent within the meaning of section 108(d)(3).

(2) *Deemed satisfaction and reissuance.* Under paragraph (g)(5)(ii) of this section, B's note is treated as satisfied for \$70 (determined under the principles of § 1.108–2(f)(2)) immediately after it becomes an intercompany obligation. Both X's \$30 capital loss (under section 1271(a)(1)) and B's \$30 of discharge of indebtedness income (under § 1.61–12) are taken into account in determining consolidated taxable income for year 3. Under paragraph (g)(6)(i)(B) of this section, the attributes of items resulting from the satisfaction are determined on a separate entity basis. *But see* section 382 and § 1.1502–15 (as appropriate). B is also treated as reissuing a new note to X. The new note is an intercompany obligation, it has a \$70 issue price and \$100 stated redemption price at maturity, and the \$30 of original issue discount will be taken into account by B and X in the same manner as provided in paragraph (g)(7)(ii)(A)(3) of this section (*Example 1*).

(3) *Amortization of repurchase premium.* The facts are the same as in paragraph (g)(7)(ii)(J)(1) of this section (*Example 10*), except that on January 1 of year 3, the B note has a fair market value of \$130 and rather than P purchasing the X stock, P purchases the B note from X by issuing its own note. The P note has an issue price, stated redemption price at maturity, stated principal amount, and fair market value of \$130. Under paragraph (g)(5)(ii) of this section, B's note is treated as satisfied for \$130 (determined under the principles of § 1.108–2(f)(1)) immediately after it becomes an intercompany obligation. As a result of the deemed satisfaction of the note, P has no gain or loss and B has \$30 of repurchase premium. Under paragraph (g)(6)(iii) of this section, B's \$30 of

repurchase premium from the deemed satisfaction is amortized by B over the term of the newly issued P note in the same manner as if it were original issue discount and the newly issued P note had been issued directly by B. B is also treated as reissuing a new note to P. The new note is an intercompany obligation, it has a \$130 issue price and \$100 stated redemption price at maturity, and the treatment of B's \$30 of bond issuance premium under the new B note is determined under § 1.163–13.

(4) *Election to file consolidated returns.* Assume instead that B borrows \$100 from S during year 1, but the P group does not file consolidated returns until year 3. Under paragraph (g)(5)(ii) of this section, B's note is treated as satisfied and reissued as a new note immediately after the note becomes an intercompany obligation. The satisfaction and reissuance are deemed to occur on January 1 of year 3, for the fair market value of the obligation (determined under the principles of § 1.108–2(f)(2)) at that time.

(K) *Example 11. Notional principal contracts—(1) Facts.* On April 1 of year 1, M1 enters into a contract with counterparty M2 under which, for a term of five years, M1 is obligated to make a payment to M2 each April 1, beginning in year 2, in an amount equal to the London Interbank Offered Rate (LIBOR), as determined by reference to LIBOR on the day each payment is due, multiplied by a \$1,000 notional principal amount. M2 is obligated to make a payment to M1 each April 1, beginning in year 2, in an amount equal to 8 percent multiplied by the same notional principal amount. LIBOR is 7.80 percent on April 1 of year 2, and therefore, M2 owes \$2 to M1.

(2) *Matching rule.* Under § 1.446–3(d), the net income (or net deduction) from a notional principal contract for a taxable year is included in (or deducted from) gross income. Under § 1.446–3(e), the ratable daily portion of M2's obligation to M1 as of December 31 of year 1 is \$1.50 (\$2 multiplied by 275/365). Under the matching rule, M1's net income for year 1 of \$1.50 is taken into account to reflect the difference between M2's net deduction of \$1.50 taken into account and the \$0 recomputed net deduction. Similarly, the \$.50 balance of the \$2 of net periodic payments made on April 1 of year 2 is taken into account for year 2 in M1's and M2's net income and net deduction from the contract. In addition, the attributes of M1's intercompany income and M2's corresponding deduction are redetermined to produce the same effect as if the transaction had occurred between divisions of a single

corporation. Under paragraph (c)(4)(i) of this section, the attributes of M2's corresponding deduction control the attributes of M1's intercompany income. (Although M1 is the selling member with respect to the payment on April 1 of year 2, it might be the buying member in a subsequent period if it owes the net payment.)

(3) *Dealer.* The facts are the same as in paragraph (g)(7)(ii)(K)(1) of this section (*Example 11*), except that M2 is a dealer in securities, and the contract with M1 is not inventory in the hands of M2. Under section 475, M2 must mark its securities to fair market value at year-end. Assume that under section 475, M2's loss from marking to fair market value the contract with M1 is \$10. Because M2 realizes an amount of loss from the mark to fair market value of the contract, the transaction is a triggering transaction under paragraph (g)(3)(i)(A)(1) of this section. Under paragraph (g)(3)(ii) of this section, M2 is treated as making a \$10 payment to M1 to terminate the contract immediately before a new contract is treated as reissued with an up-front payment by M1 to M2 of \$10. M1's \$10 of income from the termination payment is taken into account under the matching rule to reflect M2's deduction under § 1.446–3(h). The attributes of M1's intercompany income and M2's corresponding deduction are redetermined to produce the same effect as if the transaction had occurred between divisions of a single corporation. Under paragraph (c)(4)(i) of this section, the attributes of M2's corresponding deduction control the attributes of M1's intercompany income. Accordingly, M1's income is treated as ordinary income. Under § 1.446–3(f), the deemed \$10 up-front payment by M1 to M2 in connection with the issuance of a new contract is taken into account over the term of the new contract in a manner reflecting the economic substance of the contract (for example, allocating the payment in accordance with the forward rates of a series of cash-settled forward contracts that reflect the specified index and the \$1,000 notional principal amount). (The timing of taking items into account is the same if M1, rather than M2, is the dealer subject to the mark-to-market requirement of section 475 at year-end. However in this case, because the attributes of the corresponding deduction control the attributes of the intercompany income, M1's income from the deemed termination payment from M2 might be ordinary or capital). Under paragraph (g)(3)(ii)(A) of this section, section 475 does not apply to

mark the notional principal contract to fair market value after its deemed satisfaction and reissuance.

* * * * *

(1) * * *

(6) *Applicability date regarding paragraph (f)(7)(iv) of this section (Example 4).* Paragraph (f)(7)(iv) of this section (*Example 4*) applies to transactions occurring on or after December 18, 2009.

* * * * *

(8) *Election to apply paragraph (f)(5)(ii) of this section to an intercompany transaction.* Paragraph (f)(5)(ii)(E) of this section applies to any original consolidated Federal income tax return due (without extensions) after June 14, 2007.

(9) *Election to reduce basis of parent stock under paragraph (f)(6) of this section.* Paragraph (f)(6)(i)(C)(2) of this section applies to any original consolidated Federal income tax return due (without extensions) after June 14, 2007.

(10) *Certain qualified stock dispositions.* Paragraph (f)(5)(ii)(C) of this section applies to any qualified stock disposition (as defined in § 1.336–1(b)(6)) for which the disposition date (as defined in § 1.336–1(b)(8)) is on or after May 15, 2013.

■ **Par. 19.** Section 1.1502–17 is amended by revising and republishing paragraphs (a) and (e) to read as follows:

§ 1.1502–17 Methods of accounting.

(a) *General rule.* The method of accounting to be used by each member of the group is determined in accordance with the provisions of section 446 as if such member filed a separate return.

* * * * *

(e) *Effective dates.* Paragraph (b) of this section applies to changes in method of accounting effective for years beginning on or after July 12, 1995. Paragraphs (c) and (d) of this section apply with respect to acquisitions occurring or activities undertaken in years beginning on or after July 12, 1995.

§ 1.1502–18 [Removed]

■ **Par. 20.** Section 1.1502–18 is removed.

■ **Par. 21.** Section 1.1502–21 is amended by:

- a. Revising paragraphs (b)(3)(i) and (b)(4);
- b. Removing and reserving paragraph (d); and
- c. Revising paragraphs (h)(6) and (8).

The revisions read as follows:

§ 1.1502–21 Net operating losses.

* * * * *

(b) * * *

(3) * * *

(i) *In general.* A group may make an irrevocable election under section 172(b)(3) to relinquish the entire carryback period with respect to a CNOL for any consolidated return year. Except as provided in paragraphs (b)(4) and (5) of this section, the election may not be made separately for any member (whether or not it remains a member), and must be made in a separate statement titled “THIS IS AN ELECTION UNDER § 1.1502–21(b)(3)(i) TO WAIVE THE ENTIRE CARRYBACK PERIOD PURSUANT TO SECTION 172(b)(3) FOR THE [insert consolidated return year] CNOLs OF THE CONSOLIDATED GROUP OF WHICH [insert name and employer identification number of common parent] IS THE COMMON PARENT.” The statement must be filed with the group's income tax return for the consolidated return year in which the loss arises. The election may be made in an unsigned statement.

* * * * *

(4) *General split-waiver election.* If one or more members of a consolidated group becomes a member of another consolidated group, the acquiring group may make an irrevocable election to relinquish, with respect to all consolidated net operating losses attributable to the member, the portion of the carryback period for which the corporation was a member of another group, provided that any other corporation joining the acquiring group that was affiliated with the member immediately before it joined the acquiring group is also included in the waiver. This election is not a yearly election and applies to all losses that would otherwise be subject to a carryback to a former group under section 172. The election must be made in a separate statement titled “THIS IS AN ELECTION UNDER § 1.1502–21(b)(4) TO WAIVE THE PRE- [insert first taxable year for which the member (or members) was not a member of another group] CARRYBACK PERIOD FOR THE CNOLs attributable to [insert names and employer identification number of members].” The statement must be filed with the acquiring consolidated group's original income tax return for the year the corporation (or corporations) became a member. The election may be made in an unsigned statement.

* * * * *

(h) * * *

(6) *Certain prior periods.* Paragraphs (b)(1), (b)(2)(iv)(A), (b)(2)(iv)(B)(1), and (c)(2)(vii) of this section apply to taxable

years for which the due date of the original return (without regard to extensions) is after March 21, 2005.

* * * * *

(8) *Losses treated as expired under § 1.1502-35(f)(1).* For rules regarding losses treated as expired under § 1.1502-35(f) on or after March 10, 2006, see § 1.1502-21(b)(3)(v) as contained in 26 CFR part 1 in effect on April 1, 2006.

* * * * *

§ 1.1502-22 [Amended]

■ **Par. 22.** Section 1.1502-22 is amended by removing and reserving paragraph (d).

■ **Par. 23.** Section 1.1502-24 is amended by revising paragraphs (a)(2) and (c) to read as follows:

§ 1.1502-24 Consolidated charitable contributions deduction.

(a) * * *

(2) The percentage limitation on the total charitable contribution deduction provided in section 170(b)(2)(A) applied to adjusted consolidated income as determined under paragraph (c) of this section.

* * * * *

(c) *Adjusted consolidated taxable income.* For purposes of this section, the adjusted consolidated taxable income of the group for any consolidated return year is the consolidated taxable income computed without regard to this section, section 243(a)(2) and (3), and § 1.1502-26, and without regard to any consolidated net operating or net capital loss carrybacks to such year.

■ **Par. 24.** Section 1.1502-26 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1.1502-26 Consolidated dividends received deduction.

(a) *In general.* The consolidated dividends received deduction for the taxable year is the lesser of—

(1) The aggregate of the deduction of the members of the group allowable under sections 243(a)(1), 245(a) and (b), and 250 (computed without regard to the limitations provided in section 246(b)), or

(2) The aggregate amount described in section 246(b), determined by substituting, wherever it appears—

(i) The term *consolidated taxable income for taxable income*,

(ii) The term *consolidated net operating loss* for *net operating loss*, and

(iii) The term *consolidated net capital loss for capital loss*.

* * * * *

(c) *Examples.* The provisions of this section may be illustrated by the following examples:

(1) *Example 1.* (i) Corporations P, S, and S-1 filed a consolidated return for the calendar year 2023 showing consolidated taxable income of \$100,000 (determined without regard to the consolidated net operating loss deduction, and the consolidated dividends received deduction). These corporations received dividends during such year from less than 20-percent owned domestic corporations as follows:

TABLE 1 TO PARAGRAPH (c)(1)(i)

Corporation	Dividends
P	\$6,000
S	10,000
S-1	34,000
Total	50,000

(ii) The dividends received deduction allowable to each member under section 243(a)(1) (computed without regard to the limitation in section 246(b)) is as follows: P has \$3,000 (50 percent of \$6,000), S has \$5,000 (50 percent of \$10,000), and S-1 has \$17,000 (50 percent of \$34,000), or a total of \$25,000. Since \$25,000 is less than \$50,000 (50 percent of \$100,000), the consolidated dividends received deduction is \$25,000.

(2) *Example 2.* Assume the same facts as in paragraph (c)(1)(i) of this section (*Example 1*), except that consolidated taxable income (computed without regard to the consolidated net operating loss deduction and the consolidated dividends received deduction) was \$40,000. The aggregate of the dividends received deductions, \$42,500, computed without regard to section 246(b), results in a consolidated net operating loss of \$2,500. See section 172(d)(5). Therefore, paragraph (a)(2) of this section does not apply and the consolidated dividends received deduction is \$42,500.

§ 1.1502-27 [Removed]

■ **Par. 25.** Section 1.1502-27 is removed.

■ **Par. 26.** Section 1.1502-32 is amended by:

■ a. Revising paragraphs (b)(4)(v) and (vii).

■ b. Revising and republishing paragraphs (b)(5), (h)(2)(i), and (h)(5) through (8).

■ c. Redesignating paragraph (j) as paragraph (h)(10) and revising newly designated paragraph (h)(10).

■ d. Removing paragraph (k).

The revisions read as follows:

§ 1.1502-32 Investment adjustments.

* * * * *

(b) * * *

(4) * * *

(v) *Special rule for loss carryovers of a subsidiary acquired in a transaction for which an election under § 1.1502-20(i)(2) is made.* See paragraph (b)(4)(v) of this section as contained in 26 CFR part 1 revised as of April 1, 2005.

* * * * *

(vii) *Special rules for amending waiver of loss carryovers from separate return limitation year relating to the acquisition of a subsidiary in a transaction subject to § 1.1502-20.* See paragraph (b)(4)(vii) of this section as contained in 26 CFR part 1 revised as of April 1, 2005.

(5) *Examples—(i) In general.* For purposes of the examples in this section, unless otherwise stated, M owns all of the only class of S's stock, the stock is owned for the entire year, S owns no stock of lower-tier members, the tax year of all persons is the calendar year, all persons use the accrual method of accounting, the facts set forth the only corporate activity, preferred stock is described in section 1504(a)(4), all transactions are between unrelated persons, and tax liabilities are disregarded.

(ii) *Stock basis adjustments.* The principles of this paragraph (b) are illustrated by the following examples.

(A) *Example 1. Taxable income—(1) Current taxable income.* For Year 1, the M group has \$100 of taxable income when determined by including only S's items of income, gain, deduction, and loss taken into account. Under paragraph (b)(1) of this section, M's basis in S's stock is adjusted under this section as of the close of Year 1. Under paragraph (b)(2) of this section, M's basis in S's stock is increased by the amount of the M group's taxable income determined by including only S's items taken into account. Thus, M's basis in S's stock is increased by \$100 as of the close of Year 1.

(2) *Intercompany gain that is not taken into account.* The facts are the same as in paragraph (b)(5)(ii)(A)(1) of this section (*Example 1*), except that S also sells property to another member at a \$25 gain in Year 1, the gain is deferred under § 1.1502-13 and taken into account in Year 3, and M sells 10% of S's stock to nonmembers in Year 2. Under paragraph (b)(3)(i) of this section, S's deferred gain is not additional taxable income for Year 1 or 2 because it is not taken into account in determining the M group's consolidated taxable income for either of those years. The deferred gain is not tax-exempt income under paragraph (b)(3)(ii) of this section because it is not permanently excluded from S's gross income. The

deferred gain does not result in a basis adjustment until Year 3, when it is taken into account in determining the M group's consolidated taxable income. Consequently, M's basis in the S shares sold is not increased to reflect S's gain from the intercompany sale of the property. In Year 3, the deferred gain is taken into account, but the amount allocable to the shares sold by M does not increase their basis because these shares are held by nonmembers.

(3) *Intercompany gain taken into account.* The facts are the same as in paragraph (b)(5)(ii)(A)(2) of this section (*Example 1*), except that M sells all of S's stock in Year 2 (rather than only 10%). Under § 1.1502–13, S takes the \$25 gain into account immediately before S becomes a nonmember. Thus, M's basis in S's stock is increased to reflect S's gain from the intercompany sale of the property.

(B) *Example 2. Tax loss—(1) Current absorption.* For Year 2, the M group has a \$50 consolidated net operating loss when determined by taking into account only S's items of income, gain, deduction, and loss. S's loss is absorbed by the M group in Year 2, offsetting M's income for that year. Under paragraph (b)(3)(i)(A) of this section, because S's loss is absorbed in the year it arises, M has a \$50 negative adjustment with respect to S's stock. Under paragraph (b)(2) of this section, M reduces its basis in S's stock by \$50. Under paragraph (a)(3)(ii) of this section, if the decrease exceeds M's basis in S's stock, the excess is M's excess loss account in S's stock.

(2) *Interim determination from stock sale.* The facts are the same as in paragraph (b)(5)(ii)(B)(1) of this section (*Example 2*), except that S's Year 2 loss arises in the first half of the calendar year, M sells 50% of S's stock on July 1 of Year 2, and M's income for Year 2 does not arise until after the sale of S's stock. M's income for Year 2 (exclusive of the sale of S's stock) is offset by S's loss, even though the income arises after the stock sale, and no loss remains to be apportioned to S. See §§ 1.1502–11 and 1.1502–21(b). Under paragraph (b)(3)(i)(A) of this section, because S's \$50 loss is absorbed in the year it arises, it reduces M's basis in the S shares sold by \$25 immediately before the stock sale. Because S becomes a nonmember, the loss also reduces M's basis in the retained S shares by \$25 immediately before S becomes a nonmember.

(3) *Loss carryback.* The facts are the same as in paragraph (b)(5)(ii)(B)(1) of this section (*Example 2*), except that M has no income or loss for Year 2, S's \$50 loss is carried back and absorbed by the M group in Year 1 (offsetting the income

of M or S), and the M group receives a \$17 tax refund in Year 2 that is paid to S. Under paragraph (b)(3)(i)(B) of this section, because the \$50 loss is carried back and absorbed in Year 1, it is treated as a tax loss for Year 2 (the year in which it arises). Under paragraph (b)(3)(ii) of this section, the refund is treated as tax-exempt income of S. Under paragraph (b)(3)(iv)(C) of this section, the tax-exempt income is taken into account in Year 2 because that is the year it would be taken into account under S's method of accounting if it were subject to Federal income taxation. Thus, under paragraph (b)(2) of this section, M reduces its basis in S's stock by \$33 as of the close of Year 2 (the \$50 tax loss, less the \$17 tax refund).

(4) *Loss carryforward.* The facts are the same as in paragraph (b)(5)(ii)(B)(1) of this section (*Example 2*), except that M has no income or loss for Year 2, and S's loss is carried forward and absorbed by the M group in Year 3 (offsetting the income of M or S). Under paragraph (b)(3)(i)(A) of this section, the loss is not treated as a tax loss under paragraph (b)(2) of this section until Year 3.

(C) *Example 3. Tax-exempt income and noncapital, nondeductible expenses—(1) Facts.* For Year 1, the M group has \$500 of consolidated taxable income. However, the M group has a \$100 consolidated net operating loss when determined by including only S's items of income, gain, deduction, and loss taken into account. Also for Year 1, S has \$80 of interest income that is permanently excluded from gross income under section 103, and S incurs \$60 of related expense for which a deduction is permanently disallowed under section 265.

(2) *Analysis.* Under paragraph (b)(3)(i)(A) of this section, S has a \$100 tax loss for Year 1. Under paragraph (b)(3)(ii)(A) of this section, S has \$80 of tax-exempt income. Under paragraph (b)(3)(iii)(A) of this section, S has \$60 of noncapital, nondeductible expense. Under paragraph (b)(3)(iv)(C) of this section, the tax-exempt income and noncapital, nondeductible expense are taken into account in Year 1 because that is the year they would be taken into account under S's method of accounting if they were subject to Federal income taxation. Thus, under paragraph (b) of this section, M reduces its basis in S's stock as of the close of Year 1 by an \$80 net amount (the \$100 tax loss, less \$80 of tax-exempt income, plus \$60 of noncapital, nondeductible expenses).

(D) *Example 4. Discharge of indebtedness—(1) Facts.* M forms S on January 1 of Year 1 and S borrows \$200. During Year 1, S's assets decline in value and the M group has a \$100

consolidated net operating loss. Of that amount, \$10 is attributable to M and \$90 is attributable to S under the principles of § 1.1502–21(b)(2)(iv). None of the loss is absorbed by the group in Year 1, and S is discharged from \$100 of indebtedness at the close of Year 1. M has a \$0 basis in the S stock. M and S have no attributes other than the consolidated net operating loss. Under section 108(a), S's \$100 of discharge of indebtedness income is excluded from gross income because of insolvency. Under section 108(b) and § 1.1502–28, the consolidated net operating loss is reduced to \$0.

(2) *Analysis.* Under paragraph (b)(3)(iii)(A) of this section, the reduction of \$90 of the consolidated net operating loss attributable to S is treated as a noncapital, nondeductible expense in Year 1 because that loss is permanently disallowed by section 108(b) and § 1.1502–28. Under paragraph (b)(3)(ii)(C)(1) of this section, all \$100 of S's discharge of indebtedness income is treated as tax-exempt income in Year 1 because the discharge results in a \$100 reduction to the consolidated net operating loss. Consequently, the loss and the cancellation of the indebtedness result in a net positive \$10 adjustment to M's basis in its S stock.

(3) *Insufficient attributes.* The facts are the same as in paragraph (b)(5)(ii)(D)(1) of this section (*Example 4*), except that S is discharged from \$120 of indebtedness at the close of Year 1. Under section 108(a), S's \$120 of discharge of indebtedness income is excluded from gross income because of insolvency. Under section 108(b) and § 1.1502–28, the consolidated net operating loss is reduced by \$100 to \$0 after the determination of tax for Year 1. Under paragraph (b)(3)(iii)(A) of this section, the reduction of \$90 of the consolidated net operating loss attributable to S is treated as a noncapital, nondeductible expense. Under paragraph (b)(3)(ii)(C)(1) of this section, only \$100 of the discharge is treated as tax-exempt income because only that amount is applied to reduce tax attributes. The remaining \$20 of discharge of indebtedness income excluded from gross income under section 108(a) has no effect on M's basis in S's stock.

(4) *Purchase price adjustment.* Assume instead that S buys land in Year 1 in exchange for S's \$100 purchase money note (bearing interest at a market rate of interest in excess of the applicable Federal rate, and providing for a principal payment at the end of Year 10), and the seller agrees with S in Year 4 to discharge \$60 of the note as a purchase price adjustment to which

section 108(e)(5) applies. S has no discharge of indebtedness income that is treated as tax-exempt income under paragraph (b)(3)(ii) of this section. In addition, the \$60 purchase price adjustment is not a noncapital, nondeductible expense under paragraph (b)(3)(iii) of this section. A purchase price adjustment is not equivalent to a discharge of indebtedness that is offset by a deduction or loss. Consequently, the purchase price adjustment results in no net adjustment to M's basis in S's stock under paragraph (b) of this section.

(E) *Example 5. Distributions—(1) Amounts declared and distributed.* For Year 1, the M group has \$120 of consolidated taxable income when determined by including only S's items of income, gain, deduction, and loss taken into account. S declares and makes a \$10 dividend distribution to M at the close of Year 1. Under paragraph (b) of this section, M increases its basis in S's stock as of the close of Year 1 by a \$110 net amount (\$120 of taxable income, less a \$10 distribution).

(2) *Distributions in later years.* The facts are the same as in paragraph (b)(5)(ii)(E)(1) of this section (*Example 5*), except that S does not declare and distribute the \$10 until Year 2. Under paragraph (b) of this section, M increases its basis in S's stock by \$120 as of the close of Year 1, and decreases its basis by \$10 as of the close of Year 2. (If M were also a subsidiary, the basis of its stock would also be increased in Year 1 to reflect M's \$120 adjustment to basis of S's stock; the basis of M's stock would not be changed as a result of S's distribution in Year 2, because M's \$10 of tax-exempt dividend income under paragraph (b)(3)(ii) of this section would be offset by the \$10 negative adjustment to M's basis in S's stock for the distribution.)

(3) *Amounts declared but not distributed.* The facts are the same as in paragraph (b)(5)(ii)(E)(1) of this section (*Example 5*), except that, during December of Year 1, S declares (and M becomes entitled to) another \$70 dividend distribution with respect to its stock, but M does not receive the distribution until after it sells all of S's stock at the close of Year 1. Under § 1.1502-13(f)(2)(iv), S is treated as making a \$70 distribution to M at the time M becomes entitled to the distribution. (If S is distributing an appreciated asset, its gain under section 311 is also taken into account under paragraph (b)(3)(i) of this section at the time M becomes entitled to the distribution.) Consequently, under paragraph (b) of this section, M increases its basis in S's stock as of the

close of Year 1 by only a \$40 net amount (\$120 of taxable income, less two distributions totaling \$80). Any further adjustments after S ceases to be a member and the \$70 distribution is made would be duplicative, because the stock basis has already been adjusted for the distribution. Accordingly, the distribution will not result in further adjustments or gain, even if the distribution is a payment to which section 301(c)(2) or (3) applies.

(F) *Example 6. Reorganization with boot—(1) Facts.* M owns all the stock of S and T. M owns ten shares of the same class of common stock of S and ten shares of the same class of common stock of T. The fair market value of each share of S stock is \$10 and the fair market value of each share of T stock is \$10. On January 1 of Year 1, M has a \$5 basis in each of its ten shares of S stock and a \$10 basis in each of its ten shares of T stock. S and T have no items of income, gain, deduction, or loss for Year 1. S and T each have substantial earnings and profits. At the close of Year 1, T merges into S in a reorganization described in section 368(a)(1)(A) (and in section 368(a)(1)(D)). M receives no additional S stock, but does receive \$10 which is treated as received by M in a separate transaction occurring immediately after the merger of T into S.

(2) *Analysis.* The merger of T into S is a transaction to which § 1.1502-13(f)(3) applies. Under §§ 1.1502-13(f)(3) and 1.358-2(a)(2)(iii), M is deemed to receive ten additional shares of S stock with a total fair market value of \$100 (the fair market value of the T stock surrendered by M). Under § 1.358-2(a)(2)(i), M will have a basis of \$10 in each share of S stock deemed received in the reorganization. Under § 1.358-2(a)(2)(iii), M is deemed to surrender all twenty shares of its S stock in a recapitalization under section 368(a)(1)(E) in exchange for the ten shares of S stock, the number of shares of S stock held by M immediately after the transaction. Thus, under § 1.358-2(a)(2)(i), M has five shares of S stock each with a basis of \$10 and five shares of S stock each with a basis of \$20. The \$10 M received is treated as a dividend distribution under section 301 and, under paragraph (b)(3)(v) of this section, the \$10 is a distribution to which paragraph (b)(2)(iv) of this section applies. Accordingly, M's total basis in the S stock is decreased by the \$10 distribution.

(G) *Example 7. Tiering up of basis adjustments.* M owns all of S's stock, and S owns all of T's stock. For Year 1, the M group has \$100 of consolidated taxable income when determined by

including only T's items of income, gain, deduction, and loss taken into account, and \$50 of consolidated taxable income when determined by including only S's items taken into account. S increases its basis in T's stock by \$100 under paragraph (b) of this section. Under paragraph (a)(3) of this section, this \$100 basis adjustment is taken into account in determining M's adjustments to its basis in S's stock. Thus, M increases its basis in S's stock by \$150 under paragraph (b) of this section.

(H) *Example 8. Allocation of items—(1) Acquisition in mid-year.* M is the common parent of a consolidated group, and S is an unaffiliated corporation filing separate returns on a calendar-year basis. M acquires all of S's stock and S becomes a member of the M group on July 1 of Year 1. For the entire calendar Year 1, S has \$100 of ordinary income and under § 1.1502-76(b) \$60 is allocated to the period from January 1 to June 30 and \$40 to the period from July 1 to December 31. Under paragraph (b) of this section, M increases its basis in S's stock by \$40.

(2) *Sale in mid-year.* The facts are the same as in paragraph (b)(5)(ii)(H)(1) of this section (*Example 8*), except that S is a member of the M group at the beginning of Year 1 but ceases to be a member on June 30 as a result of M's sale of S's stock. Under paragraph (b) of this section, M increases its basis in S's stock by \$60 immediately before the stock sale. (M's basis increase would be the same if S became a nonmember because S issued additional shares to nonmembers.)

(3) *Absorption of loss carryovers.* Assume instead that S is a member of the M group at the beginning of Year 1 but ceases to be a member on June 30 as a result of M's sale of S's stock, and a \$100 consolidated net operating loss attributable to S is carried over by the M group to Year 1. The consolidated net operating loss may be apportioned to S for its first separate return year only to the extent not absorbed by the M group during Year 1. Under paragraph (b)(3)(i) of this section, if the loss is absorbed by the M group in Year 1, whether the offsetting income arises before or after M's sale of S's stock, the absorption of the loss carryover is included in the determination of S's taxable income or loss for Year 1. Thus, M's basis in S's stock is adjusted under paragraph (b) of this section to reflect any absorption of the loss by the M group.

(I) *Example 9. Gross-ups—(1) Facts.* M owns all of the stock of S, and S owns all of the stock of T, a newly formed controlled foreign corporation that is not a passive foreign investment

company. In Year 1, T has \$100 of subpart F income and pays \$34 of foreign income tax, leaving T with \$66 of earnings and profits. The M group has \$100 of consolidated taxable income when determined by taking into account only S's items (the inclusion under section 951(a), taking into account the section 78 gross-up). As a result of the section 951(a) inclusion, S increases its basis in T's stock by \$66 under section 961(a).

(2) *Analysis.* Under paragraph (b)(3)(i) of this section, S has \$100 of taxable income. Under paragraph (b)(3)(iii)(B) of this section, the \$34 gross-up for taxes paid by T that S is treated as having paid is a noncapital, nondeductible expense (whether or not any corresponding amount is claimed by the M group as a tax credit). Thus, M increases its basis in S's stock under paragraph (b) of this section by the net adjustment of \$66.

(3) *Subsequent distribution.* The facts are the same as in paragraph (b)(5)(ii)(I)(1) of this section (*Example 9*), except that T distributes its \$66 of earnings and profits in Year 2. The \$66 distribution received by S is excluded from S's income under section 959(a) because the distribution represents earnings and profits attributable to amounts that were included in S's income under section 951(a) for Year 1. In addition, S's basis in T's stock is decreased by \$66 under section 961(b). The excluded distribution is not tax-exempt income under paragraph (b)(3)(ii) of this section because of the corresponding reduction to S's basis in T's stock. Consequently, M's basis in S's stock is not adjusted under paragraph (b) of this section for Year 2.

(J) *Example 10. Recapture of tax-exempt items—(1) Facts.* S is a life insurance company. For Year 1, the M group has \$200 of consolidated taxable income, determined by including only S's items of income, gain, deduction, and loss taken into account (including a \$300 small company deduction under section 806). In addition, S has \$100 of tax-exempt interest income, \$60 of which is S's company share. The remaining \$40 of tax-exempt income is the policyholders' share that reduces S's deduction for increase in reserves.

(2) *Tax-exempt items generally.* Under paragraph (b)(3)(i) of this section, S has \$200 of taxable income for Year 1. Also for Year 1, S has \$100 of tax-exempt income under paragraph (b)(3)(ii)(A) of this section, and another \$300 is treated as tax-exempt income under paragraph (b)(3)(ii)(B) of this section because of the deduction under section 806. Under paragraph (b)(3)(iii) of this section, S has \$40 of noncapital, nondeductible

expenses for Year 1 because S's deduction under section 807 for its increase in reserves has been permanently reduced by the \$40 policyholders' share of the tax-exempt interest income. Thus, M increases its basis in S's stock by \$560 under paragraph (b) of this section.

(3) *Recapture.* Assume instead that S is a property and casualty company and, for Year 1, S accrues \$100 of estimated salvage recoverable under section 832. Of this amount, \$87 (87% of \$100) is excluded from gross income because of the "fresh start" provisions of Sec. 11305(c) of Public Law 101-508 (the Omnibus Budget Reconciliation Act of 1990). Thus, S has \$87 of tax-exempt income under paragraph (b)(3)(ii)(A) of this section that increases M's basis in S's stock for Year 1. (S also has \$13 of taxable income over the period of inclusion under section 481.) In Year 5, S determines that the \$100 salvage recoverable was overestimated by \$30 and deducts \$30 for the reduction of the salvage recoverable. However, S has \$26.10 (87% of \$30) of taxable income in Year 5 due to the partial recapture of its fresh start. Because S has no basis corresponding to this income, S is treated under paragraph (b)(3)(iii)(B) of this section as having a \$26.10 noncapital, nondeductible expense in Year 5. This treatment is necessary to reflect the elimination of the erroneous fresh start in S's stock basis and causes a decrease in M's basis in S's stock by \$30 for Year 5 (a \$3.90 taxable loss and a \$26.10 special adjustment).

* * * * *

(h) * * *

(2) * * *

(i) *In general.* If M disposes of stock of S in a consolidated return year beginning before January 1, 1995, the amount of M's income, gain, deduction, or loss, and the basis reflected in that amount, are not redetermined under this section.

* * * * *

(5) *Continuing basis reductions for certain deconsolidated subsidiaries.* If a subsidiary ceases to be a member of a group in a consolidated return year beginning before January 1, 1995, and its basis was subject to reduction under § 1.1502-32T or § 1.1502-32(g) as contained in the 26 CFR part 1 edition revised as of April 1, 1994, its basis remains subject to reduction under those principles. For example, if S ceased to be a member in 1990, and M's basis in any retained S stock was subject to a basis reduction account, the basis remains subject to reduction. Similarly, if an election could be made to apply § 1.1502-32T instead of § 1.1502-32(g),

the election remains available. However, §§ 1.1502-32T and 1.1502-32(g) do not apply as a result of a subsidiary ceasing to be a member in tax years beginning on or after January 1, 1995.

(6) *Loss suspended under § 1.1502-35(c) or disallowed under § 1.1502-35(g)(3)(iii).* Paragraphs (a)(2), (b)(3)(iii)(C) and (D), and (b)(4)(vi) of this section are applicable on and after March 10, 2006.

(7) *Rules related to discharge of indebtedness income excluded from gross income.* Paragraphs (b)(1)(ii), (b)(3)(ii)(C)(1), (b)(3)(iii)(A), and (b)(5)(ii), *Example 4*, paragraphs (a), (b), and (c) of this section apply with respect to determinations of the basis of the stock of a subsidiary in consolidated return years the original return for which is due (without regard to extensions) after March 21, 2005. However, groups may apply those provisions with respect to determinations of the basis of the stock of a subsidiary in consolidated return years the original return for which is due (without regard to extensions) on or before March 21, 2005, and after August 29, 2003.

(8) *Determination of stock basis in reorganization with boot.* Paragraph (b)(5)(ii)(F) of this section (*Example 6*) applies only with respect to determinations of the basis of the stock of a subsidiary on or after January 23, 2006.

* * * * *

(10) *Election to treat loss carryover as expiring.* Paragraph (b)(4)(iv) of this section applies to any original consolidated Federal income tax return due (without extensions) after June 14, 2007. For original consolidated Federal income tax returns due (without extensions) after May 30, 2006, and on or before June 14, 2007, see § 1.1502-32T as contained in 26 CFR part 1 in effect on April 1, 2007.

* * * * *

■ **Par. 27.** Section 1.1502-34 is revised to read as follows:

§ 1.1502-34 Special aggregate stock ownership rules.

(a) *Determination of stock ownership.* For purposes of the consolidated return regulations, in determining the stock ownership of a member of a group in another corporation (issuing corporation) for purposes of determining the application of section 165(g)(3)(A), 332(b)(1), 351(a), 732(f), or 904(f) in a consolidated return year, stock in the issuing corporation owned by all other members of the group is included. For the determination of whether a member of the group is an 80-

percent distributee, *see* section 337(c) (providing that, for purposes of section 337, the determination of whether any corporation is an 80-percent distributee is made without regard to any consolidated return regulation).

(b) *Example regarding liquidation of member.* The following example illustrates the stock ownership aggregation rule set forth in paragraph (a) of this section.

(1) *Facts.* P wholly owns A, B, and C, each of which is a member of the P group. A, B, and C each owns 33⅓ percent of the stock of D. D liquidates in a transaction purported to qualify under section 332.

(2) *Analysis.* For purposes of determining satisfaction of the 80-percent stock ownership requirement under section 332(b)(1), under the stock ownership aggregation rule set forth in paragraph (a) of this section: A is treated as owning all of the D stock owned by B and C; B is treated as owning all of the D stock owned by A and C; and C is treated as owning all of the D stock owned by A and B. Therefore, each of A, B, and C is treated as owning 100 percent of the stock of D and thus meeting the 80-percent stock ownership requirement for purposes of section 332. However, none of A, B, or C is treated as an 80-percent distributee for purposes of section 337. *See* section 337(c). Therefore, section 337(a) does not apply.

§ 1.1502-42 [Removed]

■ **Par. 28.** Section 1.1502-42 is removed.

■ **Par. 29.** Section 1.1502-43 is amended by revising paragraphs (b)(2)(iii) through (viii) and (e) to read as follows:

§ 1.1502-43 Consolidated accumulated earnings tax.

* * * * *

(b) * * *

(2) * * *

(iii) Under section 535(b)(3), the deduction determined under § 1.1502-26 is not allowed.

(iv) Under section 535(b)(4), the consolidated net operating loss deduction described in § 1.1502-21(a) is not allowed.

(v) Under section 535(b)(5), there is allowed as a deduction the consolidated net capital loss, determined under § 1.1502-22(a).

(vi) Under section 535(b)(6), there is allowed as a deduction an amount equal to—

(A) The consolidated capital gain net income for the taxable year (determined under § 1.1502-22(a) and without the consolidated net capital loss carryovers

and carrybacks to the taxable year), minus

(B) The taxes attributable to such gain.

(vii) Under section 535(b)(7), the consolidated net capital loss carryovers and carrybacks are not allowed. *See* § 1.1502-22(b).

(viii) Section 1.1502-15 does not apply.

* * * * *

(e) *Effective/applicability date.* This section applies to any consolidated Federal income tax return due (without extensions) on or after December 21, 2009.

■ **Par. 30.** Section 1.1502-44 is amended by revising paragraph (b) to read as follows:

§ 1.1502-44 Percentage depletion for independent producers and royalty owners.

* * * * *

(b) *Adjusted consolidated taxable income.* For purposes of this section, adjusted consolidated taxable income is an amount (not less than zero) equal to the group's consolidated taxable income determined without—

(1) Any depletion with respect to an oil or gas property (other than a gas property with respect to which the depletion allowance for all production is determined pursuant to section 613A(b)) for which percentage depletion would exceed cost depletion in the absence of the depletable quantity limitations contained in section 613A(c)(1) and (6) and the consolidated taxable income limitation contained in paragraph (a) of this section;

(2) Any consolidated net operating loss carryback to the consolidated return year under § 1.1502-21; and

(3) Any consolidated net capital loss carryback to the consolidated return year under § 1.1502-22.

* * * * *

■ **Par. 31.** Section 1.1502-45 is added to read as follows:

§ 1.1502-45 Limitation on losses to amount at risk.

(a) *In general.*—(1) *Scope.* This section applies to a loss of any subsidiary if the common parent's stock meets the stock ownership requirement described in section 465(a)(1)(B).

(2) *Limitation on use of losses.* Except as provided in paragraph (a)(4) of this section, a loss from an activity of a subsidiary during a consolidated return year is includible in the computation of consolidated taxable income (or consolidated net operating loss) and consolidated capital gain net income (or consolidated net capital loss) only to the extent the loss does not exceed the amount that the parent is at risk in the

activity at the close of that subsidiary's taxable year. In addition, the sum of a subsidiary's losses from all its activities is includible only to the extent that the parent is at risk in the subsidiary at the close of that year. Any excess may not be taken into account for the consolidated return year but will be treated as a deduction allocable to that activity of the subsidiary in the first succeeding taxable year.

(3) *Amount parent is at risk in subsidiary's activity.* The amount the parent is at risk in an activity of a subsidiary is the lesser of the amount the parent is at risk in the subsidiary, or the amount the subsidiary is at risk in the activity. These amounts are determined under paragraph (b) of this section and the principles of section 465. *See* section 465 and the regulations thereunder and the examples in paragraph (e) of this section.

(4) *Excluded activities.* The limitation on the use of losses in paragraph (a)(2) of this section does not apply to a loss attributable to an activity described in section 465(c)(4).

(5) *Substance over form.* Any transaction or arrangement between members (or between a member and a person that is not a member) which does not cause the parent to be economically at risk in an activity of a subsidiary will be treated in accordance with the substance of the transaction or arrangement notwithstanding any other provision of this section.

(b) *Rules for determining amount at risk.*—(1) *Excluded amounts.* The amount a parent is at risk in an activity of a subsidiary at the close of the subsidiary's taxable year does not include any amount that would not be taken into account under section 465 were the subsidiary not a separate corporation. Thus, for example, if the amount a parent is at risk in the activity of a subsidiary is attributable to nonrecourse financing, the amount at risk is not more than the fair market value of the property (other than the subsidiary's stock or debt or assets) pledged as security.

(2) *Guarantees.* If a parent guarantees a loan by a person other than a member to a subsidiary, the loan increases the amount the parent is at risk in the activity of the subsidiary.

(c) *Application of section 465.* This section applies in a manner consistent with the provisions of section 465. Thus, for example, the recapture of losses provided in section 465(e) applies if the amount the parent is at risk in the activity of a subsidiary is reduced below zero.

(d) *Other consolidated return provisions unaffected.* This section

limits only the extent to which losses of a subsidiary may be used in a consolidated return year. This section does not apply for other purposes, such as §§ 1.1502–32 and 1.1502–19, relating to investment in stock of a subsidiary and excess loss accounts, respectively. Thus, a loss which reduces a subsidiary's earnings and profits in a consolidated return year, but is disallowed as a deduction for the year by reason of this section, may nonetheless result in a negative adjustment to the basis of an owning member's stock in the subsidiary or create (or increase) an excess loss account.

(e) *Examples.* The provisions of this section may be illustrated by the examples in this paragraph (e). In each example, the stock ownership requirement of section 465(a)(1)(B) is met for the stock of the parent (P), and each affiliated group files a consolidated return on a calendar year basis and comprises only the members described.

(1) *Example 1.* In 2022, P forms S with a contribution of \$200 in exchange for all of S's stock. During the year, S borrows \$400 from a commercial lender and P guarantees \$100 of the loan. S uses \$500 of its funds to acquire a motion picture film. S incurs a loss of \$120 for the year with respect to the film. At the close of 2022, the amount P is at risk in S's activity is \$300 (\$200 contribution plus \$100 guarantee). If S has no gain or loss in 2023, and there are no contributions from or distributions to P, at the close of 2023 P's amount at risk in S's activity will be \$180.

(2) *Example 2.* P forms S–1 with a capital contribution of \$1 on January 1, 2023. On February 1, 2023, S–1 borrows \$100 with full recourse and contributes all \$101 to its newly formed subsidiary S–2. S–2 uses the proceeds to explore for natural oil and gas resources. S–2 incurs neither gain nor loss from its explorations during the taxable year. As of December 31, 2023, P is at risk in the exploration activity of S–2 only to the extent of \$1.

(f) *Applicability date.* This section applies to consolidated return years for which the due date of the income tax return (without regard to extensions) is after December 30, 2024.

■ **Par. 32.** Section 1.1502–47 is amended by revising and republishing paragraphs (a)(3), (b)(14)(iii), (c)(2)(ii), (h)(3)(i), (ii), and (x), (h)(4) introductory text, (h)(4)(ii) and (iii), (k), (l), and (m)(1)(i), (iv), and (v) to read as follows:

§ 1.1502–47 Consolidated returns by life-nonlife groups.

(a) * * *

(3) *Other provisions.* The provisions of the consolidated return regulations apply unless this section provides otherwise. Further, unless otherwise indicated in this section, a term used in this section has the same meaning as in sections 801–848.

(b) * * *

(14) * * *

(iii) *Example 3.* Since 2012, L has owned all the stock of L₁, which has owned all the stock of S₁, a nonlife insurance company. L₁ writes some accident and health insurance business. In 2018, L₁ transfers this business, and S₁ transfers some of its business, to a new nonlife insurance company, S₂, in a transaction described in section 351(a). The property transferred to S₂ by L₁ had a fair market value of \$50 million. The property transferred by S₁ had a fair market value of \$40 million. S₂ is ineligible for 2020 because the tacking rule in paragraph (b)(12)(v) of this section does not apply. The old corporations (L₁ and S₁) and the new corporation (S₂) do not all have the same tax character. See paragraph (b)(12)(v)(B) and (D) of this section. The result would be the same if L₁ transferred other property (for example, stock and securities) with the same value, rather than accident and health insurance contracts, to S₂.

* * * * *

(c) * * *

(2) * * *

(ii) *Special rule.* Notwithstanding the general rule, however, if the nonlife members in the group filed a consolidated return for the immediately preceding taxable year and had executed and filed a Form 1122 (or successor form) that is effective for the preceding year, then such members will be treated as if they filed a Form 1122 (or successor form) when they join in the filing of a consolidated return under section 1504(c)(2) and they will be deemed to consent to the regulations under this section. However, an affiliation schedule (Form 851, or any successor form) must be filed by the group and the life members must execute a Form 1122 (or successor form) in the manner prescribed in § 1.1502–75(h)(2).

* * * * *

(h) * * *

(3) * * *

(i) *Separate return years.* The carryovers in paragraph (h)(2)(ii) of this section may include net operating losses and net capital losses of the nonlife members arising in separate return years, that may be carried over to a succeeding year under the principles (including limitations) of §§ 1.1502–21

and 1.1502–22. *But see* paragraph (h)(3)(ix) of this section.

(ii) *Capital loss.* Nonlife consolidated net capital loss sets off consolidated LICTI only to the extent of life consolidated capital gain net income (as determined under paragraph (g)(3) of this section) and this setoff applies before any nonlife consolidated net operating loss sets off consolidated LICTI.

* * * * *

(x) *Percentage limitation.* The offsetable nonlife consolidated net operating losses that may be set off against consolidated LICTI in a particular year may not exceed a percentage limitation. This limitation is the applicable percentage in section 1503(c)(1) of the lesser of two amounts—

(A) The first amount is the sum of the offsetable nonlife consolidated net operating losses under paragraph (h)(2) of this section that may serve in the particular year (determined without this limitation) as a setoff against consolidated LICTI.

(B) The second amount is consolidated LICTI in the particular year reduced by any nonlife consolidated net capital loss that sets off consolidated LICTI in that year.

* * * * *

(4) *Examples.* The following examples illustrate the principles of this paragraph (h). In the examples, L indicates a life company, S is a nonlife insurance company, another letter indicates a nonlife company that is not an insurance company, no company has farming losses (within the meaning of section 172(b)(1)(B)(ii)), and each corporation uses the calendar year as its taxable year.

* * * * *

(ii) *Example 2.* (A) The facts are the same as in paragraph (h)(4)(i) of this section (*Example 1*), except that, for 2021, S's separate net operating loss is \$200. Assume further that L's consolidated LICTI is \$200. Under paragraph (h)(3)(vi) of this section, the offsetable nonlife consolidated net operating loss is \$100 (the nonlife consolidated net operating loss computed under paragraph (f)(2)(ii) of this section (\$200), reduced by the separate net operating loss of I (\$100)). The offsetable nonlife consolidated net operating loss that may be set off against consolidated LICTI in 2021 is \$35 (35 percent of the lesser of the offsetable \$100 or consolidated LICTI of \$200). See section 1503(c)(1) and paragraph (h)(3)(x) of this section. S carries over a loss of \$65, and I carries over a loss of \$100, to 2022 under paragraph (f)(2) of

this section to be used against nonlife consolidated taxable income (consolidated net operating loss (\$200) less amount used in 2021 (\$35)). Under

paragraph (h)(2)(ii) of this section, the offsetable nonlife consolidated net operating loss that may be carried to 2022 is \$65 (\$100 minus \$35). The facts

and results are summarized in the following table.

TABLE 1 TO PARAGRAPH (h)(4)(ii)(A)

	Facts (a)	Offsetable (b)	Limit (c)	Unused loss (d)
P	100	.....	.....	.....
S	(200)	(100)	.....	(65)
I	(100)	.....	.....	(100)
Nonlife subgroup	(200)	(100)	(100)	(165)
L	200	.....	200	.....
35% of the lower of line 4(c) or 5(c) .....	.....	.....	35	.....
Unused offsetable loss .....	.....	.....	.....	(65)

(B) Accordingly, under paragraph (e) of this section, consolidated taxable income is \$165 (line 5(a) minus line 6(c)).

(iii) *Example 3.* The facts are the same as in paragraph (h)(4)(ii) of this section (*Example 2*), with the following additions for 2022. The nonlife subgroup has nonlife consolidated taxable income of \$50 (all of which is attributable to I) before the nonlife consolidated net operating loss deduction under paragraph (f)(2) of this section. Consolidated LICTI is \$100. Under paragraph (f)(2) of this section, \$50 of the nonlife consolidated net operating loss carryover (\$165) is used in 2022 and, under paragraph (h)(3)(vi) and (vii) of this section, the portion used in 2022 is attributable to I, the ineligible nonlife member. Accordingly, the offsetable nonlife consolidated net operating loss from 2021 under paragraph (h)(3)(ii) of this section is \$65, the unused loss from 2021. The offsetable nonlife consolidated net operating loss in 2022 is \$22.75 (35 percent of the lesser of the offsetable loss of \$65 or consolidated LICTI of \$100). Accordingly, under paragraph (e) of this section, consolidated taxable income is \$77.25 (consolidated LICTI of \$100 minus the offsetable loss of \$22.75).

* * * * *

(k) *Preemption.* The rules in this section preempt any inconsistent rules in other sections of the consolidated return regulations. For example, the rules in paragraph (h)(3)(vi) of this section apply notwithstanding § 1.1502–21.

(l) *Other consolidation principles.* The fact that this section treats the life and nonlife members as separate groups in computing, respectively, consolidated LICTI (or life consolidated net operating loss) and nonlife consolidated taxable income (or loss) does not affect the usual rules in the consolidated return

regulations unless this section provides otherwise. Thus, the usual rules in § 1.1502–13 (relating to intercompany transactions) apply to both the life and nonlife members by treating them as members of one affiliated group.

(m) * * *

(1) * * *

(i) File the applicable consolidated corporate income tax return: a Form 1120–L, *U.S. Life Insurance Company Income Tax Return*, where the common parent is a life insurance company; a Form 1120–PC, *U.S. Property and Casualty Insurance Company Income Tax Return*, where the common parent is an insurance company, other than a life insurance company; a Form 1120, *U.S. Corporation Income Tax Return*, where the common parent is any other type of corporation; or any successor form;

* * * * *

(iv) Report separately the nonlife consolidated taxable income or loss, determined under paragraph (f) of this section, on a Form 1120 or 1120–PC (or any successor forms) (whether filed by the common parent or as an attachment to the consolidated return), as the case may be, of all nonlife members of the consolidated group; and

(v) Report separately the consolidated Life Insurance Company Taxable Income or life consolidated net operating loss, on a Form 1120–L (or any successor form) (whether filed by the common parent or as an attachment to the consolidated return), of all life members of the consolidated group.

* * * * *

■ **Par. 33.** Section 1.1502–75 is amended by:

■ a. Revising and republishing paragraphs (b)(1) through (3), (c)(1)(i), and (c)(2)(i) and (ii);

■ b. Removing paragraph (d)(5); and

■ c. Revising and republishing paragraphs (h)(1) and (2).

The revisions read as follows:

§ 1.1502–75 Filing of consolidated returns.

* * * * *

(b) * * *

(1) *General rule.* The consent of a corporation referred to in paragraph (a)(1) of this section is made by such corporation joining in the making of the consolidated return for such year. A corporation is deemed to have joined in the making of such return for such year if it files a Form 1122 (or successor form) in the manner specified in paragraph (h)(2) of this section.

(2) *Consent under facts and circumstances—(i) In general.* If a member of the group fails to file Form 1122 (or successor form), the Commissioner may under the facts and circumstances determine that such member has joined in the making of a consolidated return by such group. The following circumstances, among others, will be taken into account in making this determination—

(A) Whether or not the income and deductions of the member were included in the consolidated return;

(B) Whether or not a separate return was filed by the member for that taxable year; and

(C) Whether or not the member was included in the affiliations schedule, Form 851 (or successor form).

(ii) *Treatment of member.* If the Commissioner determines that the member described in paragraph (b)(1)(i) of this section has joined in the making of the consolidated return, such member is treated as if it had filed a Form 1122 (or successor form) for such year for purposes of paragraph (h)(2) of this section.

(3) *Failure to consent due to mistake.*

If any member has failed to join in the making of a consolidated return under either paragraph (b)(1) or (2) of this section, then the tax liability of each member of the group is determined on the basis of separate returns unless the common parent corporation establishes to the satisfaction of the Commissioner

that the failure of such member to join in the making of the consolidated return was due to a mistake of law or fact, or to inadvertence. In such case, such member is treated as if it had filed a Form 1122 (or successor form) for such year for purposes of paragraph (h)(2) of this section, and thus joined in the making of the consolidated return for such year.

(c) * * *

(1) * * *

(i) *In general.* Notwithstanding that a consolidated return is required for a taxable year, the Commissioner, upon application by the common parent, may for good cause shown grant permission to a group to discontinue filing consolidated returns. Any such application must be made through a letter ruling request filed not later than the 90th day before the due date of the consolidated return for the taxable year (including extensions). In addition, if an amendment of the Code, or other law affecting the computation of tax liability, is enacted and the enactment is effective for a taxable year ending before or within 90 days after the date of enactment, then application for such a taxable year may be made not later than the 180th day after the date of enactment, and if the application is approved the permission to discontinue filing consolidated returns will apply to such taxable year notwithstanding that a consolidated return has already been filed for such year.

* * * * *

(2) * * *

(i) *Permission to all groups.* The Commissioner, in the Commissioner's discretion, may grant all groups permission to discontinue filing consolidated returns if any provision of the Code or regulations has been amended and such amendment is of the type which could have a substantial adverse effect on the filing of consolidated returns by substantially all groups, relative to the filing of separate returns. Ordinarily, the permission to discontinue applies with respect to the taxable year of each group which includes the effective date of such an amendment.

(ii) *Permission to a class of groups.* The Commissioner, in the Commissioner's discretion, may grant a particular class of groups permission to discontinue filing consolidated returns if any provision of the Code or regulations has been amended and such amendment is of the type which could have a substantial adverse effect on the filing of consolidated returns by substantially all such groups relative to the filing of separate returns. Ordinarily,

the permission to discontinue applies with respect to the taxable year of each group within the class which includes the effective date of such an amendment.

* * * * *

(h) * * *

(1) *Consolidated return made by common parent or agent.* The consolidated return must be made on Form 1120, *U.S. Corporation Income Tax Return* (or any successor form), for the group by the common parent or the agent for the group as provided in § 1.1502-77(c). The consolidated return, with Form 851, *Affiliations Schedule* (or any successor form), attached, must be filed with the service center with which the common parent would have filed a separate return.

(2) *Filing of Form 1122 for first year.* If, under the provisions of paragraph (a)(1) of this section, a group wishes to file a consolidated return for a taxable year, then a Form 1122 (*Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Income Tax Return*) (or successor form) must be executed by each subsidiary. The group must attach either executed Forms 1122 (or successor forms) or unsigned copies of the completed Forms 1122 (or successor forms) to the consolidated return. If the group submits unsigned Forms 1122 (or successor forms) with its return, it must retain the signed originals in its records in the manner required by § 1.6001-1(e). Form 1122 (or any successor form) is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding taxable year.

* * * * *

■ **Par. 34.** Section 1.1502-76 is amended by revising and republishing paragraphs (a), (b)(1)(ii)(A)(2), (b)(2)(v), (b)(6), (c)(3), and (d) to read as follows:

§ 1.1502-76 Taxable year of members of group.

(a) *Taxable year of members of group.* The consolidated return of a group must be filed on the basis of the common parent's taxable year, and each subsidiary must adopt the common parent's annual accounting period for the first consolidated return year for which the subsidiary's income is includible in the consolidated return. If any member is on a 52-53-week taxable year, the rule of the preceding sentence will, with the advance consent of the Commissioner, be deemed satisfied if the taxable years of all members of the group end within the same 7-day period. Any request for such consent must be requested at the time and in the

manner that the Commissioner of Internal Revenue may prescribe by Internal Revenue Service forms and instructions or by publication in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii) of this chapter).

(b) * * *

(1) * * *

(ii) * * *

(A) * * *

(2) *Special rule for former S corporations.* If S becomes a member in a transaction other than in a qualified stock purchase for which an election under section 338(g) is made, and immediately before becoming a member an election under section 1362(a) was in effect, then S will become a member at the beginning of the day the termination of its S corporation election is effective. S's tax year ends for all Federal income tax purposes at the end of the preceding day.

* * * * *

(2) * * *

(v) *Acquisition of S corporation.* If a corporation is acquired in a transaction to which paragraph (b)(1)(ii)(A)(2) of this section applies, then paragraphs (b)(2)(ii) and (iii) of this section do not apply and items of income, gain, loss, deduction, and credit are assigned to each short taxable year on the basis of the corporation's normal method of accounting as determined under section 446.

* * * * *

(6) *Applicability date.* Except as provided in paragraphs (b)(1)(ii)(A)(2) and (b)(2)(v) of this section, this paragraph (b) applies to corporations becoming or ceasing to be members of consolidated groups on or after January 1, 1995.

(c) * * *

(3) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples:

(i) *Example 1.* Corporation P, which filed a separate return for the calendar year 2022, acquires all of the stock of corporation S as of the close of December 31, 2022. Corporation S reports its income on the basis of a fiscal year ending March 31. On July 15, 2023, the due date for the filing of a separate return by S (assuming no extensions of time), a consolidated return has not been filed for the group (P and S). On such date S may either file a return for the period April 1, 2022, through December 31, 2022, or it may file a return for the complete fiscal year ending March 31, 2023. If S files a return for the short period ending December 31, 2022, and if the group elects not to file a consolidated return for the calendar year 2023, S, on or

before April 15, 2024 (the due date of P's return, assuming no extensions of time), must file a substituted return for the complete fiscal year ending March 31, 2023, in lieu of the return previously filed for the short period. Interest is computed from July 15, 2023. If, however, S files a return for the complete fiscal year ending March 31, 2023, and the group elects to file a consolidated return for the calendar year 2023, then S must file an amended return covering the period from April 1, 2022, through December 31, 2022, in lieu of the return previously filed for the complete fiscal year. Interest is computed from July 15, 2023.

(ii) *Example 2.* Assume the same facts as in paragraph (c)(3)(i) of this section (*Example 1*), except that corporation P

acquires all of the stock of corporation S at the close of September 30, 2023, and P files a consolidated return for the group for 2023 on April 15, 2024 (not having obtained any extensions of time). Since a consolidated return has been filed on or before the due date (July 15, 2024) for the filing of the separate return for the taxable year ending March 31, 2024, the return of S for the short taxable year beginning April 1, 2023, and ending September 30, 2023, should be filed no later than April 15, 2024.

(d) *Applicability date*—(1) *Taxable years of members of group applicability date.* Paragraph (a) of this section applies to any original consolidated Federal income tax return due (without extensions) after July 20, 2007.

(2) *Election to ratably allocate items applicability date.* Paragraph (b)(2)(ii)(D) of this section applies to any original consolidated Federal income tax return due (without extensions) after July 20, 2007.

§ 1.1502–77 [Amended]

■ **Par. 35.** Section 1.1502–77 is amended by:

■ a. Designating *Examples 1* through *15* in paragraph (g) as paragraphs (g)(1) through (15), respectively.

■ b. In paragraph (g), for each newly redesignated paragraph listed in the “Paragraph” column, removing the text indicated in the “Remove” column and adding in its place the text indicated in the “Add” column:

Paragraph	Remove	Add
(g)(2)(i)	<i>Example 1</i>	paragraph (g)(1)(i) of this section (<i>Example 1</i>).
(g)(4)(i)	<i>Example 3</i>	paragraph (g)(3)(i) of this section (<i>Example 3</i>).
(g)(5)(i)	<i>Example 4</i>	paragraph (g)(4) of this section (<i>Example 4</i>).
(g)(11)(i)(B)(1)	His	the Commissioner's.
(g)(11)(ii)(A)	paragraph (i)(A) of this <i>Example 11</i> .	paragraph (g)(11)(i)(A) of this section.
(g)(12)(i)	paragraph (ii)(A) of <i>Example 11</i>	paragraph (g)(11)(ii)(A) of this section (<i>Example 11</i>).
(g)(13)(i)	March 15	April 15.

■ **Par. 36.** Section 1.1502–77A is amended by revising and republishing paragraph (d) to read as follows:

§ 1.1502–77A Common parent agent for subsidiaries applicable for consolidated return years beginning before June 28, 2002.

* * * * *

(d) *Effect of dissolution of common parent corporation.* If the common parent corporation contemplates dissolution, or is about to be dissolved, or if for any other reason its existence is about to terminate, it must forthwith notify the Commissioner of such fact and designate, subject to the approval of the Commissioner, another member to act as agent in its place to the same extent and subject to the same conditions and limitations as are applicable to the common parent. If the notice thus required is not given by the common parent, or the designation is not approved by the Commissioner, the remaining members may, subject to the approval of the Commissioner, designate another member to act as such agent, and notice of such designation must be given to the Commissioner. Until a notice in writing designating a new agent has been approved by the Commissioner, any notice of deficiency or other communication mailed to the common parent will be considered as having been properly mailed to the agent of the group; or, if the

Commissioner has reason to believe that the existence of the common parent has terminated, the Commissioner may deal directly with any member in respect of its liability.

* * * * *

■ **Par. 37.** Section 1.1502–77B is amended by revising and republishing paragraphs (a)(6)(i) and (ii) to read as follows:

§ 1.1502–77B Agent for the group applicable for consolidated return years beginning on or after June 28, 2002, and before April 1, 2015.

(a) * * *

(6) * * *

(i) *Several liability.* The Commissioner may, upon issuing to the common parent written notice that expressly invokes the authority of this provision, deal directly with any member of the group with respect to its liability under § 1.1502–6 for the consolidated tax of the group, in which event such member has sole authority to act for itself with respect to that liability. However, if the Commissioner believes or has reason to believe that the existence of the common parent has terminated, the Commissioner may deal directly with any member with respect to that member's liability under § 1.1502–6 without giving the notice required by this provision.

(ii) *Information requests.* The Commissioner may, upon informing the

common parent, request information relevant to the consolidated tax liability from any member of the group. However, if the Commissioner believes or has reason to believe that the existence of the common parent has terminated, the Commissioner may request such information from any member of the group without informing the common parent.

* * * * *

■ **Par. 38.** Section 1.1502–78 is amended by revising paragraph (f) to read as follows:

§ 1.1502–78 Tentative carryback adjustments.

* * * * *

(f) *Applicability date.* This section applies to taxable years to which a loss or credit may be carried back and for which the due date (without extensions) of the original return is after June 28, 2002, except that the provisions of paragraph (e)(2) of this section apply for applications by new members of consolidated groups for tentative carryback adjustments resulting from net operating losses, net capital losses, or unused business credits arising in separate return years of new members that begin on or after January 1, 2001.

■ **Par. 39.** Section 1.1502–79 is amended by revising paragraphs (a), (b), (d), and (e)(1) and (2) to read as follows:

§ 1.1502–79 Separate return years.

(a) *Carryover and carryback of consolidated net operating losses to separate return years.* For rules regarding the carryover and carryback of consolidated net operating losses to separate return years, see § 1.1502–21(b).

(b) *Carryover and carryback of consolidated net capital loss to separate return years.* For rules regarding the carryover and carryback of consolidated net capital losses to separate return years, see § 1.1502–22(b).

(d) *Carryover and carryback of consolidated unused foreign tax—(1) In general.* If a consolidated unused foreign tax can be carried under the principles of section 904(c) and § 1.1502–4(d) to a separate return year of a corporation (or could have been so carried if such corporation were in existence) that was a member of the group in the year in which the unused foreign tax arose, then the portion of the consolidated unused foreign tax attributable to the corporation (as determined under paragraph (d)(2) of this section) is apportioned to the corporation (and any successor to that corporation in a transaction to which section 381(a) applies) under the principles of § 1.1502–21(b) and is deemed paid or accrued in such separate return year to the extent provided in section 904(c).

(2) *Portion of consolidated unused foreign tax attributable to a member.* The portion of a consolidated unused foreign tax for any year attributable to a member is an amount equal to the consolidated unused foreign tax multiplied by a fraction. The numerator of the fraction is the foreign taxes paid or accrued by the member for the year (including those taxes deemed paid or accrued, other than by reason of section 904(c)). The denominator of the fraction is the aggregate of all such taxes paid or accrued for the year (including those taxes deemed paid or accrued, other than by reason of section 904(c)) by all members of the group.

(e) * * *

(1) *In general.* If the consolidated excess charitable contributions for any taxable year can be carried under the principles of section 170(b)(2) and § 1.1502–24(b) to a separate return year of a corporation (or could have been so carried if such corporation were in existence) which was a member of the group in the year in which such excess contributions arose, then the portion of such consolidated excess charitable contributions attributable to such corporation (as determined under

paragraph (e)(2) of this section) is apportioned to such corporation (and any successor to such corporation in a transaction to which section 381(a) applies) under the principles of § 1.1502–21(b) and is a charitable contribution carryover to such separate return year.

(2) *Portion of consolidated excess charitable contributions attributable to a member.* The portion of the consolidated excess charitable contributions for any year attributable to a member is an amount equal to the consolidated excess contributions multiplied by a fraction. The numerator of the fraction is the charitable contributions paid by the member for the year. The denominator of the fraction is the aggregate of all charitable contributions paid for the year by all members of the group.

* * * * *

■ **Par. 40.** Section 1.1502–80 is amended by revising and republishing paragraph (c)(2) to read as follows:

§ 1.1502–80 Applicability of other provisions of law.

* * * * *

(c) * * *

(2) *Cross reference.* See § 1.1502–36 for additional rules relating to worthlessness of subsidiary stock.

* * * * *

§ 1.1502–81T [Removed]

■ **Par. 41.** Section 1.1502–81T is removed.

■ **Par. 42.** Section 1.1502–90 is amended by revising the entry for § 1.1502–99 to read as follows:

§ 1.1502–90 Table of contents.

* * * * *

§ 1.1502–99 *Effective/applicability dates.*

(a) In general.

(b) Reattribution of losses under § 1.1502–36(d)(6).

(c) Application to section 163(j).

(1) Sections 1.382–2 and 1.382–5.

(2) Sections 1.382–6 and 1.383–1.

§ 1.1502–91 [Amended]

■ **Par. 43.** Section 1.1502–91 is amended by removing paragraph (b)(3).

■ **Par. 44.** Section 1.1502–92 is amended by:

■ a. Designating *Examples 1* through *3* in paragraph (b)(3)(iii) as paragraphs (b)(3)(iii)(A) through (C), respectively.

■ b. In newly redesignated paragraphs (b)(3)(iii)(A) through (C), further redesignating paragraphs in the first column as paragraphs in the second column:

Old paragraphs	New paragraphs
(b)(3)(iii)(A)(i) and (ii)	(b)(3)(iii)(A)(1) and (2).

Old paragraphs	New paragraphs
(b)(3)(iii)(B)(i), (ii), (iii), and (iv).	(b)(3)(iii)(B)(1), (2), (3), and (4).
(b)(3)(iii)(C)(i) and (ii)	(b)(3)(iii)(C)(1) and (2).

■ c. Revising newly redesignated paragraphs (b)(3)(iii)(B)(2) through (4). The revisions read as follows:

§ 1.1502–92 Ownership change of a loss group or a loss subgroup.

* * * * *

(b) * * *

(3) * * *

(iii) * * *

(B) * * *

(2) For purposes of determining if the L loss group has an ownership change on November 22, Year 3, the day of the merger, P is treated as a continuation of L so that the testing period for P begins on January 1, Year 2, the first day of the taxable year of the L loss group in which the consolidated net operating loss that is carried over to Year 3 arose. Immediately after the close of November 22, Year 3, D is the only 5-percent shareholder that has increased its ownership interest in P during the testing period (from zero to 10 percentage points).

(3) The facts are the same as in paragraph (b)(3)(iii)(B)(1) of this section (*Example 2*), except that A has held 23 $\frac{1}{3}$ shares (23 $\frac{1}{3}$ percent) of L's stock for five years, and A purchased an additional 10 shares of L stock from E two years before the merger. Immediately after the close of the day of the merger (a testing date), A's ownership interest in P, the common parent of the L loss group, has increased by 6 $\frac{2}{3}$ percentage points over A's lowest percentage ownership during the testing period (23 $\frac{1}{3}$ percent to 30 percent).

(4) The facts are the same as in paragraph (b)(3)(iii)(B)(1) of this section (*Example 2*), except that P has a net operating loss arising in Year 1 that is carried to the first consolidated return year ending after the day of the merger. Solely for purposes of determining whether the L loss group has an ownership change under paragraph (b)(1)(i) of this section, the testing period for P commences on January 1, Year 2. P does not determine the earliest day for its testing period by reference to its net operating loss carryover from Year 1, which §§ 1.1502–1(f)(3) and 1.1502–75(d)(3)(i) treat as arising in a SRLY. See § 1.1502–94 to determine the application of section 382 with respect to P's net operating loss carryover.

* * * * *

■ **Par. 45.** Section 1.1502–99 is amended by:

■ a. Revising paragraphs (a) and (b).

- b. Removing paragraph (c).
- c. Redesignating paragraph (d) as paragraph (c).

The revisions read as follows:

§ 1.1502–99 Effective/applicability dates.

(a) *In general.* Sections 1.1502–91 through 1.1502–96 and § 1.1502–98 apply to any testing date that is on or after June 25, 1999. Sections 1.1502–94 through 1.1502–96 also apply to a corporation that becomes a member of a group or ceases to be a member of a group (or loss subgroup) on or after June 25, 1999.

(b) *Reattribution of losses under § 1.1502–36(d)(6).* Section 1.1502–96(d) applies to reattributions of net operating loss carryovers, capital loss carryovers, and deferred deductions in connection with a transfer of stock to which § 1.1502–36 applies, and the election under § 1.1502–96(d)(5) (relating to an election to reattribute section 382 limitation) can be made with an election under § 1.1502–36(d)(6) to reattribute a loss to the common parent that is filed at the time and in the manner provided in § 1.1502–36(e)(5)(x).

* * * * *

■ **Par. 46.** Section 1.1502–100 is amended by revising and republishing paragraphs (a)(2), (c)(2), and (d) to read as follows:

§ 1.1502–100 Corporations exempt from tax.

(a) * * *

(2) *Applicability of other consolidated return provisions.* The provisions of the consolidated return regulations are applicable to an exempt group to the extent they are not inconsistent with the provisions of this section or the provisions of subchapter F of chapter 1 of the Code. For purposes of applying the provisions of the consolidated return regulations to an exempt group, the following substitutions must be made—

(i) The term “exempt group” is substituted for the term “group”;

(ii) The terms “unrelated business taxable income”, “separate unrelated business taxable income”, and “consolidated unrelated business taxable income” are substituted for the terms “taxable income”, “separate taxable income”, and “consolidated taxable income”; and

(iii) The term *consolidated liability for tax determined under § 1.1502–2* (or an equivalent term) means the consolidated liability for tax of an exempt group determined under paragraph (b) of this section.

* * * * *

(c) * * *

(2) Any consolidated net operating loss deduction (determined under § 1.1502–21) subject to the limitations provided in section 512(b)(6);

* * * * *

(d) *Separate unrelated business taxable income—*(1) *In general.* The separate unrelated business taxable income of a member of an exempt group must be computed in accordance with the provisions of section 512 covering the determination of unrelated business taxable income of separate corporations, except that:

(i) The provisions of paragraphs (a) through (d), (f) through (k), and (o) of § 1.1502–12 apply; and

(ii) No charitable contributions deduction is taken into account under section 512(b)(10).

(2) *Section 501(c)(2) organizations.* See sections 511(c) and 512(a)(3)(C) for special rules applicable to organizations described in section 501(c)(2).

§§ 1.1502–9A, 1.1502–15A, 1.1502–21A, 1.1502–22A, 1.1502–23A, 1.1502–41A, 1.1502–79A, 1.1502–90A, 1.1502–91A, 1.1502–92A, 1.1502–93A, 1.1502–94A, 1.1502–95A, 1.1502–96A, 1.1502–97A, 1.1502–98A, 1.1502–99A, and 1.1503–2 [Removed]

■ **Par. 47.** Sections 1.1502–9A, 1.1502–15A, 1.1502–21A, 1.1502–22A, 1.1502–23A, 1.1502–41A, 1.1502–79A, 1.1502–90A, 1.1502–91A, 1.1502–92A, 1.1502–93A, 1.1502–94A, 1.1502–95A, 1.1502–96A, 1.1502–97A, 1.1502–98A, 1.1502–99A, and 1.1503–2 are removed.

■ **Par. 48.** Section 1.1503(d)–1 is amended by revising and republishing paragraph (b)(7) to read as follows:

§ 1.1503(d)–1 Definitions and special rules for filings under section 1503(d).

* * * * *

(b) * * *

(7) *Foreign country* includes any U.S. territory (as defined in § 1.1502–1(l)).

* * * * *

■ **Par. 49.** Section 1.1503(d)–8 is amended by:

■ a. Revising and republishing paragraph (a).

■ b. Removing and reserving paragraphs (b)(1) and (2), (b)(3)(ii) and (iii), and (b)(4).

The revision and republication read as follows:

§ 1.1503(d)–8 Effective dates.

(a) *General rule.* Except as provided in paragraph (b) of this section, this paragraph (a) provides the dates of applicability of §§ 1.1503(d)–1 through 1.1503(d)–7. Sections 1.1503(d)–1 through 1.1503(d)–7 apply to dual consolidated losses incurred in taxable years beginning on or after April 18,

2007. However, a taxpayer may apply §§ 1.1503(d)–1 through 1.1503(d)–7, in their entirety, to dual consolidated losses incurred in taxable years beginning on or after January 1, 2007, by filing its return and attaching to such return the domestic use agreements, certifications, or other information in accordance with these regulations. For purposes of this section, the term application date means either April 18, 2007, or, if the taxpayer applies these regulations pursuant to the preceding sentence, January 1, 2007. Section 1.1503–2, as contained in 26 CFR part 1, revised as of April 1, 2024, applies for dual consolidated losses incurred in taxable years beginning on or after October 1, 1992, and before the application date.

* * * * *

■ **Par. 50.** Section 1.1504–3 is amended by revising and republishing paragraph (d)(1)(ii) to read as follows:

§ 1.1504–3 Treatment of stock in a QOF C corporation for purposes of consolidation.

* * * * *

(d) * * *

(1) * * *

(ii) *Analysis.* Under paragraph (b)(1) of this section, stock of a QOF C corporation (qualifying or otherwise) is not treated as stock for purposes of determining whether the QOF C corporation may join in the filing of a consolidated return. Thus, because no election has been made under paragraph (b)(2) of this section, once Q1 becomes a QOF, Q1 ceases to be affiliated with the P group members for purposes of section 1501, and it deconsolidates from the P group. See the consolidated return regulations generally for the consequences of deconsolidation.

* * * * *

■ **Par. 51.** Section 1.1552–1 is amended by:

■ a. Redesignating paragraphs (a)(1)(ii)(a) through (d) as paragraphs (a)(1)(ii)(A) through (D), respectively.

■ b. Revising newly redesignated paragraph (a)(1)(ii)(B).

■ c. Redesignating paragraphs (a)(2)(ii)(a) through (f) as paragraphs (a)(2)(ii)(A) through (I), respectively.

■ d. Removing and reserving newly redesignated paragraph (a)(2)(ii)(B).

■ e. Revising newly redesignated paragraph (a)(2)(ii)(I).

■ f. Adding paragraph (g).

The revisions and addition read as follows:

§ 1.1552–1 Earnings and Profits.

(a) * * *

(1) * * *

(ii) * * *

(B) Such member's capital gain net income (determined without regard to any net capital loss carryover attributable to such member);

* * * * *

(2) * * *

(ii) * * *

(I) For purposes of subtitle A of the Code, if two or more taxable income brackets are set forth in section 11(b) of the Code, the amount in each taxable income bracket is divided by the number of members (or such portion of each bracket which is apportioned to the member pursuant to a schedule attached to the consolidated return for the consolidated return year). However, if for the taxable year some or all of the members are component members of a controlled group of corporations (within the meaning of section 1563) and if there are other such component members which do not join in filing the consolidated return for such year, the amount to be divided among the members filing the consolidated return is (in lieu of the taxable income brackets) the sum of the amounts apportioned to the component members which join in filing the consolidated return.

* * * * *

(g) *Applicability date.* This section applies to taxable years beginning on or after January 1, 2025. See 26 CFR 1.1552-1, as revised April 1, 2024, for rules applicable prior to January 1, 2025.

■ **Par. 52.** Section 1.1563-1 is amended by:

■ a. Revising and republishing paragraphs (a)(2)(i)(A) and (B) and (a)(6);

■ b. In paragraph (b)(4), designating *Examples 1 through 4* as paragraphs (b)(4)(i) through (iv), respectively;

■ c. Revising newly designated paragraph (b)(4)(i); and

■ d. Revising paragraph (e).

The revisions read as follows:

§ 1.1563-1 Definition of controlled group of corporations and component members and related concepts.

(a) * * *

(2) * * *

(i) * * *

(A) Stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned (directly and with the application of § 1.1563-3(b)(1), (2), and (3)) by one or more of the other corporations; and

(B) The common parent corporation owns (directly and with the application

of § 1.1563-3(b)(1), (2), and (3)) stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of at least one of the other corporations, excluding, in computing such voting power or value, stock owned directly by such other corporations.

* * * * *

(6) *Voting power of stock.* For purposes of this section, and §§ 1.1563-2 and 1.1563-3, in determining whether the stock owned by a person (or persons) possesses a certain percentage of the total combined voting power of all classes of stock entitled to vote of a corporation, consideration will be given to all the facts and circumstances of each case. A share of stock will generally be considered as possessing the voting power accorded to such share by the corporate charter, by-laws, or share certificate. On the other hand, if there is any agreement, whether express or implied, that a shareholder will not vote the shareholder's stock in a corporation, the formal voting rights possessed by the shareholder's stock may be disregarded in determining the percentage of the total combined voting power possessed by the stock owned by other shareholders in the corporation, if the result is that the corporation becomes a component member of a controlled group of corporations. Moreover, if a shareholder agrees to vote the shareholder's stock in a corporation in the manner specified by another shareholder in the corporation, the voting rights possessed by the stock owned by the first shareholder may be considered to be possessed by the stock owned by such other shareholder if the result is that the corporation becomes a component member of a controlled group of corporations.

* * * * *

(b) * * *

(4) * * *

(i) *Example 1.* B, an individual, owns all of the stock of corporations W and X on each day of 1964. W and X each use the calendar year as their taxable year. On January 1, 1964, B also owns all the stock of corporation Y (a fiscal year corporation with a taxable year beginning on July 1, 1964, and ending on June 30, 1965), which stock B sells on October 15, 1964. On December 1, 1964, B purchases all the stock of corporation Z (a fiscal year corporation with a taxable year beginning on September 1, 1964, and ending on August 31, 1965). On December 31, 1964, W, X, and Z are members of the same controlled group. However, the

component members of the group on such December 31st are W, X, and Y. Under paragraph (b)(2)(i) of this section, Z is treated as an excluded member of the group on December 31, 1964, since Z was a member of the group for less than one-half of the number of days (29 out of 121 days) during the period beginning on September 1, 1964 (the first day of its taxable year) and ending on December 30, 1964. Under paragraph (b)(3) of this section, Y is treated as an additional member of the group on December 31, 1964, since Y was a member of the group for at least one-half of the number of days (107 out of 183 days) during the period beginning on July 1, 1964 (the first day of its taxable year) and ending on December 30, 1964.

* * * * *

(e) *Applicability dates—(1) In general.* Except as provided in paragraph (e)(2) of this section, this section applies to taxable years beginning on or after May 26, 2009. However, taxpayers may apply this section to taxable years beginning before May 26, 2009. For taxable years beginning before May 26, 2009, see § 1.1563-1T as contained in 26 CFR part 1 in effect on April 1, 2009.

(2) *Exceptions.* (i) Paragraph (a)(1)(ii) of this section applies to taxable years beginning on or after April 11, 2011.

(ii) Paragraphs (a)(2)(i)(A) and (B), (a)(6), and (b)(4) of this section apply to taxable years beginning on or after December 30, 2024.

■ **Par. 53.** Section 1.1563-2 is amended by:

■ a. Revising and republishing paragraphs (b)(2)(iii) and (b)(4)(ii);

■ b. In paragraph (b)(7), designating *Examples 1 through 3* as paragraphs (b)(7)(i) through (iii), respectively;

■ c. Revising newly designated paragraph (b)(7)(ii) and (iii); and

■ d. Adding paragraph (d).

The revisions and addition read as follows:

§ 1.1563-2 Excluded stock.

* * * * *

(b) * * *

(2) * * *

(iii) *Employees.* Stock in the subsidiary corporation owned (directly and with the application of the rules contained in § 1.1563-3(b)) by an employee of the subsidiary corporation if such stock is subject to conditions which substantially restrict or limit the employee's right (or if the employee constructively owns such stock, the direct owner's right) to dispose of such stock and which run in favor of the parent or subsidiary corporation. In general, any condition which extends, directly or indirectly, to the parent

corporation or the subsidiary corporation preferential rights with respect to the acquisition of the employee's (or direct owner's) stock will be considered to be a condition described in the preceding sentence. It is not necessary, in order for a condition to be considered to be in favor of the parent corporation or the subsidiary corporation, that the parent or subsidiary be extended a discriminatory concession with respect to the price of the stock. For example, a condition whereby the parent corporation is given a right of first refusal with respect to any stock of the subsidiary corporation offered by an employee for sale is a condition which substantially restricts or limits the employee's right to dispose of such stock and runs in favor of the parent corporation. Moreover, any legally enforceable condition which prohibits the employee from disposing of the employee's stock without the consent of the parent (or a subsidiary of the parent) will be considered to be a substantial limitation running in favor of the parent corporation.

* * * * *

(4) * * *
(ii) *Employees.* Stock in such corporation owned (directly and with the application of the rules contained in § 1.1563–3(b)) by an employee of such corporation if such stock is subject to conditions which run in favor of a common owner of such corporation (or in favor of such corporation) and which substantially restrict or limit the employee's right (or if the employee constructively owns such stock, the record owner's right) to dispose of such stock. The principles of paragraph (b)(2)(iii) of this section apply in determining whether a condition satisfies the requirements of the preceding sentence. Thus, in general, a condition which extends, directly or indirectly, to a common owner or such corporation preferential rights with respect to the acquisition of the employee's (or record owner's) stock will be considered to be a condition which satisfies such requirements. For purposes of this paragraph (b)(4)(ii), if a condition which restricts or limits an employee's right (or record owner's right) to dispose of the employee's (or record owner's) stock also applies to the stock in such corporation held by such common owner pursuant to a bona fide reciprocal stock purchase arrangement, such condition is not treated as one which restricts or limits the employee's (or record owner's) right to dispose of such stock. An example of a reciprocal stock purchase arrangement is an agreement whereby a common owner

and the employee are given a right of first refusal with respect to stock of the employer corporation owned by the other party. If, however, the agreement also provides that the common owner has the right to purchase the stock of the employer corporation owned by the employee in the event that the corporation should discharge the employee for reasonable cause, the purchase arrangement would not be reciprocal within the meaning of this paragraph (b)(4)(ii).

* * * * *

(7) * * *
(ii) *Example 2.* The facts are the same as in paragraph (b)(7)(i) of this section (*Example 1*), except that Jones owns 15 shares of the 100 shares of the only class of stock of corporation S–1, and corporation S owns 75 shares of such stock. P satisfies the 50 percent stock ownership requirement of paragraph (b)(1) of this section with respect to S–1 since P is considered as owning 52.5 percent (70 percent × 75 percent) of the S–1 stock with the application of § 1.1563–3(b)(4). Since Jones is an officer of P, under paragraph (b)(2)(ii) of this section, the S–1 stock owned by Jones is treated as not outstanding for purposes of determining whether S–1 is a member of the parent-subsidiary controlled group of corporations. Thus, S is considered to own stock possessing 88.2 percent (75 ÷ 85) of the voting power and value of the S–1 stock. Accordingly, P, S, and S–1 are members of a parent-subsidiary controlled group of corporations.

(iii) *Example 3.* Corporation X owns 60 percent of the only class of stock of corporation Y. D, the president of Y, owns the remaining 40 percent of the stock of Y. D has agreed that, if D offers D's stock in Y for sale, D will first offer the stock to X at a price equal to the fair market value of the stock on the first date the stock is offered for sale. Since D is an employee of Y within the meaning of section 3306(i) of the Code, and D's stock in Y is subject to a condition which substantially restricts or limits D's right to dispose of such stock and runs in favor of X, under paragraph (b)(2)(iii) of this section such stock is treated as if it were not outstanding for purposes of determining whether X and Y are members of a parent-subsidiary controlled group of corporations. Thus, X is considered to own stock possessing 100 percent of the voting power and value of the stock of Y. Accordingly, X and Y are members of a parent-subsidiary controlled group of corporations. The result would be the same if D's spouse, instead of D, owned directly the 40 percent stock interest in

Y and such stock was subject to a right of first refusal running in favor of X.

* * * * *

(d) *Applicability date.* This section applies to taxable years beginning on or after December 30, 2024. For taxable years beginning before December 30, 2024, see § 1.1563–2 as contained in 26 CFR part 1 in effect on April 1, 2024.

■ **Par. 54.** Section 1.1563–3 is amended by revising and republishing paragraphs (b)(2)(i) and (ii), (b)(3)(i) and (ii), (b)(4)(ii), (b)(5)(i) and (ii), (b)(6)(i), (ii), and (iv), (c)(2) and (4), (d)(3), and (e) to read as follows:

§ 1.1563–3 Rules for determining stock ownership.

* * * * *

(b) * * *

(2) * * *

(i) *Rule.* Stock owned, directly or indirectly, by or for a partnership is considered as owned by any partner having an interest of 5 percent or more in either the capital or profits of the partnership in proportion to the partner's interest in capital or profits, whichever such proportion is the greater.

(ii) *Example—(A) Facts.* Green, Jones, and White are unrelated individuals and are partners in the GJW partnership. The partners' interests in the capital and profits of the partnership are as follows:

TABLE 1 TO PARAGRAPH (b)(2)(ii)(A)

Partner	Capital percent	Profit percent
Green	36	25
Jones	60	71
White	4	4

(B) *Analysis.* The GJW partnership owns the entire outstanding stock (100 shares) of X Corporation. Under this paragraph (b)(2), Green is considered to own the X stock owned by the partnership in proportion to Green's interest in capital (36 percent) or profits (25 percent), whichever such proportion is the greater. Therefore, Green is considered to own 36 shares of the X stock. However, since Jones has a greater interest in the profits of the partnership, Jones is considered to own the X stock in proportion to Jones's interest in such profits. Therefore, Jones is considered to own 71 shares of the X stock. Since White does not have an interest of 5 percent or more in either the capital or profits of the partnership, White is not considered to own any shares of the X stock.

(3) * * *

(i) Stock owned, directly or indirectly, by or for an estate or trust is considered

as owned by any beneficiary who has an actuarial interest of 5 percent or more in such stock, to the extent of such actuarial interest. For purposes of this paragraph (b)(3)(i), the actuarial interest of each beneficiary is determined by assuming the maximum exercise of discretion by the fiduciary in favor of such beneficiary and the maximum use of such stock to satisfy the beneficiary's rights as a beneficiary. A beneficiary of an estate or trust who cannot under any circumstances receive any interest in stock held by the estate or trust, including the proceeds from the disposition thereof, or the income therefrom, does not have an actuarial interest in such stock. Thus, where stock owned by a decedent's estate has been specifically bequeathed to certain beneficiaries and the remainder of the estate is bequeathed to other beneficiaries, the stock is attributable only to the beneficiaries to whom it is specifically bequeathed. Similarly, a remainderman of a trust who cannot under any circumstances receive any interest in the stock of a corporation which is a part of the corpus of the trust (including any accumulated income therefrom or the proceeds from a disposition thereof) does not have an actuarial interest in such stock. However, an income beneficiary of a trust does have an actuarial interest in stock if that beneficiary has any right to the income from such stock even though under the terms of the trust instrument such stock can never be distributed to that beneficiary. The factors and methods prescribed in § 20.2031-7 of this chapter (Estate Tax Regulations) for use in ascertaining the value of an interest in property for estate tax purposes must be used for purposes of this paragraph (b)(3)(i) in determining a beneficiary's actuarial interest in stock owned directly or indirectly by or for a trust.

(ii) For the purposes of this paragraph (b)(3), property of a decedent is considered as owned by the decedent's estate if such property is subject to administration by the executor or administrator for the purposes of paying claims against the estate and expenses of administration notwithstanding that, under local law, legal title to such property vests in the decedent's heirs, legatees or devisees immediately upon death. With respect to an estate, the term *beneficiary* includes any person entitled to receive property of the decedent pursuant to a will or pursuant to laws of descent and distribution. A person no longer is considered a beneficiary of an estate when all the property to which the person is entitled

has been received by the person, when the person no longer has a claim against the estate arising out of having been a beneficiary, and when there is only a remote possibility that it will be necessary for the estate to seek the return of property or to seek payment from the person by contribution or otherwise to satisfy claims against the estate or expenses of administration. When pursuant to the preceding sentence, a person ceases to be a beneficiary, stock owned by the estate is not thereafter considered owned by the person.

* * * * *

(4) * * *

(ii) *Example.* Brown, an individual, owns 60 shares of the 100 shares of the only class of outstanding stock of corporation P. Smith, an individual, owns 4 shares of the P stock, and corporation X owns 36 shares of the P stock. Corporation P owns, directly and indirectly, 50 shares of the stock of corporation S. Under this paragraph (b)(4), Brown is considered to own 30 shares of the S stock ($60/100 \times 50$), and X is considered to own 18 shares of the S stock ($36/100 \times 50$). Since Smith does not own 5 percent or more in value of the P stock, Smith is not considered as owning any of the S stock owned by P. If, in this example, Smith's spouse had owned directly 1 share of the P stock, Smith (and Smith's spouse) would each own 5 shares of the P stock, and therefore Smith (and Smith's spouse) would be considered as owning 2.5 shares of the S stock ($5/100 \times 50$).

(5) * * *

(i) Except as provided in paragraph (b)(5)(ii) of this section, an individual is considered to own the stock owned, directly or indirectly, by or for the individual's spouse, other than a spouse who is legally separated from the individual under a decree of divorce, whether interlocutory or final, or a decree of separate maintenance.

(ii) An individual is not considered to own stock in a corporation owned, directly or indirectly, by or for the individual's spouse on any day of a taxable year of such corporation, provided that each of the following conditions are satisfied with respect to such taxable year:

(A) Such individual does not, at any time during such taxable year, own directly any stock in such corporation.

(B) Such individual is not a member of the board of directors or an employee of such corporation and does not participate in the management of such corporation at any time during such taxable year.

(C) Not more than 50 percent of such corporation's gross income for such

taxable year was derived from royalties, rents, dividends, interest, and annuities.

(D) Such stock in such corporation is not, at any time during such taxable year, subject to conditions which substantially restrict or limit the spouse's right to dispose of such stock and which run in favor of the individual or the individual's children who have not attained the age of 21 years. The principles of § 1.1563-2(b)(2)(iii) apply in determining whether a condition is a condition described in the preceding sentence.

* * * * *

(6) * * *

(i) An individual is considered to own the stock owned, directly or indirectly, by or for the individual's children who have not attained the age of 21 years, and, if the individual has not attained the age of 21 years, the stock owned, directly or indirectly, by or for the individual's parents.

(ii) If an individual owns (directly, and with the application of the rules of this paragraph but without regard to this paragraph (b)(6)(ii)) stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock in a corporation, then such individual is considered to own the stock in such corporation owned, directly or indirectly, by or for the individual's parents, grandparents, grandchildren, and children who have attained the age of 21 years. In determining whether the stock owned by an individual possesses the requisite percentage of the total combined voting power of all classes of stock entitled to vote of a corporation, see § 1.1563-1(a)(6).

* * * * *

(iv) *Example—(A) Facts.* Individual B owns directly 40 shares of the 100 shares of the only class of stock of Z Corporation. B's child, M (20 years of age), owns directly 30 shares of such stock, and B's child, A (30 years of age), owns directly 20 shares of such stock. The remaining 10 shares of the Z stock are owned by an unrelated person.

(B) *B's ownership.* Individual B owns 40 shares of the Z stock directly and is considered to own the 30 shares of Z stock owned directly by M. Since, for purposes of the more-than-50-percent stock ownership test contained in paragraph (b)(6)(ii) of this section, B is treated as owning 70 shares or 70 percent of the total voting power and value of the Z stock, B is also considered as owning the 20 shares owned by B's adult child, A.

Accordingly, B is considered as owning a total of 90 shares of the Z stock.

(C) *M's ownership.* Minor child, M, owns 30 shares of the Z stock directly, and is considered to own the 40 shares of Z stock owned directly by B. However, M is not considered to own the 20 shares of Z stock owned directly by M's sibling, A, and constructively by B, because stock constructively owned by B by reason of family attribution is not considered as owned by M for purposes of making another member of B's family the constructive owner of such stock. See paragraph (c)(2) of this section. Accordingly, M owns and is considered as owning a total of 70 shares of the Z stock.

(D) *A's ownership.* Adult child, A, owns 20 shares of the Z stock directly. Since, for purposes of the more-than-50-percent stock ownership test contained in paragraph (b)(6)(ii) of this section, A is treated as owning only the Z stock which A owns directly, A does not satisfy the condition precedent for the attribution of Z stock from B. Accordingly, A is treated as owning only the 20 shares of Z stock which A owns directly.

(c) * * *

(2) *Members of family.* Stock constructively owned by an individual by reason of the application of paragraph (b)(5) or (6) of this section is not treated as owned by the individual for purposes of again applying such paragraphs in order to make another the constructive owner of such stock.

* * * * *

(4) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples:

(i) *Example 1.* A, 30 years of age, has a 90 percent interest in the capital and profits of a partnership. The partnership owns all the outstanding stock of corporation X and X owns 60 shares of the 100 outstanding shares of corporation Y. Under paragraph (c)(1) of this section, the 60 shares of Y constructively owned by the partnership by reason of paragraph (b)(4) of this section is treated as actually owned by the partnership for purposes of applying paragraph (b)(2) of this section. Therefore, A is considered as owning 54 shares of the Y stock (90 percent of 60 shares).

(ii) *Example 2.* The facts are the same as in paragraph (c)(4)(i) of this section (*Example 1*), except that that B, who is 20 years of age and the sibling of A, directly owns 40 shares of Y stock. Although the stock of Y owned by B is considered as owned by C (the parent of A and B) under paragraph (b)(6)(i) of this section, under paragraph (c)(2) of

this section such stock may not be treated as owned by C for purposes of applying paragraph (b)(6)(ii) of this section in order to make A the constructive owner of such stock.

(iii) *Example 3.* The facts are the same as in paragraph (c)(4)(ii) of this section (*Example 2*), except that that C has an option to acquire the 40 shares of Y stock owned by B. The rule contained in paragraph (c)(2) of this section does not prevent the reattribution of such 40 shares to A because, under paragraph (c)(3) of this section, C is considered as owning the 40 shares by reason of option attribution and not by reason of family attribution. Therefore, since A satisfies the more-than-50-percent stock ownership test contained in paragraph (b)(6)(ii) of this section with respect to Y, the 40 shares of Y stock constructively owned by C are reattributed to A, and A is considered as owning a total of 94 shares of Y stock.

(d) * * *

(3) *Examples.* The provisions of this paragraph (d) may be illustrated by the following examples, in which each corporation referred to uses the calendar year as its taxable year and the stated facts are assumed to exist on each day of 1970 (unless otherwise provided in the example):

(i) *Example 1.* Jones owns all the stock of corporation X and has an option to purchase from Smith all the outstanding stock of corporation Y. Smith owns all the outstanding stock of corporation Z. Since the Y stock is considered as owned by two or more persons, under paragraph (d)(2)(ii) of this section, the Y stock is treated as owned only by Smith since Smith has direct ownership of such stock. Therefore, on December 31, 1970, Y and Z are component members of the same brother-sister controlled group. If, however, Smith had owned Smith's stock in corporation Z for less than one-half of the number of days of Z's 1970 taxable year, then under paragraph (d)(1) of this section, the Y stock would be treated as owned only by Jones since Jones's ownership results in Y being a component member of a controlled group on December 31, 1970.

(ii) *Example 2.* Individual A owns directly all the outstanding stock of corporation M. B (the spouse of A) owns directly all the outstanding stock of corporation N. Neither spouse is considered as owning the stock directly owned by the other because each of the conditions prescribed in paragraph (b)(5)(ii) of this section is satisfied with respect to each corporation's 1970 taxable year. A owns directly 60 percent of the only class of stock of corporation P and B owns the remaining 40 percent of the P stock. Under paragraph

(d)(2)(iii) of this section, the stock of P is treated as owned only by A since A owns (directly and with the application of the rules contained in paragraphs (b)(1) through (4) of this section) the stock possessing the greatest percentage of the total value of shares of all classes of stock of P. Accordingly, on December 31, 1970, P is treated as a component member of a brother-sister group consisting of M and P.

(iii) *Example 3.* Unrelated individuals A and B each own 49 percent of all the outstanding stock of corporation R, which in turn owns 70 percent of the only class of outstanding stock of corporation S. The remaining 30 percent of the stock of corporation S is owned by unrelated individual C. C also owns the remaining 2 percent of the stock of corporation R. Under the attribution rule of paragraph (b)(4) of this section, A and B are each considered to own 34.3 percent of the stock of corporation S. Accordingly, since five or fewer persons own at least 80 percent of the stock of corporations R and S and also own more than 50 percent identically (A's and B's identical ownership each is 34.3 percent, C's identical ownership is 2 percent), on December 31, 1970, corporations R and S are treated as component members of the same brother-sister controlled group for purposes of § 1.1563-1(a)(3)(ii).

* * * * *

(e) *Applicability dates.* This section applies to taxable years beginning on or after December 30, 2024. For taxable years beginning before December 30, 2024, see § 1.1563-3 as contained in 26 CFR part 1 in effect on April 1, 2024.

PART 5—TEMPORARY INCOME TAX REGULATIONS UNDER THE REVENUE ACT OF 1978

■ **Par. 55.** The authority citation for part 5 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 5.1502-45 [Removed]

■ **Par. 56.** Section 5.1502-45 is removed.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 57.** The authority citation for part 301 continues to read in part as follows:

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

■ **Par. 58.** Section 301.6402-7 is amended by revising and republishing paragraph (g)(2)(iii) to read as follows:

§ 301.6402–7 Claims for refund and applications for tentative carryback adjustments involving consolidated groups that include insolvent financial institutions.

* * * * *

- (g) * * *
- (2) * * *

(iii) *Absorption of net operating losses.* The absorption of net operating losses generally is determined under applicable principles of the Code and regulations, including the principles of section 172 and § 1.1502–21(b) of this chapter. Notwithstanding any contrary rule or principle of the Code or regulations, if an institution and another member of the carryback year group

have net operating losses that arise in taxable years ending on the same date and are carried to the same consolidated carryback year, the carryback year group’s consolidated taxable income for that year is treated as offset first by the loss attributable to the institution to the extent thereof.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 59.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

■ **Par. 60.** Section 602.101 is amended in the table in paragraph (b) by removing the entries for §§ 1.1502–9A, 1.1502–18, 1.1502–76T, 1.1502–95A, 1.1503–2, and 1.1503–2A.

Douglas W. O'Donnell,
Deputy Commissioner,

Approved: November 14, 2024.

Aviva R. Aron-Dine,
Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2024–29480 Filed 12–27–24; 8:45 am]

BILLING CODE 4830–01–P

Proposed Rules

Federal Register

Vol. 89, No. 249

Monday, December 30, 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 THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–134420–10]

RIN 1545–BJ87

Revising Consolidated Return Regulations and Controlled Group of Corporations Regulations To Reflect Statutory Changes, Modernize Language, and Enhance Clarity

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that affect affiliated groups of corporations that file consolidated Federal income tax returns. These regulations would modify the consolidated return regulations to clarify that, in the case of certain transfers between members of a consolidated group, a transferee's assumption of certain liabilities will not reduce the transferor's basis in the transferee's stock received in the transfer. Final regulations modifying other consolidated return regulations are published in the Rules section of this issue of the **Federal Register**.

DATES: Written or electronic comments as well as requests for a public hearing must be received by March 31, 2025. Requests for a public hearing must be submitted as prescribed in the "Comments and Requests for a Public Hearing" section.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at <http://www.regulations.gov> (indicate IRS and REG–134420–10). Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment

submitted electronically or on paper to its public docket.

Send paper submissions to:
CC:PA:01:PR (REG–134420–10), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, contact William W. Burhop at (202) 317–5363 or Kelton P. Frye at (202) 317–5135 (not toll-free numbers); concerning the submission of comments and/or requests for a public hearing, contact the Publications and Regulations Section of the Office of Associate Chief Counsel (Procedure and Administration) by email at publichearings@irs.gov (preferred) or by phone at (202) 317–5306 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Authority

Section 1502 authorizes the Secretary of the Treasury or her delegate (Secretary) to prescribe consolidated return regulations for an affiliated group of corporations that join in filing (or that are required to join in filing) a consolidated return (consolidated group) to clearly reflect the Federal income tax liability of the consolidated group and to prevent avoidance of such tax liability. *See* § 1.1502–1(h) (defining the term "consolidated group"). For purposes of carrying out those objectives, section 1502 also permits the Secretary to prescribe rules that may be different from the provisions of chapter 1 of the Code (chapter 1) that would apply if the corporations composing the consolidated group filed separate returns. Additionally, section 7805(a) of the Code authorizes the Secretary to "prescribe all needful rules and regulations for the enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue."

Background

This notice of proposed rulemaking contains proposed regulations under section 1502 of the Internal Revenue Code (Code) that would revise the Income Tax Regulations (26 CFR part 1) issued under section 1502 (consolidated return regulations). Terms used in the consolidated return regulations generally are defined in § 1.1502–1.

I. Section 357(c) and § 1.1502–80(d)

Section 1.1502–80 provides generally that: (i) the Code, or other law, is applicable to a consolidated group to the extent the consolidated return regulations do not exclude its application; and (ii) to the extent not excluded, other rules operate in addition to, and may be modified by, the consolidated return regulations. *See* § 1.1502–80(a)(1). Section 1.1502–80(d) provides that section 357(c) of the Code does not apply to any transaction to which § 1.1502–13 and other specified sections of the consolidated return regulations apply.

As discussed in the preamble to proposed regulations (REG–137519–01) published in the **Federal Register** (66 FR 57021, 57022) on November 14, 2001 (proposed consolidated section 357(c) regulations), because section 357(c) does not apply to certain intragroup section 351 exchanges (that is, exchanges between members of a consolidated group to which section 351 of the Code applies) under § 1.1502–80(d), a concern arose that no liabilities can technically be excluded under section 357(c)(3). Therefore, in such an intragroup section 351 exchange, the transferor's basis in the stock of the transferee received in the transfer first would be reduced by liabilities assumed by the transferee, including those liabilities described in section 357(c)(3) that would not have reduced basis had section 357(c) applied. The transferor's basis in the stock of the transferee then would be reduced a second time under the principles of § 1.1502–32 at the time the liability does in fact give rise to a deduction on the part of the transferee and is taken into account on the consolidated return. This result ultimately could cause the transferor to recognize an amount of gain on the sale of the stock of the transferee that does not clearly reflect income.

The Treasury Department and the IRS published the proposed consolidated section 357(c) regulations to eliminate potential duplicative stock basis reductions arising from such transactions. As discussed in the preamble to the proposed consolidated section 357(c) regulations, those proposed regulations were published to clarify that, in certain transfers described in section 351 of the Code between members of a consolidated group, a transferee's assumption of

liabilities described in section 357(c)(3)(A), other than those also described in section 357(c)(3)(B), will not reduce the transferor's basis in the transferee's stock received in the exchange.

II. 2023 Proposed Regulations

On August 7, 2023, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–134420–10) in the **Federal Register** (88 FR 52057) under sections 52(a), 414(b), 1502, 1503, 1552, and 1563 of the Code (2023 proposed regulations). The 2023 proposed regulations primarily would revise the consolidated return regulations and the controlled group of corporations regulations (i) to eliminate obsolete or otherwise outdated provisions, (ii) to modernize the language and improve the clarity of the regulations, and (iii) to facilitate taxpayer compliance. The 2023 proposed regulations are adopted as final regulations (T.D. 10018) published in the Rules section in this issue of the **Federal Register**.

The preamble to the 2023 proposed regulations stated that the proposed rule in the proposed consolidated section 357(c) regulations is unnecessary because §§ 1.1502–32 and 1.1502–80 prevent any duplicative stock basis reduction. Accordingly, the 2023 proposed regulations withdrew the proposed consolidated section 357(c) regulations.

III. Comment Received

A commenter stated that, in light of the withdrawal of the proposed consolidated section 357(c) regulations, it is unclear whether the transferor's basis in the transferee stock should be reduced for an assumed section 357(c)(3)(A) liability: (i) at the time of the section 351 exchange under section 358 of the Code, with no further basis reduction under § 1.1502–32(b) when the assumed section 357(c)(3)(A) liability generates a deduction that is absorbed (front-end adjustment); or (ii) at the time the deduction for the assumed section 357(c)(3)(A) liability is absorbed that reduces basis under § 1.1502–32(b), with no prior basis reduction under section 358 at the time of the section 351 exchange (back-end adjustment). The commenter recommended the back-end adjustment approach for various reasons, including the additional compliance costs and complexity associated with tracking and monitoring the transferee's § 1.1502–32(b) basis adjustments (potentially over multiple years, and potentially across multiple groups) under the front-end adjustment approach. The commenter

also expressed the view that the back-end adjustment approach is the prevailing approach currently applied by taxpayers.

Explanation of Provisions

The withdrawal of the proposed consolidated section 357(c) regulations was not intended to suggest that a front-end adjustment approach is required. To reflect the Treasury Department's and the IRS's view regarding the appropriate timing for the single basis reduction for an assumed section 357(c)(3)(A) liability, and to clarify that a back-end adjustment is appropriate, this document would repropose the proposed consolidated section 357(c) regulations in modified form.

Proposed Applicability Date

Pursuant to section 1503(a) of the Code, these proposed regulations would apply to consolidated return years for which the due date of the return (without regard to extensions) is after [date of publication of final regulations in the **Federal Register**].

Special Analyses

I. Regulatory Planning and Review

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

II. Paperwork Reduction Act

These regulations update the regulations under section 1502 to clarify the timing of a single basis adjustment required by statute. Therefore, the proposed regulations would not impose additional reporting burden beyond what is otherwise required by existing statutes, regulations, and forms. The total burden associated with the proposed regulations, if finalized in their current form, would be \$0.

III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), the Secretary of the Treasury certifies that the proposed regulations would not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the proposed regulations would apply only to corporations that file consolidated Federal income tax returns, and that such corporations tend to be larger businesses. Therefore, the proposed regulations would not create additional obligations for, or impose an

economic impact on, small entities. Accordingly, the Secretary certifies that these proposed regulations will not have significant economic impact on a significant number of small entities.

Pursuant to section 7805(f) of the Code, the proposed regulations have been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

IV. Unfunded Mandates Reform Act

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

V. Executive Order 13132: Federalism

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

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. All commenters are strongly encouraged to submit comments electronically. The Treasury Department and the IRS will publish for public availability any comment submitted electronically or on paper to its public docket on <https://www.regulations.gov>.

A public hearing will be scheduled if requested in writing by any person who

timely submits electronic or written comments. Requests for a public hearing are encouraged to be made electronically. If a public hearing is scheduled, a notice of the date and time for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of this document are William W. Burhop and Kelton P. Frye of the Office of Associate Chief Counsel (Corporate). Other personnel from the Treasury Department and the IRS participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.1502–80 is amended by revising paragraph (d)(1) and adding paragraphs (d)(3) and (4) to read as follows:

§ 1.1502–80 Applicability of other provisions of law.

* * * * *

(d) * * *

(1) *In general.* Section 357(c) does not apply to any transaction to which § 1.1502–13 applies if it occurs in a consolidated return year beginning on or after [date of publication of final regulations in the **Federal Register**]. Notwithstanding the foregoing, for

purposes of determining the transferor's basis in property under section 358(a) received in a transfer described in section 351, section 358(d)(2) operates to exclude liabilities described in section 357(c)(3)(A), other than those also described in section 357(c)(3)(B), from the computation of the amount of liabilities assumed that is treated as money received under section 358(d)(1), if the transfer occurs in a consolidated return year beginning after [date of publication of final regulations in the **Federal Register**]. This paragraph (d) does not apply to a transaction if the transferor or transferee becomes a nonmember as part of the same plan or arrangement. The transferor (or transferee) is treated as becoming a nonmember once it is no longer a member of a consolidated group that includes the transferee (or transferor). For purposes of this paragraph (d), any reference to a transferor or transferee includes, as the context may require, a reference to a successor or predecessor.

* * * * *

(3) *Examples.* The principles of paragraph (d)(1) of this section are illustrated by the following examples.

(i) *Example 1—(A) Facts.* P, S, and T are members of a consolidated group. P owns all the stock of S and T with bases of \$30 and \$20, respectively. S has a \$30 basis in its assets and \$40 of liabilities. S merges into T in a transaction described in section 368(a)(1)(A) (and in section 368(a)(1)(D)).

(B) *Analysis.* Section 357(c) does not apply to the merger. P's basis in T's stock increases to \$50 (\$30 + \$20), and T succeeds to S's \$30 basis in the assets transferred subject to the \$40 liability. Similarly, if S instead transferred its assets and liabilities to a newly formed subsidiary in a transaction to which section 351 applies, section 357(c) does not apply, and S's basis in the

subsidiary's stock is a \$10 excess loss account.

(ii) *Example 2—(A) Facts.* P owns all the stock of S1. S1 has assets with a total fair market value equal to \$100 and an aggregate basis of \$30. S1 has \$40 of liabilities, \$5 of which are described in section 357(c)(3)(A), but not section 357(c)(3)(B), and \$35 of which are not described in section 357(c)(3)(A). S1 transfers its assets to a newly formed subsidiary, S2, in exchange for stock of S2 and S2's assumption of the liabilities of \$40 in a transaction to which section 351 applies. P, S1, and S2 are members of a consolidated group.

(B) *Analysis.* Section 357(c) does not apply to cause S1 to recognize gain in connection with the transfer. For purposes of determining S1's basis in the S2 stock it received in the exchange, section 358(d)(2) operates to exclude \$5 of the liabilities from the computation of the amount of liabilities assumed that are treated as money received under section 358(d)(1). S1's basis in the S2 stock received in the exchange is a \$5 excess loss account (reflecting its \$30 basis in the assets transferred reduced by \$35, the amount of liabilities assumed that are not described in section 357(c)(3)(A)).

(4) *Applicability dates.* Paragraphs (d)(1) and (3) of this section apply to consolidated return years for which the due date of the return (without regard to extensions) is after [date of publication of final regulations in the **Federal Register**]. For rules that apply to earlier taxable years, see § 1.1502–80(d) as contained in 26 CFR part 1, revised April 1, 2024.

* * * * *

Douglas W. O'Donnell,
Deputy Commissioner.

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Part IV

Securities and Exchange Commission

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Various Phlx Rules in Connection With a Technology Migration; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101989; File No. SR–Phlx–2024–71]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Various Phlx Rules in Connection With a Technology Migration

December 19, 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 December 12, 2024, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 2, Section 6, Market Maker Orders. The Exchange also proposes to amend the following Options 3 Rules: Section 4, Entry and Display of Quotes; Section 6, Firm Quotations; Section 7, Types of Orders and Order and Quote Protocols; Section 8, Opening Process; Section 9, Trading Halts; Section 10, Electronic Execution Priority and Processing in the System; Section 15, Simple Order Risk Protections; Section 23, Data Feeds and Trade Information; and Section 28, Optional Risk Protections. The Exchange also proposes to amend Options 5, Section 4, Order Routing; Options 6, Section 1, Authorization to Give-Up; Options 7, Section 9, B, Port Fees; and Options 8, Section 32, Types of Floor-Based (Non-System) Orders.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for

the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In connection with a technology migration to an enhanced Nasdaq, Inc. (“Nasdaq”) functionality which will result in higher performance, scalability, and more robust architecture, the Exchange intends to adopt certain trading functionality currently utilized at Nasdaq affiliate exchanges. As further discussed below, the Exchange is proposing to adopt such functionality substantially in the same form as currently on the Nasdaq affiliated options exchanges, while retaining certain intended differences between it and its affiliates. The Exchange also proposes a number of changes to memorialize existing functionality, add more granularity in its rules to describe how existing functionality operates today, and to harmonize the Exchange’s rules where appropriate with the rules of its affiliated options exchanges by using consistent language to describe identical functionality.

Specifically, the Exchange proposes to amend Options 2, Section 6, Market Maker Orders and the following Options 3 Rules: Section 4, Entry and Display of Quotes; Section 6, Firm Quotations; Section 7, Types of Orders and Order and Quote Protocols; Section 8, Opening Process; Section 9, Trading Halts; and Section 10, Electronic Execution Priority and Processing in the System;³ Section 15, Simple Order Risk Protections; Section 23, Data Feeds and Trade Information; and Section 28,

³ Phlx Options 1, Section 1(b)(57) provides, [t]he term “System” shall mean the automated system for order execution and trade reporting owned and operated by the Exchange which comprises: (i) an order execution service that enables members to automatically execute transactions in option series; and provides members with sufficient monitoring and updating capability to participate in an automated execution environment; (ii) a trade reporting service that submits “locked-in” trades for clearing to a registered clearing agency for clearance and settlement; transmits last-sale reports of transactions automatically to the Options Price Reporting Authority (“OPRA”) for dissemination to the public and industry; and provides participants with monitoring and risk management capabilities to facilitate participation in a “locked-in” trading environment; and (iii) the data feeds described at Options 3, Section 23.

Optional Risk Protections. The Exchange also proposes to amend Options 5, Section 4, Order Routing; Options 7, Section 9, B, Port Fees; and Options 8, Section 32, Types of Floor-Based (Non-System) Orders. Each rule change is described below.

Options 2, Section 6

Options 2, Section 6(a) currently states that Market Makers⁴ and Lead Market Makers⁵ may enter all order types defined in Options 3, Section 7(b) in the options classes to which they are appointed and non-appointed, except for Market Orders as provided in Options 3, Section 7(b)(1), Stop Orders as provided in Options 3, Section 7(b)(4), All-or-None Orders as provided in Options 3, Section 7(b)(5), Directed Orders as provided for in Options 2, Section 10, and Public Customer-to-Public Customer Cross Orders subject to Options 3, Section 13(a) and (f).

The Exchange proposes to remove the Market Maker restrictions related to Market Orders,⁶ Stop Orders,⁷ All-or-None Orders⁸ and Directed Orders⁹ so as not to restrict the ability of a Lead Market Maker or Market Maker from entering orders they may enter today on

⁴ A “Market Maker” means a Streaming Quote Trader or a Remote Streaming Quote Trader who enters quotations for his own account electronically into the System. See Options 1, Section 1(b)(28).

⁵ A “Lead Market Maker” means a member who is registered as an options Lead Market Maker pursuant to Options 2, Section 12(a). A Lead Market Maker includes a Remote Lead Market Maker which is defined as a Lead Market Maker in one or more classes that does not have a physical presence on the Exchange’s Trading Floor and is approved by the Exchange pursuant to Options 2, Section 11. See Options 1, Section 1(b)(27).

⁶ A Market Order is an order to buy or sell a stated number of options contracts that is to be executed at the best price obtainable when the order reaches the Exchange. Lead Market Makers, Market Makers, and Off-Floor Broker-Dealers may not submit Market Orders. See Phlx Options 3, Section 7(b)(1).

⁷ A Stop Order is a Limit Order or Market Order to buy or sell at a limit price when interest on the Exchange for a particular option contract reaches a specified price. A Stop Order shall be cancelled if it is immediately electable upon receipt. A Stop Order shall not be elected by a trade that is reported late or out of sequence or by a Complex Order trading with another Complex Order. Lead Market Makers and Market Makers may not submit a Stop Order. Off-Floor Broker-Dealers may not enter a Stop Market Order. See Phlx Options 3, Section 7(b)(4).

⁸ An All-or-None Order is a Limit Order or Market Order that is to be executed in its entirety or not at all. An All-or None Order may only be submitted by a Public Customer as an Immediate-or-Cancel Order. The Acceptable Trade Range protection in Options 3, Section 15(a) is not applied to All-Or-None Orders. See Phlx Options 3, Section 7(b)(5).

⁹ The term “Directed Order” means any order to buy or sell which has been directed to a particular Lead Market Maker, RSQT, or SQT by an Order Flow Provider, as defined below. To qualify as a Directed Order, an order must be delivered to the Exchange via the System. See Phlx Options 2, Section 10.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

other options markets.¹⁰ With this proposed change, Market Makers would be permitted to enter Market Orders, Stop Orders and All-or-None Orders similar to other market participants, and similar to market makers on ISE, GEMX and MRX, as explained below in greater detail. Also, today, Market Makers may enter all Complex Order types. To make this clear in the rule text, the Exchange proposes to reference Options 3, Section 14, which governs Complex Orders, in addition to referencing Options 3, Section 7(b), which governs simple orders.¹¹

Additionally, as currently noted in Options 3, Section 7(e), Off-Floor Broker-Dealers may not enter All-or-None Orders, Market Orders, Stop Market Orders, and public customer-to-public customer cross orders subject to Options 3, Section 13(a) and (f). The Exchange is also proposing to remove the restrictions applicable to Off-Floor Broker-Dealers. Today, Nasdaq ISE, LLC ("ISE"), Nasdaq GEMX, LLC ("GEMX") and Nasdaq MRX, LLC ("MRX") Options 2, Section 6 do not provide similar restrictions as Phlx for Market Orders, Stop Orders and All-or-None Orders.

The Exchange proposes to permit Lead Market Makers, Market Makers, and Off-Floor Broker Dealers to enter Market Orders and Stop Orders similar to all other market participants on Phlx. Today, all market participants, including Lead Market Makers, Market Makers and Off-Floor Broker Dealers¹² may transact Market Orders and Stop Orders on other options markets.¹³ The Exchange does not believe there is any reason to restrict Lead Market Makers, Market Makers and Off-Floor Broker Dealers from entering Market Orders or Stop Orders. Previously, in a 2019 rule change¹⁴ Phlx noted that it believed

that prohibiting Market Makers from entering Market Orders was consistent with the Act because Market Orders are designed to remove liquidity from the Order Book. Further, that rule change noted that Stop Orders are non-displayed order types until they are triggered which does not benefit the role of a Market Makers in displaying liquidity on the Order Book.¹⁵ Stop Orders are triggered by either the occurrence of a transaction or posting on the order book. Once triggered, the order becomes displayed as either a Market Order or Limit Order as described in greater detail below in the discussion of Stop Orders in Options 3, Section 7. At this time, the Exchange proposes to permit Lead Market Makers, Market Makers, and Off-Floor Broker Dealers to enter both Market Orders and Stop Orders. Today, ISE, GEMX and MRX do not prohibit Lead Market Makers, Market Makers, and Off-Floor Broker Dealers from entering a Market Order and Stop Order on those markets, and those markets have not observed any adverse consequences. Also, current Phlx Options 2, Section 6 restricts the number of contracts that a Market Maker may enter in a quarter,¹⁶ thereby preventing Market Makers from entering an unlimited quantity of orders. In addition, the Exchange would no longer prohibit an Off-Floor Broker Dealer from entering a Market Order for the same reasons.¹⁷ All Market Makers, including away market makers, are restricted to a total number of contracts executed during a quarter in options series to which it is not appointed of twenty-five percent (25%) of the total number of contracts executed by the Market Maker and Lead Market Maker in options series as all options markets impose this restriction on market makers. The Exchange does not believe there is any reason to restrict Off-Floor Broker Dealers from entering Market Orders in options classes, rather, the Exchange

proposes to permit all member organizations to be able to enter Market Orders. Finally, the Exchange believes that harmonizing the ability for Lead Market Makers, Market Makers, and Off-Floor Broker Dealers to enter both Market Orders and Stop Orders across ISE, GEMX, MRX and Phlx will allow market participants to enter equivalent order types on all these markets. For these reasons, Phlx believes Lead Market Makers, Market Makers and Off-Floor Broker Dealers should be permitted to utilize Market Orders and Stop Orders to remove liquidity from its order book without impacting their ability to provide liquidity.

Today, Phlx restricts all market participants from entering All-or-None Orders except Public Customers.¹⁸ Similar to other options markets, the Exchange proposes to permit all market participants to enter All-or-None Orders. The Exchange is proposing to amend the All-or-None Order type in Options 3, Section 7 to reflect this proposed change as explained further below. By way of background, in 2019, the Exchange amended its All-or-None Order to no longer offer the order type to Professionals.¹⁹ At the time, the Exchange noted that permitting Public Customers to enter All-or-None Orders with specific size limitations that rest on the Order Book would continue to allow Public Customers the opportunity to obtain fills for their orders when the market moves even if the All-Or-None Order was not immediately executable upon entry. The Exchange notes that in 2023, it amended All-or-None Orders so that they would no longer rest on the order book, rather the order type would be executed in its entirety, or it will cancel if it cannot execute.²⁰ With this change, the prior reasoning is no longer a reason to restrict the order type to Public Customer use only. The Exchange proposes to remove the restriction that only permits Public Customers to enter the order type and allow all market participants to utilize the All-or-None Order which now does not rest on the order book. The

¹⁰ The Exchange proposes to delete the term "Lead Market Makers" in Options 2, Section 6(a) as the term "Market Makers" includes "Lead Market Makers." Both terms are not necessary. Additionally, removing the term "Lead Market Makers" harmonizes the rule text in Phlx Options 2, Section 6(a) to ISE, GEMX, MRX and BX Options 2, Section 6(a).

¹¹ Today, Options 3, Section 14 includes all Complex Order Types that may be traded by any market participant.

¹² Phlx Options 1, Section 1(b)(33) provides, [t]he term "Off-Floor Broker-Dealer Order" means an order delivered from off the floor of the Exchange by or on behalf of a broker-dealer for the proprietary account(s) of such broker-dealer, including an order for a market maker located on an exchange or trading floor other than the Exchange's trading floor delivered electronically for the proprietary account(s) of such market maker.

¹³ See Nasdaq ISE, LLC ("ISE"), Nasdaq GEMX, LLC ("GEMX") and Nasdaq MRX, LLC ("MRX") Options 2, Section 6 and NYSE Arca, Inc. Rule 6.37B-O and NYSE American LLC Rule 925.2NY.

¹⁴ See Securities Exchange Act Release No. 87691 (December 9, 2019), 85 FR 68197 (December 13,

2019) (SR-Phlx-2019-52) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Order Types and Remove and Relocate Certain Rule Text Currently Located Within Rule 1080).

¹⁵ *Id.*

¹⁶ Pursuant to Phlx Options 2, Section 6, the total number of contracts executed during a quarter by a Market Maker and Lead Market Maker in options series to which it is not appointed may not exceed twenty-five percent (25%) of the total number of contracts executed by the Market Maker and Lead Market Maker in options series.

¹⁷ Current Phlx Options 3, Section 7(e) provides that, an off-floor broker-dealer order may be entered for a minimum size of one contract. Off-floor broker-dealers may enter all order types defined in Options 3, Section 7(b) except for All-or-None Orders, Market Orders, Stop Market Orders, and public customer-to-public customer cross orders subject to Options 3, Section 13(a) and (f).

¹⁸ This includes Off-Floor Broker Dealers as noted in current Options 3, Section 7(e).

¹⁹ See Securities Exchange Act Release No. 85262 (March 7, 2019), 84 FR 9192 (March 13, 2019) (SR-Phlx-2019-03) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Option Floor Procedure Advice A-9 and Phlx Rules 1000 and 1066 and To Adopt a New Phlx Rule 1078). Prior to this rule change, All-or-None Orders were available to Public Customers and Professionals, ("2019 AON Rule Change").

²⁰ See Securities Exchange Act Release No. 98142 (August 16, 2023), 88 FR 57140 August 22, 2023) (SR-Phlx-2023-34) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Phlx's All-or-None Order) ("2023 AON Rule Change").

Exchange proposes to reflect the removal of the restriction in Options 2, Section 6 to reflect the fact that Market Makers would be able to trade All-or-None Orders. The Exchange also explains this change below in Options 3, Section 7 with respect to the order type amendments for All-or-None Orders. Permitting all market participants to enter an AON Order will harmonize the order type to ISE, GEMX and MRX Options 3, Section 7(c) which also permit all market participants to utilize this order type.

The Exchange notes that Directed Orders are orders directed to a Market Maker by an Order Flow Provider. An order becomes a Directed Order when it interacts with a Market Maker quote that is at the NBBO at the time of receipt of the Directed Order. The Exchange believes it is misleading to include a Directed Order in this list because a Directed Order may be executed by a Market Maker.

Third, the Exchange proposes to amend “Public Customer-to-Public Customer Cross Orders” to “Customer Cross Orders” to align with the name of this order type on ISE, GEMX and MRX Options 3, Section 7(i). The Exchange proposes to relocate the definition of Public Customer-to-Public Customer Cross Orders” from Options 3, Section 13 to proposed Options 3, Section 7(i). A Customer Cross Order cannot be entered by a Market Maker. The Exchange believes noting this exception in this order type will bring greater transparency to Options 2, Section 6. Additionally, the Exchange proposes to adopt a Reserve Order at Options 3, Section 7(g). A Reserve Order is a limit order with a displayed and non-displayed portion.

The Exchange believes that Market Maker liquidity should be displayed liquidity.²¹ For these reasons, and to remain competitive with other markets, the Exchange proposes to permit Market Makers to enter all orders they are eligible to submit, with the exception of Reserve Orders, and restrict Reserve Orders in the non-appointed classes similar to ISE, GEMX and MRX Options 2, Section 6. As noted above, Market Makers are not able to enter Reserve Orders.

The Exchange also proposes to amend the rule citations to align with the relocated rule text. Finally, the Exchange proposes to renumber the remainder of the text within Options 2, Section 6, related to total number of

contracts that may be executed in a quarter, as new “b.” The proposed rule text of Options 2, Section 6 will align with ISE, GEMX and MRX Options 2, Section 6.

Options 3, Section 4

With respect to quotes, today, as set forth in Options 3, Section 4(b)(6), if, at the time of entry, a quote would cause a locked or crossed market violation or would cause a trade-through violation, it will either be re-priced to the current national best offer (for bids) or the current national best bid (for offers) as non-displayed and displayed at one minimum price variance above (for offers) or below (for bids) the national best price.

The Exchange now proposes to amend the quote re-pricing mechanism currently described in Phlx Options 3, Section 4(b)(6) by harmonizing it with ISE, GEMX and MRX Options 3, Section 4(b)(6). As amended, the quote re-pricing language in Options 3, Section 4(b)(6) would be amended to provide: “If, at the time of entry, a quote would cause a locked or crossed market violation or would cause a trade-through violation, it will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) as non-displayed, and displayed at one minimum price variance above (for offers) or below (for bids) the national best price, or *immediately cancelled, as configured by the member organization.*” With this amendment, Phlx would permit member organizations to configure their ports to instruct the Exchange to immediately cancel a quote that would otherwise cause a locked or crossed market violation in lieu of re-pricing the quote. The Exchange believes this functionality will provide member organizations with more flexibility in handling their quotes.

Further, the Exchange proposes to remove the Quote Exhaust functionality which is explained further below. In connection with the removal of that functionality, the Exchange proposes to amend Options 2, Section 6(b)(8) to remove a reference to the Quote Exhaust.

Options 3, Section 6

Currently, Options 3, Section 6, Firm Quotations, describes the Exchange’s Quote Exhaust functionality that was adopted in 2009.²² Quote Exhaust

occurs when the Exchange’s disseminated market at a particular price level includes a quote, and such market is exhausted by an inbound contra-side quote or order (“initiating quote or order”), and following such exhaustion, contracts remain to be executed from the initiating quote or order through the initial execution price.²³ The initial execution price that gives rise to Quote Exhaust is known as the “reference price.”²⁴ Under Quote Exhaust, any order volume that is routed to away markets will be marked as an ISO.²⁵ When a Quote Exhaust occurs, the System will initiate a “Quote Exhaust Timer” that applies to all options traded on the System, not to exceed one second, during which any participant (including any participant(s) whose size was exhausted) may submit quotes, sweeps or orders at any price level.²⁶ Today, during the Quote Exhaust Timer, the Exchange will disseminate the reference price for the remaining size, provided that such price does not lock an away market, in which case, the Exchange will disseminate a bid and offer that is one MPV from the away market price. Today, the Exchange will disseminate, on the opposite side of the market from remaining unexecuted contracts: (i) a non-firm bid for the price and size of the next available bid(s) on the Exchange if the remaining size is a seller, or (ii) a non-firm offer for the price and size of the next available offer(s) on the Exchange if the remaining size is a buyer. If the remaining contracts in the initiating quote or order are either traded or cancelled during the Quote Exhaust Timer, the Quote Exhaust Timer will be terminated, and normal trading will resume.²⁷

Today, if the Exchange receives an order, quote or sweep on the opposite side of the market from the initiating quote or order during the Quote Exhaust Timer that locks or crosses the reference price at any time during the Quote Exhaust Timer, it will execute immediately against the initiating quote or order at the reference price. If the initiating quote or order that caused the Quote Exhaust is exhausted, the Quote Exhaust Timer will be terminated. Today, with respect to any order, quote or sweep received on the opposite side of the market from the initiating quote or order during the Quote Exhaust Timer that is inferior to the reference price, the system will place any non-IOC order onto the book. Such non-IOC

²¹ While Stop Orders are not displayed until triggered, the Exchange notes that once triggered a Stop Order would be displayed as either a Market or Limit Order.

²² See Securities Exchange Act Release No. 59721 (April 9, 2009), 74 FR 17245 (April 14, 2009) (SR-Phlx-2009-32) (Notice of Filing of Proposed Rule Change Relating to the Exchange’s Enhanced Electronic Trading Platform for Options, Phlx XL II).

²³ See Phlx Options 3, Section 6(a)(2)(B)(2).

²⁴ *Id.*

²⁵ *Id.*

²⁶ See Phlx Options 3, Section 6(a)(2)(B)(2)(a).

²⁷ See Phlx Options 3, Section 6(a)(2)(B)(2)(b).

order on the book will be included in the first PBBO calculation following the end of the Quote Exhaust Timer. All non-marketable sweeps and IOC orders will be cancelled immediately if not executed and will not participate in the Quote Exhaust process.²⁸ Today, if the Exchange receives an order, quote or sweep on the same side of the market as the initiating quote or order during the Quote Exhaust Timer, the System will cancel any such sweep or IOC order. If such new quote or order, other than an IOC order, is a market or marketable Limit Order or marketable quote (*i.e.*, priced at or through the reference price) the System will display it at the reference price, with a disseminated size that is the sum of such order and/or quote plus the remaining contracts in the initiating order or quote.²⁹

Today, at the end of the Quote Exhaust Timer, if there are still unexecuted contracts remaining in the initiating quote or order or any new interest on the same side of the market, the System will calculate a new Phlx Best Bid/Offer ("PBBO"). The PBBO includes the remaining unexecuted portion of the initiating quote or order plus any new interest received on the same side of the market at the reference price, or if locking or crossing the ABBO, at one minimum trading increment away from the ABBO, for the full available size. The other side of the PBBO will be the actual Exchange interest at the best price.³⁰

Today, the System will conduct an Acceptable Range Test to determine if the next available price on the Exchange is within an Acceptable Range.³¹ The System will first determine whether to trade at the next available Phlx price by comparing it to the Acceptable Range price (defined as, with respect to an initiating buy order, the highest price of the Acceptable Range, and, with respect to an initiating sell order, the lowest price of the Acceptable Range) and the Away Best Bid/Offer ("ABBO") price to establish a "Best Price".³² Current Options 3, Section 6(g)(1) describes the Best Price. The current rules review the various potential scenarios including where the initiating quote or order does not lock the Best Price, locks the Best Price, crosses the Best Price, the order is not routable, and remainders.³³ The current rule also considers scenarios where there are no offers on the

Exchange and on away markets in the affected series, or no bids or a zero priced bid on Exchange.³⁴

Today, with Quote Exhaust, the Exchange disseminates an updated bid and offer prices together with the size associated with such bid and offer in certain cases.³⁵ All quotations made available by the Exchange and displayed by quotation vendors shall be firm for customer and broker-dealer orders³⁶ at the disseminated price in an amount up to the disseminated size,³⁷ except in certain cases.³⁸ Finally, today, responsible brokers or dealers that receive an order to buy or sell a listed option at the disseminated price in an amount greater than the disseminated size shall, within thirty (30) seconds of receipt of the order, (i) execute the entire order at the disseminated price (or better), or (ii) execute that portion of the order equal to the disseminated size

³⁴ See Phlx Options 3, Section 6(a)(2)(B)(3).

³⁵ See Phlx Options 3, Section 6(a)(2)(C).

³⁶ Phlx Supplementary .01 to Options 3, Section 6 provides, "Broker-dealer orders" includes orders for the account(s) of market makers on another exchange and Market Makers on the Exchange.

³⁷ Phlx Options 3, Section 6(b)(1) provides in pertinent part that, except as provided in paragraph (c) of this Rule, all quotations made available by the Exchange and displayed by quotation vendors shall be firm for customer and broker-dealer orders at the disseminated price in an amount up to the disseminated size. If the responsible broker or dealer is representing (as agent) a Limit Order, such responsible broker or dealer shall be responsible (as agent) up to the size of such Limit Order, but may be responsible as principal for all or a portion of the excess of the disseminated size over the size of such Limit Order to the extent provided in General 2, Section 17. Phlx Options 2, Section 6(b)(2) provides in pertinent part that, in the event an SQT, RSQT or Lead Market Maker in a Streaming Quote Option has electronically submitted on the Exchange bids or offers for a Streaming Quote Option, each such SQT, RSQT or Lead Market Maker member shall be considered a "responsible broker or dealer" for that bid or offer, up to the size associated with such responsible broker or dealer's bid or offer.

³⁸ Phlx Options 2, Section 6(c) provides in pertinent part that, the requirements of paragraph (b) or (d) of this Rule shall not apply to displayed quotations: (i) when the level of trading activities or the existence of unusual market conditions is such that the Exchange is incapable of collecting, processing, and making available to quotation vendors the data for a subject security required to be made available pursuant to the SEC Quote Rule in a manner that accurately reflects the current market on the Exchange as determined by an Options Exchange Official; (ii) during a trading rotation; (iii) if any of the circumstances provided in paragraph (c)(3) of the SEC Quote Rule exist; or (iv) on a case by case basis where it is determined that an exemption is warranted for an obvious error in the posting of the disseminated price or disseminated size due to reporter error or system malfunction. The Exchange shall immediately notify all specified persons of such a determination. Regular trading procedures shall be resumed when an Options Exchange Official determines that the conditions supporting that declaration no longer exist. The Exchange shall immediately notify all specified persons of such a determination.

at the disseminated price (or better), and revise its bid or offer.³⁹

Quote Exhaust was designed to enhance the process for refreshing a Market Maker's quote that has been fully exhausted by an incoming quote or order that has, after exhausting the Phlx quote at a particular price level, remaining size to be executed at a price through the reference price. The Quote Exhaust functionality was intended to provide an opportunity for remaining portions of incoming quotes or orders to be executed on the Exchange at prices that are equal to or better than away markets by allowing Market Makers to refresh their quotes before routing away, thus potentially providing better prices at which to execute such remaining portions. Quote Exhaust is intended to provide an opportunity for such quote or order to receive a price for that order better than the next price that would otherwise be available on Phlx whether by executing on the Phlx or by routing to applicable away markets. This functionality implements price checks to limit executions at far away prices.

At this time, Phlx proposes to discontinue Quote Exhaust. Today, the Exchange offers various risk protections in its System to limit executions at far away prices. Phlx offers an Acceptable Trade Range protection at Options 3, Section 15(b)(1) and an Automated Quotation Adjustments protection at Options 3, Section 15(c)(2). In light of these additional protections and other risk protections that the Exchange is adding with this proposal within Options 3, Section 15, the Exchange does not believe that the Quote Exhaust protection is required any longer. Other Nasdaq affiliated exchanges do not offer Quote Exhaust. Once discontinued, the Exchange's quoting functionalities will continue to abide by Phlx's Options 3, Section 4 rules governing the entry and display of orders and the allocation methodology in Options 3, Section 10. By way of example, Market Maker quotes $1.00 (100) \times 1.10 (100)$

FIX Order to Sell 101 @0.95 arrives
Order trades 100 @1.00 with the quote
The quote purges as its entire bid side volume were exhausted

The remaining 1 contract books
Today, the Quote Exhaust timer begins—the reference price is displayed for the remaining 1 contract of the initiating sell order, and the displayed bid is disseminated to OPRA with a 'non-firm' indicator; Dissemination is $0.00 (0) \times 1.00 (1)$, bid not firm
Quote Exhaust timer concludes

³⁹ See Phlx Options 2, Section 6(d).

²⁸ See Phlx Options 3, Section 6(a)(2)(B)(2)(c).

²⁹ See Phlx Options 3, Section 6(a)(2)(B)(2)(d).

³⁰ See Phlx Options 3, Section 6(a)(2)(B)(2)(e).

³¹ See Phlx Options 3, Section 6(a)(2)(B)(2)(f).

³² See Phlx Options 3, Section 6(a)(2)(B)(2)(g).

³³ See Phlx Options 3, Section 6(a)(2)(B)(2)(g)(1)–(6).

Today, a firm quote is now disseminated to OPRA; dissemination is $0.00 (0) \times 0.95 (1)$

As proposed, without Quote Exhaust, there will be no period during which the order is disseminated at the Quote Exhaust Reference Price; instead, the order's remainder will book and display at its limit price right away. The Exchange will continue to purge the other side of the quote due to one side being exhausted, as is the case today on ISE, GEMX, MRX that do not have a similar quote exhaust mechanism.

Without Quote Exhaust:

Market Maker quotes $1.00 (100) \times 1.10 (100)$

FIX Order to Sell 101 @0.95 arrives
Order trades 100 @1.00 with the quote
The quote purges as its entire bid side volume were exhausted

The remaining 1 contract books
A firm quote is disseminated to OPRA; dissemination is $0.00 (0) \times 0.95 (1)$

With respect to the interaction between the Quote Exhaust and risk protections, the Exchange notes that instead of first being posted at the Quote Exhaust Reference Price, aggressively priced orders can instead post right away at the Acceptable Trade Range Threshold⁴⁰, allowing for quicker order execution while still providing order exposure and pauses between price bands, which continues to allow for risk mitigation. By way of example, Note that the configured Acceptable Trade Range (ATR) price band is \$0.07 in the price range used in this example.

Market Maker1 quotes $2.00 (10) \times 2.12 (10)$

Firm enters FIX Order to Buy 10 @1.80
Public Customer enters FIX Market Order to Sell 20 @MKT

Trades 10 @2.00 with Market Maker1's quote

Market Maker 1's quote is purged as its entire bid side volume has been exhausted

Quote exhaust commences and displays the remainder of the Public Customer's market order at the quote exhaust reference price, disseminating to OPRA: $1.80 (10) \times 2.00 (10)$, bid not firm

Quote exhaust timer passes

The remainder of the Public Customer's market order now posts at the Acceptable Trade Range (ATR) Threshold of 1.93, disseminating to OPRA: $1.80 (10) \times 1.93 (10)$, bid not firm

ATR Posting Period (iteration #1) passes
The remainder of the Public Customer's market order now posts at the new

ATR Threshold of 1.86, disseminating to OPRA: $1.80 (10) \times 1.86 (10)$, bid not firm

ATR Posting Period (iteration #2) passes
The remainder of the Public Customer's market order now trades with the Firm FIX order on the book, 10 @1.80

With this proposal, Quote Exhaust will no longer occur; after trading with Market Maker 1's quote, the remainder of the Public Customer Market Order will go straight into its first ATR Posting Period, displaying at the ATR Threshold of 1.93—it will no longer first display at the Quote Exhaust reference price of 2.00, but the remainder of the behavior will remain the same due to applicability of ATR.

Similar to ISE, GEMX and MRX, the Exchange proposes to amend Options 3, Section 6 to rename it "Collection and Dissemination of Quotes" and adopt a rule identical to ISE, GEMX and MRX Options 3, Section 6. The proposed new rule will specify, as is the case today, that each Market Maker shall communicate to the Exchange its bid and offers in accordance with the requirements of Rule 602 of Regulation NMS under the Exchange Act and the Rules of the Exchange.⁴¹ Further, as is the case today, the Exchange will disseminate to quotation vendors the highest bid and the lowest offer, and the aggregate quotation size associated therewith that is available to Public Customer Orders, in accordance with the requirements of Rule 602 of Regulation NMS under the Exchange Act.⁴²

The Exchange proposes in Options 3, Section 6(c) to adopt rules around unusual market conditions. Today, Options 3, Section 6(c) notes that "when the level of trading activities or the existence of unusual market conditions is such that the Exchange is incapable of collecting, processing, and making available to quotation vendors the data for a subject security required to be made available pursuant to the SEC Quote Rule in a manner that accurately reflects the current market on the Exchange as determined by an Options Exchange Official." The Exchange proposes to continue to provide that in proposed Options 3, Section 6(c)(1),

An Exchange official designated by the Board shall have the power to determine that the level of trading activities or the existence of unusual market conditions is such that the Exchange is incapable of collecting, processing, and making available to quotation vendors the data for the option in a manner that accurately reflects the current state of the market on the Exchange. Upon

making such a determination, the Exchange shall designate the market in such option to be "fast." When a market for an option is declared fast, the Exchange will provide notice that its quotations are not firm by appending an appropriate indicator to its quotations.

Further, the Exchange proposes to state in proposed Options 3, Section 6(c)(2) that if a market is declared fast, designated Exchange officials shall have the power to: (i) direct that one or more trading rotations be employed pursuant to Options 3, Section 8; (ii) suspend the minimum size requirement of Options 2, Section 5(c)(1); or (iii) take such other actions as are deemed in the interest of maintaining a fair and orderly market. Today, Options 3, Section 9(b) provides certain manual trading halt authority deemed necessary in the interests of maintaining a fair and orderly market in such class or series of options and to protect investors.

Proposed Options 3, Section 6(c)(3) provides that the Exchange will monitor the activity or conditions that caused a fast market to be declared, and a designated Exchange official shall review the condition of such market at least every thirty (30) minutes. Regular trading procedures shall be resumed by the Exchange when a designated Exchange official determines that the conditions supporting a fast market declaration no longer exist. The Exchange will provide notice that its quotations are once again firm by removing the indicator from its quotations. Finally, the Exchange proposes to state in Options 3, Section 6(c)(4) that if the conditions supporting a fast market declaration cannot be managed utilizing one or more of the procedures described above, then a designated Exchange official shall halt trading in a class, or classes so affected. Today, ISE, GEMX and MRX have the same authority in Options 3, Section 6(c)(3) to protect those markets in the event of unusual market conditions. The Exchange believes that it should be able to manage trading on Phlx in the same manner as ISE, GEMX and MRX in the event of unusual market conditions.

Options 3, Section 7

Phlx proposes to align its order types to those of ISE, GEMX and MRX Options 3, Section 7 and utilize the same numbering as those markets.⁴³

⁴³ The Exchange also proposes to separately file rule changes related to Complex Orders, Qualified Contingent Cross Orders and auctions. The Exchange notes that those filing will also add order types to Options 3, Section 7 to mirror ISE, GEMX and MRX Options 3, Section 7 order types.

⁴⁰ See Phlx Options 3, Section 15(b)(1) which describes the Acceptable Trade Range.

⁴¹ See proposed Phlx Options 3, Section 6(a).

⁴² See proposed Phlx Options 3, Section 6(b).

Phlx proposes to relocate Options 3, Section 7(f)⁴⁴ to the first paragraph of Options 3, Section 7.

Market Orders

The Exchange proposes to amend the description of Market Orders. Today, Options 3, Section 7(b)(1) states, “A Market Order is an order to buy or sell a stated number of options contracts that is to be executed at the best price obtainable when the order reaches the Exchange. Lead Market Makers, Market Makers and Off-Floor Broker-Dealers may not submit Market Orders.” The Exchange proposes to amend the definition of Market Orders to introduce a cancel timer feature, which will allow member organizations to designate Market Orders that do not execute after a certain period of time to be cancelled back to the member organization. Specifically, the Exchange proposes to add that member organizations can designate their Market Orders not executed after a pre-established period of time, as established by the Exchange,⁴⁵ will be cancelled back to the member organization once an options series has opened for trading. Nasdaq BX, Inc. currently has an identical timer feature for BX Market Orders.⁴⁶ Similar to BX, the proposed timer would be available once the intra-day trading session begins for an options series, as the Exchange already has a separate opening delay timer that provides protection to the market during the Opening Process.⁴⁷ In particular, the Exchange would cancel orders (if consistent with the member organization’s instructions) if an options series has not opened before the conclusion of the opening delay timer.⁴⁸ As such, the Exchange is proposing that the pre-established period of time for the proposed timer feature would commence once the intra-day trading session begins for that options series. In other words, while the Opening Process is on-going, and the intra-day trading session has not commenced, the pre-established period of time for the proposed timer feature would not commence. Further, the Exchange

proposes to note that Market Orders on the order book would be immediately cancelled if an options series is halted, provided the member organization designated the cancellation of Market Orders.⁴⁹ The proposed changes are intended to make clear that in the event there is a Market Order in a zero bid market while the Market Order was resting on the order book, the Member has an option to designate the cancellation of that Market Order pursuant to the proposed cancel timer feature. In this case, those Market Orders to sell, which were resting on the order book, would immediately cancel upon a trading halt instead of waiting until the end of the pre-established timer period. ISE, GEMX, MRX and BX also has identical language governing its Market Orders today.⁵⁰ Like ISE, GEMX, MRX and BX, the Exchange believes that the proposed intra-day timer feature will provide additional flexibility for member organizations that wish to cancel unexecuted Market Orders after a certain period of time.

As noted above in Options 2, Section 6, the Exchange would no longer prohibit Market Makers (and Lead Market Makers)⁵¹ from entering Market Orders. In addition, the Exchange would no longer prohibit an Off-Floor Broker Dealer⁵² from entering a Market Order for the same reasons as expressed above in Options 2, Section 6.⁵³ All Market Makers, including away market makers, are restricted to a total number of contracts executed during a quarter in options series to which it is not appointed of twenty-five percent (25%) of the total number of contracts executed by the Market Maker and Lead Market Maker in options series as all options markets impose this restriction on market makers. The Exchange does not believe there is any reason to restrict

Off-Floor Broker Dealers from entering Market Orders in options classes, rather, the Exchange proposes to permit all member organizations to be able to enter Market Orders as is the case on The Nasdaq Options Market LLC (“NOM”), BX, ISE, GEMX and MRX.

Limit Orders

The Exchange proposes to relocate “Limit Orders” from current Options 3, Section 7(b)(2) to proposed Options 3, Section 7(b) without change.⁵⁴ The Exchange proposes to define three types of Limit Orders similar to ISE, GEMX and MRX. First, the Exchange proposes to define a “Marketable Limit Order” as a Limit Order to buy (sell) at or above (below) the best offer (bid) on the Exchange. Next, the Exchange proposes to define a Fill-or-Kill Orders as a Limit Order that is to be executed in its entirety as soon as it is received and, if not so executed, treated as cancelled. Finally, the Exchange proposes to relocate an Intermarket Sweep Order from current Options 3, Section 7(b)(3) to proposed Options 3, Section 7(b)(3) with some additions. The Exchange proposes to reorder some sentences to closely resemble ISE, GEMX and MRX Options 3, Section 7(b)(3). The Exchange proposes to add an additional sentence to make clear that ISOs must have a TIF designation of IOC. Additionally, the Exchange proposes to define the “regular order book” as the “single-leg order book.”

All-or-None Orders

The Exchange proposes to relocate the All-or-None Orders from current Options 3, Section 7(b)(5) to proposed Options 3, Section 7(c) and amend it. Today, Phlx restricts All-or-None Orders to be entered only by Public Customers. At this time, the Exchange proposes to permit any member organization to submit an All-or-None Order similar to ISE, GEMX, and MRX Options 3, Section 7(c). The Exchange would not apply the Acceptable Trade Range protection in Options 3, Section 15(a) to All-Or-None Orders, similar to other orders. Finally, similar to ISE, GEMX and MRX, the Exchange proposes to modify All-or-None Orders so that they would execute against multiple, aggregated orders if the executions would occur simultaneously. Additionally, as is the case today, an All-or-None Order would not be submitted during the Opening Process similar to any other order that does not

⁴⁴ Current Phlx Options 3, Section 7(f) states, Orders may not be unbundled, nor may a firm solicit a customer to unbundle an order for this purpose.

⁴⁵ The Exchange will initially set the pre-established period of time at 4 seconds, identical to BX. This specification will be set out in the ISE System settings document on a publicly available website. The Exchange would issue an Options Trader Alert notifying all member organizations if it determined to amend that timeframe.

⁴⁶ See BX Options 3, Section 7(a)(5).

⁴⁷ See Phlx Options 3, Section 8 for the Opening Process.

⁴⁸ See Phlx Options 3, Section 8(k).

⁴⁹ Member organizations may make the designation to cancel their Market Orders through their FIX and port settings.

⁵⁰ See ISE, GEMX and MRX Options 3, Section 7(a) and BX Options 3, Section 7(a)(5).

⁵¹ As explained above, Market Makers is a broad term that covers Lead Market Makers so both terms are not needed.

⁵² Phlx Options 1, Section 1(b)(33) provides, [t]he term “Off-Floor Broker-Dealer Order” means an order delivered from off the floor of the Exchange by or on behalf of a broker-dealer for the proprietary account(s) of such broker-dealer, including an order for a market maker located on an exchange or trading floor other than the Exchange’s trading floor delivered electronically for the proprietary account(s) of such market maker.

⁵³ Current Phlx Options 3, Section 7(e) provides that An off-floor broker-dealer order may be entered for a minimum size of one contract. Off-floor broker-dealers may enter all order types defined in Options 3, Section 7(b) except for All-or-None Orders, Market Orders, Stop Market Orders, and public customer-to-public customer cross orders subject to Options 3, Section 13(a) and (f).

⁵⁴ Phlx Options 3, Section 7(b)(2) states, A Limit Order is an order to buy or sell a stated number of options contracts at a specified price or better.

rest as there is no order book during the Opening Process.

Stop Orders

The Exchange proposes to relocate the Stop Order description from Options 3, Section 7(b)(4)⁵⁵ to proposed Options 3, Section 7(d) and (e). Today, Phlx's Stop Order may be a Limit or Market Order. Also, the Stop Order may not be elected by a trade that is reported late or out of sequence or by a Complex Order trading with another Complex Order. Phlx restricts Lead Market Makers, Maker Makers, and Off-Floor Broker-Dealers from entering Stop Market Orders. At this time, the Exchange proposes to amend its Stop Order to mirror the order type that is in use on ISE, GEMX and MRX at Options 3, Section 7(d) and (e). First, Phlx will permit all member organizations to utilize a Stop Order and Stop Limit Order and not restrict Maker Makers (including Lead Market Makers) as noted in the discussion of Options 2, Section 6 above. Further, the category of "Off-Floor Broker-Dealer Orders" is being eliminated as described below with this rule change. Second, the Exchange will not separately specify a Stop Market Limit Order, rather it will describe an elected Stop Order as a Market Order. The Exchange proposes to describe a Stop Order as an order that becomes a Market Order when the stop price is elected. A Stop Order to buy is elected when the option is bid or trades on the Exchange at, or above, the specified stop price. A Stop Order to sell is elected when the option is offered or trades on the Exchange at, or below, the specified stop price. A Stop Order shall be cancelled if it is immediately electable upon receipt. Stop Orders may only be entered through FIX. The rule text that currently provides, "A Stop Order shall not be elected by a trade that is reported late or out of sequence or by a Complex Order trading with another

Complex Order" will be relocated to the end of the sentence. The Exchange proposes to provide that a Stop Limit Order is an order that becomes a Limit Order when the stop price is elected. A Stop Limit Order to buy is elected when the option is bid or trades on the Exchange at, or above, the specified stop price. A Stop Limit Order to sell becomes a sell limit order when the option is offered or trades on the Exchange at, or below, the specified stop price. A Stop Limit Order shall be cancelled if it is immediately electable upon receipt. The Exchange is removing the rule text that states that a Stop Order is a non-displayed, contingency order until elected because the proposed rule text makes clear that the Stop Order does not become a Market or Limit Order until it is elected. Finally, similar to a Stop Order, a Stop Limit Order shall not be elected by a trade that is reported late or out of sequence or by a Complex Order trading with another Complex Order.

Cancel or Replace Orders

The Exchange proposes to relocate the Cancel and Replace Order description from Options 3, Section 7(b)(7)⁵⁶ to proposed Options 3, Section 7(f). The Exchange proposes to modify the Cancel and Replace Order so that it mirrors the functionality on ISE, GEMX and MRX at Options 3, Section 7(f). The Exchange would state at the beginning that "Cancel and Replace Orders shall mean" to conform the text to the other changes to the order types. The Exchange would remove the phrase "with new terms and conditions" and instead note that the replacement order will retain the priority of the cancelled order, if the order posts to the Order Book, provided the price is not amended or size is not increased. In the case of Reserve Orders, which the Exchange is adopting as noted further below, the replacement order will retain the priority of the cancelled order, if the order posts to the Order Book, provided the price is not amended or size (displayed and non-displayed) is not changed. This new text specifically notes that amending the price or increasing the size will result in a loss of priority. Further the Exchange proposes to state that if the replacement portion of a Cancel and Replace Order

does not satisfy the System's price or other reasonability checks (e.g., Options 3, Section 15(a)(1) and Options 3, Section 15(a)(2)) the existing order shall be cancelled and not replaced. Today, the Exchange utilizes the simple order checks in Options 3, Section 15(a)(1), Order Price Protection, and Options 3, Section 15(b)(1), Acceptable Trade Range, for each order entered into the System, including replacement orders. This additional language brings more clarity to the rule text.

Reserve Orders

The Exchange proposes to adopt a Reserve Order at Options 3, Section 7(g) that is identical to the order type in ISE, GEMX and MRX Options 3, Section 7(g). As proposed, a Reserve Order would be a limit order that contains both a displayed portion and a non-displayed portion. Both the displayed and non-displayed portions of a Reserve Order would be available for potential execution against incoming marketable orders. A non-marketable Reserve Order would rest on the order book. The displayed portion of a Reserve Order would be ranked at the specified limit price and the time of order entry. The displayed portion of a Reserve Order would trade in accordance with Options 3, Section 10(a)(1)(A) for Public Customer Orders, and Options 3, Section 10(a)(1)(F) for non-Public Customer Orders. Reserve Orders would be entered with an instruction for the displayed portion of the order to be refreshed: (A) upon full execution of the displayed portion or upon any partial execution; and (B) up to the initial size of the displayed portion or with a random refresh quantity within a range determined by the member organization. When the displayed portion of a Reserve Order is decremented, either in full or in part, it would be refreshed from the non-displayed portion of the resting Reserve Order. If the displayed portion is refreshed in part, the new displayed portion would include the previously displayed portion. Upon any refresh, the entire displayed portion would be ranked at the specified limit price and obtain a new time stamp, i.e., the time that the new displayed portion of the order was refreshed. The new displayed portion would trade in accordance with Options 3, Section 10(a)(1)(A) for Public Customer Orders, and Options 3, Section 10(a)(1)(F) for non-Public Customer Orders. The initial non-displayed portion of a Reserve Order rests on the order book and would be ranked based on the specified limit price and time of order entry. Thereafter, non-displayed portions, if any, always obtain the same time stamp

⁵⁵ Phlx Options 3, Section 7(b)(4), states, A Stop Order is a Limit Order or Market Order to buy or sell at a limit price when interest on the Exchange for a particular option contract reaches a specified price. A Stop Order shall be cancelled if it is immediately electable upon receipt. A Stop Order shall not be elected by a trade that is reported late or out of sequence or by a Complex Order trading with another Complex Order. Lead Market Makers and Maker Makers may not submit a Stop Order. Off-Floor Broker-Dealers may not enter a Stop Market Order. (A) A Stop-Limit Order to buy becomes a Limit Order executable at the limit price or better when the option contract trades or is bid on the Exchange at or above the stop-limit price. A Stop-Limit Order to sell becomes a Limit Order executable at the limit price or better when the option contract trades or is offered on the Exchange at or below the stop-limit price. (B) A Stop Market Order is similar to a stop-limit except it becomes a Market Order when the option contract reaches a specified price. (C) A Stop Order is a non-displayed, contingency order until elected.

⁵⁶ Phlx Options 3, Section 7(b)(7) provides, A Cancel-Replacement Order is a single message for the immediate cancellation of a previously received order and the replacement of that order with a new order with new terms and conditions. If the previously placed order is already filled partially or in its entirety, the replacement order is automatically canceled or reduced by the number of contracts that were executed. The replacement order will result in a loss of priority.

as that of the new displayed portion as described in proposed Options 3, Section 7(g)(5). The non-displayed portion of any Reserve Order would be available for execution only after all displayed interest has been executed. The non-displayed portion of any Reserve Order would trade in accordance with Options 3, Section 10(a)(1)(A) for Public Customer Orders, and Options 3, Section 10(a)(1)(F) for non-Public Customer Orders. The Exchange believes that the adoption of this new order type will allow all member organizations the ability to trade their orders with displayed and non-displayed portions similar to ISE, GEMX and MRX Options 3, Section 7(g).

Attributable Orders

The Exchange proposes to adopt Attributable Orders at Options 3, Section 7(h) that is identical to the order type in ISE, GEMX and MRX Options 3, Section 7(h). An Attributable Order would be a market or limit order which displays the user firm ID for purposes of electronic trading on the Exchange. Use of Attributable Orders is voluntary. Attributable Orders may not be available for all Exchange Systems. The Exchange will issue an Options Regulatory Alert specifying the Systems for which the Attributable Order type shall be available. The Exchange believes that the availability of this order type will allow member organizations the ability to display their firm identification if they elect to do so.

Directed Orders ⁵⁷

The Exchange proposes to relocate the reference to Directed Orders currently in Options 3, Section 7(b)(11) ⁵⁸ to Options 3, Section 7(l) without change. The Exchange proposes to reserve Options 3, Section 7(m).

Add Liquidity Orders

The Exchange proposes to adopt an Add Liquidity Order (“ALO”) at Options 3, Section 7(n) that is identical to ISE, GEMX and MRX Options 3, Section 7(n). ALOs are limit orders that will only be executed as a “maker” on the Exchange. An Add Liquidity Order is a limit order that is to be executed in whole or in part on the Exchange (i) only after being displayed on the Exchange’s limit order book; and (ii) without routing any portion of the order

to another market center. Member organizations may specify whether an Add Liquidity Order shall be cancelled or re-priced to the minimum price variation above the national best bid price (for sell orders) or below the national best offer price (for buy orders) if, at the time of entry, the order (i) is executable on the Exchange; or (ii) the order is not executable on the Exchange, but would lock or cross the national best bid or offer. If at the time of entry, an Add Liquidity Order would lock or cross one or more non-displayed orders or quotes on the Exchange, the Add Liquidity Order shall be cancelled or re-priced to the minimum price variation above the best non-displayed bid price (for sell orders) or below the best non-displayed offer price (for buy orders). Notwithstanding the aforementioned, if an Add Liquidity Order would not lock or cross an order or quote on the System but would lock or cross the NBBO, the order will be handled pursuant to Options 3, Section 5(d).⁵⁹ An Add Liquidity Order will be ranked in the Exchange’s limit order book in accordance with Options 3, Section 10 which governs priority and allocation. Add Liquidity Orders may only be submitted when an options series is open for trading. This order type would give market participants greater control over the circumstances in which their orders are executed.

Below are some examples of the Add Liquidity Order.

Add Liquidity Only Order Re-Price Example

- Non-Penny Program MPV Option in open trading state
- Market Maker A quote \$0.90 (10) × \$1.00 (10)
- ABBO \$0.85 × \$1.05
- Firm A sends Add Liquidity Only Order to buy 5 arrives at \$1.00
- Reprices on book to \$0.95
- Displays on \$0.95 bid, which is National Best displayed bid with a quantity of 5

⁵⁹ Phlx Options 3, Section 5(d) provides, An order will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. An order that is designated by the member as routable will be routed in compliance with applicable Trade-Through and Locked and Crossed Markets restrictions. An order that is designated by a member as non-routable will be re-priced in order to comply with applicable Trade-Through and Locked and Crossed Markets restrictions. If, at the time of entry, an order that the entering party has elected not to make eligible for routing would cause a locked or crossed market violation or would cause a trade-through violation, it will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) as non-displayed, and displayed at one minimum price variance above (for offers) or below (for bids) the national best price.

- Order to sell 10 arrives at \$0.90
- 5 execute with Firm A @\$0.95
- 5 execute with Market Maker A @ \$0.90
- NBBO updates back to \$0.90 × \$1.00

Add Liquidity Only Reject Example

- Non-Penny Program MPV Option in open trading state
 - Market Maker A quote \$0.90 (10) × \$1.00 (10)
 - ABBO \$0.85 × \$1.05
 - Firm A sends Add Liquidity Only Order to buy 5 arrives at \$1.00
 - Order is rejected back to sender because the sender configured the order for reject instead of re-price
- The Exchange notes that it proposes to reserve Options 3, Section 7(o), (p), (q), (r), (s) and (t).

Opening Sweep

The Exchange proposes to relocate the Opening Sweep order type at Options 3, Section 7(b)(6)⁶⁰ to Options 3, Section 7(u) and amend it. The Exchange proposes to replace references to “Lead Market Makers” and “Market Makers” to simply “Market Makers” as all Lead Market Makers are also Market Makers.⁶¹ Additionally, the Exchange proposes to note that with the technology migration, that Opening Sweeps would be subject to the new Market Wide Risk Protection proposed in Options 3, Section 15. The Exchange is proposing to add a Market Wide Risk Protection to its rules with this proposal as described below. Finally, the Exchange proposes to add a precise citation to the Opening Process in the last sentence of Options 3, Section 7(u) by including “(b)(i)” after Options 3, Section 8.

The Exchange proposes to reserve Options 3, Section 7(x) and (y).

PIXL Order

The Exchange proposes to relocate the description of a PIXL Order from Options 3, Section 7(b)(9)⁶² to Options 3, Section 7(y) without substantive

⁵⁷ The Exchange is skipping certain letters in this rule to account for other rule changes that will be filed that impact Options 3, Section 7(i), (j), (k), (t) and (v). Where the Exchange is reserving letters, it is to align to the lettering in ISE, GEMX and MRX Options 3, Section 7.

⁵⁸ Phlx Options 3, Section 7(b)(11) provides, A Directed Order is as described in Options 2, Section 10.

⁶⁰ Phlx Options 3, Section 7(b)(6) provides, An Opening Sweep is a one-sided order entered by a Lead Market Maker or Market Maker through SQF for execution against eligible interest in the System during the Opening Process. This order type is not subject to any protections listed in Options 3, Section 15, except for Automated Quotation Adjustments. The Opening Sweep will only participate in the Opening Process pursuant to Options 3, Section 8 and will be cancelled upon the open if not executed.

⁶¹ See Phlx Options 1, Section 1(b)(28) which defines a Market Maker as a Streaming Quote Trader or a Remote Streaming Quote Trader who enters quotations for his own account electronically into the System.

⁶² Phlx Options 3, Section 7(b)(9) provides, A PIXL Order is as described in Options 3, Section 13.

change.⁶³ The Exchange proposes to populate Supplementary Material .01 to Options 3, Section 7 in a separate rule change.

Time in Force Provisions

The Exchange proposes to relocate the rule text concerning Time in Force from current Options 3, Section 7(c) to Supplementary Material .02 to Options 3, Section 7 without change. Phlx Options 3, Section 7(c) provides, “Time in Force or “TIF.” The term “Time in Force” shall mean [sic] the period of time that the System will hold an order for potential execution, and shall include:”

Day Order

The Exchange proposes to relocate Day Order from current Options 3, Section 7(c)(1)⁶⁴ to Supplementary Material .02(a) to Options 3, Section 7 and make minor amendments to the description. The Exchange proposes to amend the first sentence which states, “If not executed, an order entered with a TIF of “Day” expires at the end of the day on which it was entered.” The Exchange proposes to instead provide, “An order to buy or sell entered with a TIF of “DAY,” which, if not executed, expires at the end of the day on which it was entered.” The Exchange is rewording the rule text of Day Order to mirror the text in ISE, GEMX and MRX Supplementary Material .02(a) to Options 3, Section 7. The Exchange notes that Phlx does not have the Precise or OTTO protocols today.

Good-Till-Cancelled

The Exchange proposes to relocate Good Till Cancelled from Options 3, Section 7(c)(4)⁶⁵ to Supplementary Material .02(b) to Options 3, Section 7 and amend the description. Currently, Supplementary Material .02(b) to Options 3, Section 7 provides that a Good Til Cancelled (“GTC”) Order entered with a TIF of GTC, if not fully executed, will remain available for potential display and/or execution unless cancelled by the entering party,

or until the option expires, whichever comes first. GTC Orders shall be available for entry from the time prior to market open specified by the Exchange until market close. The Exchange proposes to instead provide that an order to buy or sell entered with a TIF of “GTC” remains in force until the order is filled, canceled or the option contract expires; provided, however, that GTC orders will be canceled in the event of a corporate action that results in an adjustment to the terms of an option contract. The first sentence of the current text is simply worded differently. Also, all order types are available throughout the trading day unless specified otherwise. The Exchange proposes to add language concerning a corporate event, noting that GTC orders are canceled in the event of a corporate action that results in an adjustment to the terms of an option contract. This is also true today. The Exchange is adding this rule text to clarify the current System behavior. The proposed GTC description is identical to the rule text in ISE, GEMX and MRX Supplementary Material .02(b) to Options 3, Section 7. There is no System change as a result of the change to the description of the GTC order.

Good-Till-Date

The Exchange proposes to adopt a new TIF designation, Good-Till-Date or “GTD” at Supplementary Material .02(c) to Options 3, Section 7 which is identical to ISE, GEMX and MRX’s Good-Till-Date TIF at Supplementary Material .02(c) to Options 3, Section 7. A Good-Till-Date TIF is an order to buy or sell entered with a TIF of “GTD,” which, if not executed, would be cancelled at the sooner of the end of the expiration date assigned to the order, or the expiration of the series; provided, however, that GTD orders would be canceled in the event of a corporate action that results in an adjustment to the terms of an option contract. The Exchange believes this additional TIF will provide member organizations with additional opportunities when trading on Phlx.

Immediate-or-Cancel

The Exchange proposes to relocate Immediate-or-Cancel from Options 3, Section 7(c)(2)⁶⁶ to Supplementary

Material .02(d) to Options 3, Section 7 and amend the description. Supplementary Material .02(d) to Options 3, Section 7 currently states, “An Immediate-or-Cancel (“IOC”) Order entered with a TIF of “IOC” is a Market Order or Limit Order to be executed in whole or in part upon receipt. Any portion not so executed is cancelled.” The Exchange proposes a non-substantive amendment to instead provide, “Immediate-or-Cancel. An order entered with a TIF of “IOC” that is to be executed in whole or in part upon receipt. Any portion not so executed is to be treated as cancelled.” The Exchange proposes to relocate the rule text in Options 3, Section 7(c)(A) to Supplementary Material .02(d)(1) to Options 3, Section 7 without change. The Exchange proposes to relocate the rule text in Options 3, Section 7(c)(B) to Supplementary Material .02(d)(2) to Options 3, Section 7 and remove the reference to “Lead Market Maker” to simply “Market Makers” as all Lead Market Makers are also Market Makers.⁶⁷ The Exchange proposes to amend “SQF is not subject to” to “the SQF protocol will not be subject to”. The Exchange proposes to add an “(A)” before Order Price Protection, and change “or Size Limitation in Options 3, Section 15(a)(1), (a)(2), and (b)(2), respectively, or Size Limitation within Options 3, Section 16(e)” to “and Size Limitation Protection as defined in Options 3, Section 15(a)(1), (a)(2), and (b)(2) respectively, for single leg orders.” These modifications are non-substantive and simply bring more clarity to the rule text. The Exchange proposes to relocate the rule text in current Phlx Options 3, Section 7(c)(2)(C) in a separate rule change. These changes align with rule text in ISE, GEMX and MRX Supplementary Material .02(d) to Options 3, Section 7.

Opening Only

The Exchange proposes to relocate Opening Only from Options 3, Section 7(c)(3)⁶⁸ to proposed Supplementary

Market Order Spread Protection, or Size Limitation in Options 3, Section 15(a)(1), (a)(2), and (b)(2), respectively, or Size Limitation within Options 3, Section 16(e). (C) Orders entered into the Price Improvement XL (“PIXL”) Mechanism and Qualified Contingent Cross (“QCC”) Mechanism are considered to have a TIF of IOC. By their terms, these orders will be: (1) executed either on entry or after an exposure period, or (2) cancelled.

⁶⁷ See Phlx Options 1, Section 1(b)(28) which defines a Market Maker as a Streaming Quote Trader or a Remote Streaming Quote Trader who enters quotations for his own account electronically into the System.

⁶⁸ Phlx Options 3, Section 7(c)(3) provides, An Opening Only (“OPG”) order is entered with a TIF of “OPG”. This order can only be executed in the Opening Process pursuant to Options 3, Section 8.

⁶³ The Exchange proposes to remove “A” before the words “PIXL Order.”

⁶⁴ Phlx Options 3, Section 7(c)(1) provides, If not executed, an order entered with a TIF of “Day” expires at the end of the day on which it was entered. All orders by their terms are Day Orders unless otherwise specified. Day orders may be entered through FIX.

⁶⁵ Phlx Options 3, Section 7(c)(4) provides, A Good Til Cancelled (“GTC”) Order entered with a TIF of GTC, if not fully executed, will remain available for potential display and/or execution unless cancelled by the entering party, or until the option expires, whichever comes first. GTC Orders shall be available for entry from the time prior to market open specified by the Exchange until market close.

⁶⁶ Phlx Options 3, Section 7(c)(2) provides, An Immediate-or-Cancel (“IOC”) Order entered with a TIF of “IOC” is a Market Order or Limit Order to be executed in whole or in part upon receipt. Any portion not so executed is cancelled. (A) Orders entered with a TIF of IOC are not eligible for routing. (B) IOC orders may be entered through FIX or SQF, provided that an IOC Order entered by a Market Maker or Lead Market Maker through SQF is not subject to the Order Price Protection, the

Material .02(e) of Options 3, Section 7. The Exchange is proposing to add Phlx's new Market Wide Risk Protection to the list of risk protections that would apply to Opening Only. The Exchange proposes a new Market Wide Risk Protection as explained below in this proposal. Also, the Exchange proposes to capitalize "orders" in the last sentence.

Order Entry Protocols

The Exchange proposes to amend the rule text currently in Supplementary Material .03(a)(i) of Options 3, Section 7. With respect to the FIX protocol, within proposed Supplementary Material .03(A) of Options 3, Section 7,⁶⁹ the Exchange proposes to add "post trade allocation messages" to the list of features that will be included in FIX. A post trade allocation message allows market participants to specify how an order should be subdivided among one or more accounts.⁷⁰ Today, ISE, GEMX and MRX provide post trade allocation messages through FIX.⁷¹ The Exchange does not propose to amend the SQF protocol within Supplementary Material .03(B) of Options 3, Section 7⁷² or the FBMS protocol within Supplementary

This order type is not subject to any protections listed in Options 3, Section 15, except Size Limitation. Any portion of the order that is not executed during the Opening Process is cancelled. OPQ orders may not route.

⁶⁹ Phlx Supplementary Material .03(A) of Options 3, Section 7 provides, "Financial Information eXchange" or "FIX" is an interface that allows members and their Sponsored Customers to connect, send, and receive messages related to orders and auction orders and responses to and from the Exchange. Features include the following: (1) execution messages; (2) order messages; and (3) risk protection triggers and cancel notifications."

⁷⁰ For example, a member may specify the account(s) and their respective order quantities which make up the order.

⁷¹ See ISE, GEMX and MRX Supplementary Material .03(a)(i) of Options 3, Section 7.

⁷² Phlx Supplementary Material .03(A) of Options 3, Section 7 provides, "Specialized Quote Feed" or "SQF" is an interface that allows Lead Market Makers, Streaming Quote Traders ("SQTs") and Remote Streaming Quote Traders ("RSQTs") to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses into and from the Exchange. Features include the following: (1) options symbol directory messages (e.g., underlying and complex instruments); (2) system event messages (e.g., start of trading hours messages and start of opening); (3) trading action messages (e.g., halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the Lead Market Maker, SQT or RSQT. Lead Market Makers, SQTs and RSQTs may only enter interest into SQF in their assigned options series. Immediate-or-Cancel Orders entered into SQF are not subject to the Order Price Protection, the Market Order Spread Protection, or Size Limitation in Options 3, Section 15(a)(1), (a)(2) and (b)(2), respectively.

Material .03(C) of Options 3, Section 7.⁷³

Routing

The Exchange proposes to relocate the rule text at Options 3, Section 7(d)⁷⁴ to Supplementary Material .04 of Options 3, Section 7 without change.

Options 3, Section 8

The Exchange proposes to amend Options 3, Section 8, Options Opening Process, at Options 3, Section 8(b) to note the eligible interest that will be included in the Opening Process. The Exchange currently provides at Options 3, Section 8(b) that, "Eligible interest during the Opening Process includes Valid Width Quotes, Opening Sweeps, and orders. Quotes, other than Valid Width Quotes, will not be included in the Opening Process. Non-SQT Market Makers may submit orders." The Exchange proposes to note that "Eligible interest during the Opening Process includes Valid Width Quotes, Opening Sweeps, and orders, *including Opening Only Orders, but excluding orders with a Time-In-Force of "Immediate or Cancel" and Add Liquidity Orders.* Quotes, other than Valid Width Quotes, will not be included in the Opening Process. *The displayed and non-displayed portions of the Reserve Orders are considered for execution and in determining the Opening Price throughout the Opening Process.* Non-SQT Market Makers may submit orders."⁷⁵ The Exchange would exclude Add Liquidity Orders and consider Reserve Orders (displayed and non-displayed portions) for execution in the Opening Process as well as when

⁷³ Phlx Supplementary Material .03(C) of Options 3, Section 7 provides, Options Floor Based Management System or ("FBMS") is a component of the System designed to enable members and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. The FBMS also is designed to establish an electronic audit trail for options orders negotiated, represented and executed by members on the Exchange, to the extent permissible pursuant to Options 8, Section 22(a), such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. The features of FBMS are described in Options 8, Sections 28(e) and 29. In addition, a non-member or member may utilize an FBMS FIX interface to create and send an order into FBMS to be represented by a Floor Broker for execution.

⁷⁴ Phlx Options 3, Section 7(d) provides, Routing Strategies. Orders may be entered on the Exchange with a routing strategy of FIND, SRCH or Do-Not-Route ("DNR") as provided in Options 5, Section 4 through FIX only.

⁷⁵ Today, Opening Only Orders are eligible for the Opening Process but not Immediate or Cancel Orders.

considering the Opening Price. The Exchange proposes to amend the rule text to note how those order types are accepted by the System for processing during the Opening Process. The proposed eligibility of these orders mirror ISE, GEMX and MRX Options 3, Section 8(b).

Also, similar to ISE, GEMX and MRX Options 3, Section 8(g), the Exchange proposes to account for the addition of Reserve Orders with respect to the Potential Opening Price⁷⁶ in Phlx Options 3, Section 8(h). The Exchange notes that to calculate the Potential Opening Price, the System will take into consideration all Valid Width Quotes and orders (including Opening Sweeps *and displayed and non-displayed portions of Reserve Orders*) for the option series and identify the price at which the maximum number of contracts can trade ("maximum quantity criterion"). The addition of this rule text will make clear the manner in which the System will handle a Reserve Order during the Opening Process.

The Exchange proposes to amend Options 3, Section 8(h)(A), which currently describes how the Potential Opening Price would be calculated when there is more than one Potential Opening Price. Today, Phlx Options 3, Section 8(h)(A) provides that when two or more Potential Opening Prices would satisfy the maximum quantity criterion and leave no contracts unexecuted, the System takes the highest and lowest of those prices and takes the mid-point; if such mid-point is not expressed as a permitted minimum price variation, it will be rounded to the minimum price variation that is closest to the closing price for the affected series from the immediately prior trading session. If there is no closing price from the immediately prior trading session, the System will round up to the minimum price variation to determine the Opening Price. The Exchange proposes to no longer round in the direction of the previous trading day's closing price, rather it would round up to the minimum price variation if the mid-point of the high/low is not expressed as a permitted minimum price variation with this technology migration. The proposed changes are intended to simplify and bring greater transparency to the Opening Process, as market participants can now have a better sense of how the Potential Opening Price will be calculated without having to account for the closing price of each options series. This proposed change will mirror

⁷⁶ The Potential Opening Price indicates a price where the System may open once all other Opening Process criteria is met.

the functionality on ISE, GEMX and MRX.⁷⁷

The Exchange further proposes to amend Phlx Options 3, Section 8(j)(7), which currently describes the determination of Opening Quote Range ("OQR") boundaries in certain scenarios.⁷⁸ Specifically, the Exchange proposes to amend the last sentence of Options 3, Section 8(j)(7) which currently states, "The System will route routable Public Customer and Professional interest pursuant to Options 3, Section 10(a)(1)(A)." The Exchange proposes to remove the current limitation that only allows routable Public Customer⁷⁹ and Professional⁸⁰ interest to route during the Opening Process. Instead, all routable market participant interest will be allowed to route to align the Exchange's opening functionality with ISE, GEMX and MRX Options 3, Section 8, which does not limit orders that may route in the Opening Process. Specifically, the Exchange proposes to remove the reference to Public Customer and Professional to allow all routable interest to route in the Opening Process. The Exchange proposes to update the cross-cite to Phlx Options 3, Section 10(a)(1)(A), that currently points to the Public Customer priority overlay. Instead, the Exchange would amend the citation to point to the more general priority rule in Phlx Options 3, Section 10(a).

Similar to other changes noted herein, the Exchange proposes to amend Phlx Options 3, Section 8(k)(C)(6) to note how Reserve Orders will be handled in the Opening Process for purposes of execution. The Exchange proposes to state, "The System will execute orders at the Opening Process that have contingencies (*such as without limitation, Reserve Orders*) and non-routable orders, such as a "Do Not Route" or "DNR" Orders, to the extent possible. This rule text will add transparency to Phlx's rule text, and mirror rule text in ISE, GEMX and MRX Options 3, Section 8(j)(6). Additionally,

⁷⁷ See ISE, GEMX and MRX Options 3, Section 8(g).

⁷⁸ OQR is an additional type of boundary used in the Opening Process, and is intended to limit the opening price to a reasonable, middle ground price, thus reducing the potential for erroneous trades during the Opening Process.

⁷⁹ The term "Public Customer" means a person or entity that is not a broker or dealer in securities and is not a Professional as defined within Options 1, Section (b)(45). See Option 1, Section 1(b)(46).

⁸⁰ The term "Professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). Member organizations must indicate whether orders are for Professionals. See Option 1, Section 1(b)(45).

the Exchange proposes an amendment to the last sentence of Phlx Options 3, Section 8(k)(C)(6) which currently states, "The System will only route non-contingency Public Customer and Professional orders." In line with proposed amendments to permit the System to route all market participant interest, thereby removing the limitation that only allows routable Public Customer and Professional interest to route, and in line with the addition of rule text related to the handling of Reserve Orders, the Exchange proposes to instead provide, "The System will only route non-contingency orders, except Reserve Orders may route up to their full volume." With this proposal, Phlx would have the following contingency orders that will not route: a Stop Order, an All-or-None Order and a Fill-or-Kill Order.

The Exchange proposes to amend current Phlx Options 3, Section 8(k)(D) to mirror rule text in ISE, GEMX and MRX Options 3, Section 8(j)(6)(A) which states, "The System will cancel any order or quote that is priced through the Opening Price. All other interest will be eligible for trading after opening." Today, the Phlx System will cancel any order or quote priced through the Opening Price. Also, today, all other interest will be eligible for trading after the Opening Process and will remain on the order book. The Exchange believes that this rule text will bring greater transparency to Phlx's Opening Process.

Finally, the Exchange proposes to amend rule text in the Opening Process Cancel Timer at Phlx Options 3, Section 8(l). With the retention of the "Good-Till-Cancel Order" and adoption of the "Good-Till-Date Order," the Exchange proposes to amend the order types in the last sentence of Options 3, Section 8(l) for consistency.

Options 3, Section 9

The Exchange proposes to amend Phlx Options 3, Section 9, Trading Halts. Specifically, the Exchange proposes to amend Options 3, Section 9(d)(3) to amend the manner in which a Stop Order will be treated during a trading halt. The Exchange proposes to mirror the treatment of Stop Orders in ISE, GEMX and MRX Options 3, Section 9(d)(3). Today, the rule text notes that "[a]fter the opening, the Exchange shall elect Stop Orders, as defined in Options 8, Section 32(c)(2), and, because they become Market Orders, shall cancel them back and notify member organizations of the reason for such rejection." The Exchange proposes to amend the rule text to instead provide, "After the Opening Process, if a Stop

Order is elected, as defined in Options 3, Section 7(d) because they become Market Orders, the System shall cancel them back and notify market participants of the reason for such cancellation." Stop Orders would become elected as provided for in proposed Options 3, Section 7(d).⁸¹ The Exchange currently cites Phlx Options 8, Section 32 erroneously, as those rules refer to Stop Order types on the trading floor. The Exchange proposes to instead cite proposed new Options 3, Section 7(d) which describes the electronic Stop Order type. The Exchange proposes to note that the System cancels orders. Also, the Exchange proposes to change the word rejection to cancellation because the order would be cancelled not rejected. The Exchange also proposes to amend Phlx Options 3, Section 9(f) which currently states, "During a halt, the Exchange will maintain existing orders on the book (but not existing quotes), except as noted in Options 5, Section 4, accept orders and quotes, and process cancels. During a halt, existing quotes are cancelled and auction orders and auction responses, as well as Crossing Orders, are rejected." The Exchange notes that this exception in Phlx Options 3, Section 9(f) to potential exceptions to this rule within Options 5, Section 4 is not necessary as the Exchange follows the trading halt processes in Options 3, Section 9. Options 5, Section 4 does not change the manner in which Options 3, Section 9 operates.

Options 3, Section 10

The Exchange proposes to amend Phlx Options 3, Section 10, Electronic Execution Priority and Processing in the System. Today, generally, Phlx's System rounds down. With this technology migration, the Exchange proposes to amend Phlx's rounding methodology to round up to the nearest integer. Today, ISE, GEMX and MRX Options 3, Section 10(c) provide for a Size Pro-Rata allocation with the same rounding methodology as proposed for Phlx. The Exchange is opting to round up and not down, uniformly, and disclose that rounding methodology directly within Options 3, Section 10, so that all member organizations are aware of the rounding methodology that would be utilized by the System. In addition, if the result of an allocation is not a whole

⁸¹ As proposed in Options 3, Section 7(d) a Stop Order becomes a Market Order when the stop price is elected. A Stop Order to buy is elected when the option is bid or trades on the Exchange at, or above, the specified stop price. A Stop Order to sell is elected when the option is offered or trades on the Exchange at, or below, the specified stop price.

number, it will now be rounded up to the nearest whole number instead of down. Finally, with respect to rounding, because the System is rounding up, the provisions which describe allocations for remainders of less than one contract are being deleted because they cannot mathematically occur. The Exchange believes that rounding up uniformly is consistent with the Act because it provides for the equitable allocation of contracts among the Exchange's market participants. The Exchange proposes to provide market participants with transparency as to the number of contracts that they are entitled to receive as the result of rounding. Further, the Exchange believes that this methodology produces an equitable outcome during allocation that is consistent with the protection of investors and the public interest because all market participants are aware of the methodology that will be utilized to calculate outcomes for allocation purposes. By way of example, Broker/Dealer Order to Buy 20 @1.00 Firm Order to Buy 10 @1.00 Customer Order to Sell 7 @1.00

Today, this order would allocate as follows: 4 contracts to the Broker/Dealer Order (BD receives 20/30 of the incoming 7 = 4.667, rounds down to 4 contracts)

Today, this order allocates 2 contracts to the Firm Order (Firm receives 10/30 of the incoming 7 = 2.33, rounds down to 2 contracts)

Today, this order allocates 1 contract (the odd lot) to the Broker/Dealer Order

With this proposal, allocation will round up instead of down, meaning the Broker/Dealer order would instead be allocated 5 contracts and the Firm order would receive the remaining 2 contracts.

To that end, the Exchange proposes to amend Options 3, Section 10(a) to instead provide that "If the result is not a whole number, it will be rounded up to the nearest whole number. Size Pro-Rata Priority shall mean that resting orders and quotes in the order book are prioritized according to price. If there are two or more resting orders or quotes at the same price, the System allocates contracts from an incoming order or quote to resting orders and quotes beginning with the resting order or quote displaying the largest size proportionally according to displayed size, based on the total number of contracts displayed at that price. Pursuant to Size Pro-Rata, if there are still contracts to be allocated after the displayed size of all orders at that price has been executed, the remaining size

from the incoming order will be allocated proportionally against non-displayed interest according to remaining total size of each resting order at such price, beginning with the order which has the largest total size remaining. The Exchange is proposing to allocate similar to ISE, GEMX and MRX Options 3, Section 10(c). The Size Pro-Rata allocation divides the remainder proportionally among the non-displayed interest. Both the displayed and non-displayed portions of a Reserve Order are available for potential execution against incoming marketable orders or quotes. The non-displayed portion of any Reserve Order is available for execution only after all displayed interest on the single-leg order book has been executed. The Odd Lot Allocation within Phlx Options 3, Section 10(a)(1)(F) is also being removed because the Exchange would no longer utilize the random assignment discussed in that paragraph, rather the Exchange would simply round up any allocation which does not result in a whole number, and thus would have no Odd Lot contracts remaining to be allocated.

The Exchange proposes to amend Phlx Options 3, Section 10(a)(1)(B) to change a reference to "DROT" to "Directed Market Maker" for consistency.

The Exchange proposes to amend Phlx Options 3, Section 10(a)(1)(C) to provide that "After all Public Customer orders have been fully executed, upon receipt of a Directed Order pursuant to Options 2, Section 10, provided the Directed Market Maker's quote is at the better of the internal PBBO or the NBBO, the Directed Market Maker will be afforded a participation entitlement. This participation entitlement will be considered after the Opening Process." Today, a Directed Market Maker's quote or market maker order must be at the better of the internal PBBO or NBBO. The Exchange believes that similar to ISE, GEMX and MRX Options 3, Section 10(c)(1)(C), that Market Maker orders should not be considered when offering Directed Market Maker priority enhancements. Phlx Options 2, Section 10 provides that when the Exchange's disseminated price is the NBBO at the time of receipt of the Directed Order, and the Directed Lead Market Maker, SQT or RSQT is *quoting* at the better of the internal PBBO or the NBBO, the Directed Order shall be automatically executed and allocated in accordance with Options 3, Section 10(a)(1)(C). The Exchange proposes to only offer the Directed Market Maker enhanced allocation if a Directed Market Maker's quote is at the better of the internal

PBBO or the NBBO and not its order. Consistent with this change, the Exchange proposes to remove "or order(s)" after quote throughout Options 3, Section 10(a)(1)(C). Consistent with its proposal to round up, the Exchange proposes to remove the last sentence of Options 3, Section 10(a)(1)(C) that provides, "If rounding would result in an allocation of less than one contract, the Directed Market Maker shall receive one contract."

The Exchange proposes to amend the Phlx's Entitlement for Orders of 5 contracts or fewer at Options 3, Section 10(a)(1)(D) to align with ISE, GEMX and MRX Options 3, Section 10(a)(1)(D). The Exchange proposes to amend the last sentence to provide, "On a quarterly basis, the Exchange will evaluate what percentage of the volume executed on the Exchange is comprised of orders for 5 contracts or fewer allocated to Lead Market Makers, and will reduce the size of the orders included in this provision if such percentage is over 40%." Today, Phlx's percentage for the reduction is 25%. The Exchange believes that utilizing the higher percentage continues to restrict Lead Market Makers with respect to the percentage of the volume executed on Phlx that is comprised of orders for 5 contracts or fewer allocated to Lead Market Makers. The Exchange will continue to evaluate the percentage on a quarterly basis. The Exchange monitors ISE, GEMX and MRX Lead Markets' orders for 5 contracts or fewer based on this percentage today and this has not raised any concerns. Finally, this proposal will align this percentage to 40% identical to ISE, GEMX and MRX Options 3, Section 10(a)(1)(D) so that Market Makers have the same compliance across the Nasdaq affiliated exchanges.⁸² Phlx notes that currently Lead Market Makers are not approaching the 25% threshold noted in Options 3, Section 10(a)(1)(D)(ii) related to the quarterly review of 5 contracts or fewer by the Exchange, which percentage is based on total volume executed. With this proposal, Phlx will monitor the frequency in which Lead Market Makers receive orders for 5 contracts or fewer. Specifically, the Exchange will review the proposed provision quarterly and will maintain the orders for 5 contracts or fewer at a level that will not allow these small size orders executed by Lead Market Makers to account for more than 40% of the volume executed on the Exchange. The Exchange does not believe the proposal raises any new or novel issues as other options exchanges also offer the same

⁸² BX also utilizes 40%. See Options 3, Sections 10(a)(1)(C)(1)(c) and 10(a)(2)(iii).

allocation for orders for 5 contracts or fewer.⁸³ The Exchange believes that providing this benefit offers Lead Market Makers an incentive for vigorous quoting since a Lead Market Maker must be quoting at the NBBO in order to receive the allocation. Incentivizing Lead Market Makers to provide liquidity on Phlx, in turn, provides greater opportunity for executions, tighter spreads, and better pricing for all member organizations. While the Commission has, in the past, been concerned about locking up larger portions of order flow from intra-market price competition, the Exchange believes that the enhancement would remain adequately balanced by the increased 40% threshold that limits the volume of orders of five contracts or fewer that are executed by Lead Market Makers to account for no more than 40% of the volume executed on the Exchange. The proposed increased limitation of 40% continues to strike a reasonable balance between encouraging vigorous price competition by Lead Market Makers and rewarding those Lead Market Makers for their unique duties. Lead Market Maker are also subject to the heightened quoting requirements specified in Options 2, Section 5(c)(2)(B). As noted above, consistent with proposed rounding, the Exchange proposes to remove the Phlx Odd Lot Allocation in Phlx Options 3, Section 10(a)(1)(F)⁸⁴ because Phlx will round up which would not result in remaining contracts to be allocated after rounding. There is no net benefit or negative to electing to round up versus utilizing any other method of rounding (down, banker's rounding, etc.) provided the rounding is handling uniformly and applied in the same manner to each trade executed by the System. The Exchange will uniformly apply its proposed rounding methodology, rounding up, to all transactions executed on Phlx. The Exchange also proposes to remove the reference to this paragraph at the end of Phlx Options 3, Section 10(a)(1)(D)(ii).

Similar to ISE, GEMX and MRX Options 3, Section 10(c)(1)(E), the Exchange proposes to account for Reserve Orders in proposed Phlx Options 3, Section 7(g)(3). The

Exchange proposes to state that, "If there are contracts remaining after all Market Maker interest has been fully executed, notwithstanding Options 3, Section 7(g)(3), such contracts shall be executed based on the Size Pro-Rata execution algorithm as described in Options 3, Section 10(a)." The Exchange proposes to cite to proposed Phlx Options 3, Section 7(g)(3) which provides that the displayed portion of a Reserve Order will trade in accordance with Options 3, Section 10(a)(1)(A) for Public Customer Orders and this subparagraph (F) for non-Public Customer Orders. The displayed portion of a Reserve Order will be allocated the same as other order types. Both the displayed and non-displayed portions of a Reserve Order are available for potential execution against incoming marketable orders or quotes. The non-displayed portion of any Reserve Order is available for execution only after all displayed interest on the single-leg order book has been executed. The proposed rule text related to allocation of a Reserve Order is identical to ISE, GEMX and MRX at Options 3, Section 10(g). The Exchange also proposes to add a citation to Options 3, Section 10(a) in this paragraph for clarity.

Finally, the Exchange proposes to amend Phlx Options 3, Section 10(a)(2) to capitalize "market maker" and remove the Market Maker order at the end of this paragraph because, as proposed above, the Exchange proposes to only offer the Directed Market Maker allocation if a Directed Market Maker's quote is at the better of the internal PBBO or the NBBO and not an order.

Options 3, Section 15

The Exchange proposes to amend Options 3, Section 15, Simple Order Risk Protections.

Order Price Protection

The Exchange proposes to amend its Order Price Protection ("OPP," also known as the fat finger check) in Phlx Options 3, Section 15(a)(1) to align certain features with the OPP functionality currently offered by its affiliate, NOM and BX. The Exchange's proposal will introduce an alternative method to determine parameters for this risk protection. The Exchange notes that OPP is intended to prevent erroneous executions of orders on Phlx. This proposal seeks to further this objective by introducing a fixed dollar threshold that, in combination with the existing percentage threshold, will provide a modified approach to order rejection based on the price of the order.

The Exchange's current OPP feature prevents certain day limit, good til

cancelled, and immediate or cancel orders at prices outside of pre-set standard limits from being accepted by the System. OPP applies to all options but currently does not apply to Stop-Limit Orders, Intermarket Sweep Orders or Complex Orders. Today, OPP is operational each trading day after the opening until the close of trading, except during trading halts. OPP assists member organizations in controlling risk by checking each order, before it is accepted into the System, against certain parameters. Today, as set forth in Phlx Options 3, Section 15(a)(1)(B), OPP rejects incoming orders that exceed certain parameters according to the following algorithm:

- (i) If the better of the NBBO or the internal market BBO (the "Reference BBO") on the contra-side of an incoming order is greater than \$1.00, orders with a limit more than 50% through such contra-side Reference BBO will be rejected by the System upon receipt.
- (ii) If the Reference BBO on the contra-side of an incoming order is less than or equal to \$1.00, orders with a limit more than 100% through such contra-side Reference BBO will be rejected by the System upon receipt.

With this technology migration, the Exchange proposes to expand the algorithm for OPP to introduce a fixed dollar threshold as an alternative to the percentage specified within the current rule. To effect this change, the Exchange proposes to amend Phlx Options 3, Section 15(a)(1)(B) to provide that OPP will reject incoming orders that exceed certain parameters according to the following algorithm:

- (i) If the better of the NBBO or the internal market BBO (the "Reference BBO") on the contra-side of an incoming order is greater than \$1.00, orders with a limit more than the greater of the below will cause the order to be rejected by the System upon receipt.

(A) 50% through such contra-side Reference BBO; or

(B) a configurable dollar amount not to exceed \$1.00 through such contra-side Reference BBO as specified by the Exchange announced via an Options Trader Alert.

- (ii) If the Reference BBO on the contra-side of an incoming order is less than or equal to \$1.00, orders with a limit more than the greater of the below will cause the order to be rejected by the System upon receipt.

(A) 100% through such contra-side Reference BBO; or

(B) a configurable dollar amount not to exceed \$1.00 through such contra-side Reference BBO as specified by the Exchange announced via an Options Trader Alert.

The proposed alternative would permit for a range of prices to be executed where the incoming order is up to \$1.00 from the Reference BBO. The parameters are identical to NOM and BX Options 3, Section 15(a)(1)(B). Similar to NOM and BX, the Exchange

⁸³ See ISE, GEMX and MRX Options 3, Section 10(a)(1)(D).

⁸⁴ Phlx Options 3, Section 10(a)(1)(F) provides, [i]f there are contracts remaining after Market Maker Priority is applied, such contracts shall be allocated by randomly assigning all Market Makers (including the Lead Market Maker or Directed Market Maker) an order of allocation each trading day, and allocating orders, quotes and sweeps in accordance with the trading day's order assignment, provided the Market Maker, is at the best price at which the order, quote or sweep is being traded.

believes that utilizing the greater of a fixed dollar amount or percentage would expand the applicability of OPP while still providing a reasonable limit to the range where orders will be accepted. By implementing a functionality that applies the greater of a fixed dollar amount not to exceed \$1.00 or a percentage, the Exchange would ensure that this protection would be able to accommodate all orders based on a determination of how far from the Reference BBO the order is priced.

The Exchange notes that certain securities in lower price ranges would not benefit from the application of a percentage as would securities with higher prices. For instance, the application of a 50% threshold to a \$50 security would provide a rejection if a limit order was priced \$75 or greater compared to a 100% threshold for a \$0.02 security which would be rejected if a limit order was priced \$0.04 or greater. As such, certain orders could be rejected under the current framework because the percentage threshold is applied to the contra-side of an incoming order, including in cases where the order is not erroneously priced. Below are additional examples to illustrate the application of the current and proposed rule:

Example: An Option Priced Less Than \$1.00

For a penny MPV option with a BBO on Phlx of $\$0.01 \times \$0.02$, consider that the configurable dollar amount is set to \$0.05.

Current Rule: Reject buy orders of more than \$0.04 bid if incoming order was less than \$1.00, and it was more than 100% through the contra-side of the Reference BBO.

Proposed Rule: A buy order priced up to \$0.07 ($\$0.02$ offer + $\$0.05$ configuration) would not be rejected because a configurable dollar amount from \$0.00 to \$0.05 would allow the order to be entered into the System for execution.

This order was marketable upon entry and was not priced far from the current bid. The Exchange believes in this example, the order should be permitted to trade instead of being rejected.

Example: An Option Priced Greater Than \$1.00

For a penny MPV option with a BBO on Phlx of $\$1.01 \times \$1.02$, consider that the configurable dollar amount is set to \$0.60.

Current Rule: Reject buy orders 50% through \$1.02—orders priced greater than \$1.53 ($\$1.02 + \$0.51$).

Proposed Rule: A buy order priced up to \$1.62 would not be rejected (this would be greater than 50% through 1.02).

This order was marketable upon entry and was not priced far from the current bid. The Exchange believes in this example, the order should be permitted to trade instead of being rejected.

As the above examples illustrate, the Exchange believes that securities in the lower price range could benefit by the proposed alternative method because the fixed amount provides for additional executions in certain situations where a percentage would reject an order that was intentional and not erroneous. This approach has been successful for NOM and BX in limiting erroneous executions while permitting intentional executions at reasonable prices, and the Exchange therefore proposes to adopt this approach for its options market as well. Similar to NOM and BX, the Exchange will post the configurable amount on its website and announce any changes to the amount in an Options Trader Alert.

The Exchange also proposes to add language similar to NOM and BX, which would provide the Exchange with discretion to temporarily deactivate OPP from time to time on an intra-day basis if it determined that unusual market conditions warranted deactivation in the interest of a fair and orderly market. Like NOM and BX, the Exchange believes that it will be useful to have the flexibility to temporarily disable OPP intra-day in response to an unusual market event (for example, if dissemination of data was delayed and resulted in unreliable underlying values needed for the Reference BBO). Member organizations would be notified of intra-day OPP deactivation and any subsequent reactivation by the Exchange through the issuance of System status messages. Specifically, the Exchange proposes to add in Phlx Options 3, Section 15(a)(1)(A) that OPP may be temporarily deactivated on an intra-day basis at the Exchange's discretion.

Lastly, the Exchange proposes to amend Options 3, Section 15(a)(1) to remove the current exclusion of Intermarket Sweep Orders ("ISOs") and Complex Orders from the OPP rule. With the proposed amendment, OPP will apply to ISOs. With respect to ISOs, the intent of an ISO is to sweep as many prices as possible at the top of the book, so market participants need to cast as wide a net as possible to get those prices and fill the ISO. With the current OPP functionality, lower priced ISOs are more likely to get rejected for the reasons discussed above, and the Exchange determined at the time to exclude ISOs when adopting OPP. The proposal to add a fixed dollar threshold as an alternative OPP parameter, however, would provide more flexibility for more lower-priced options (including lower-priced ISOs) to get executed, and the Exchange therefore believes it is no longer necessary to exclude ISOs from OPP going forward. The Exchange further believes

extending the protection to ISOs will promote the goal of limiting erroneous executions on the Exchange while permitting intentional executions at reasonable prices, and in general, extend more protections to ISOs. The Exchange is removing Complex Orders from the list of order types noted in Options 3, Section 15(a) because Section 15 applies to single-leg orders. The Exchange notes Complex Order risk protections in Options 3, Section 16. Finally, the Exchange proposes to add "until elected" after Stop-Limit Orders. Once the Stop-Limit Order is elected, the Exchange checks the Limit Order against the OPP bounds and will cancel the order back to the entering member if the order falls outside of the OPP bounds at the time of its election.

Market Wide Risk Protection

The Exchange proposes to introduce new order entry and execution rate checks identical to those on BX at Options 3, Section 15(a)(3) for Market Wide Risk Protection. These new risk protections are designed to aid member organizations in their order risk management by supplementing current price reasonability checks with activity based order protections.⁸⁵ The Exchange proposes to detail these risk protections in proposed Options 3, Section 15(a)(3), entitled "Market Wide Risk Protection" or "MWRP". As proposed, the System will maintain one or more counting programs for each member organization that count orders entered and contracts traded on Phlx. Member organizations may use multiple counting programs to separate risk protections for different groups established within the member organization. The counting programs will maintain separate counts, over rolling time periods specified by the member organization for each count, of: (1) the total number of orders entered in the order book; and (2) the total number of contracts traded.⁸⁶

All member organizations must provide parameters for the order entry and execution rate protections as described in (1) and (2) above. While the MWRP is mandatory for all member organizations, the Exchange is not proposing to establish minimum or maximum values for the order entry and execution parameters described above. The Exchange believes that this

⁸⁵ The Exchange currently provides members organizations with price protections for orders such as the OPP and the Market Order Spread Protection, which prevent limit orders and market orders from being executed at far away and potentially erroneous prices.

⁸⁶ Phlx will also provide Market Wide Risk Protections for Complex Orders in a separate rule change.

approach will give member organizations the flexibility needed to appropriately tailor the MWRP to their respective risk management needs. In this regard, the Exchange notes that each member organization is in the best position to determine risk settings appropriate for their firm based on the member organization's trading activity and business needs. In the interest of maintaining a fair and orderly market, however, the Exchange will also establish default values for each of these parameters that apply to member organizations that do not submit their own parameters for the MWRP, and will announce these default values in an Options Trader Alert to be distributed to member organizations. The Exchange notes that this approach is consistent with BX's current functionality and would provide Phlx member organizations with the flexibility to establish their own MWRP order entry and execution rate parameters. The Exchange also notes that similar to BX, Phlx member organizations will have the discretion to establish the applicable time period for each of the counts maintained under the proposed MWRP, provided that the selected time period must be within the minimum and maximum duration of the applicable time period established by the Exchange and announced via an Options Trader Alert.⁸⁷

Pursuant to proposed Phlx Options 3, Section 15(a)(3)(A)–(C), if, during the applicable time period, the member organization exceeds the thresholds that it has set for any of the order entry or execution counts described above on Phlx, the System will automatically reject all subsequent incoming orders entered by the member organization. Member organizations may also choose to have the System automatically cancel all of their existing orders on Phlx when the MWRP is triggered. The MWRP will remain engaged until the member organization manually notifies the Exchange to enable the acceptance of new orders. For member organizations that still have open orders on the order book that have not been cancelled pursuant to proposed subparagraph (B), the System will continue to allow those member organizations to interact with existing orders entered before the protection was triggered, including sending cancel order messages and receiving trade executions for those orders. The action taken in proposed subparagraphs (A)–(C) is substantially similar to BX Options 3, Section

15(a)(3)(C), except that BX does not have complex order functionality.

The Exchange believes that the proposed MWRP will assist member organizations in better managing their risk when trading on Phlx. In particular, the proposed rule change provides functionality that allows member organizations to set risk management thresholds for the number of orders or contracts executed on the Exchange during a specified period. As discussed above, this is similar to how BX has implemented the MWRP, and the Exchange believes this functionality will likewise be beneficial for Phlx member organizations.

The examples below illustrate how the MWRP would work both for order entry and order execution protections:

Example: Order Entry Rate Protection

Broker Dealer 1 (“BD1”) designates an allowable order rate of 499 orders/1 second.

@0 milliseconds, BD1 enters 200 orders. (Order total: 200 orders).

@450 milliseconds, BD1 enters 250 orders. (Order total: 450 orders).

@950 milliseconds, BD1 enters 50 orders. (Order total: 500 orders).

Market Wide Risk Protection is triggered on Phlx due to exceeding 499 orders in 1 second. All subsequent orders are rejected, and if BD1 has opted in to this functionality, all existing orders are cancelled. BD1 must contact the Exchange to resume trading.

Example: Order Execution Rate Protection

BD1 designates an allowable execution rate of 15,000 contracts/2 seconds.

@0 milliseconds, BD1 receives executions for 5,000 contracts. (Execution total: 5,000 contracts).

@600 milliseconds, BD1 receives executions for 10,000 contracts. (Execution total: 15,000 contracts).

@1550 milliseconds, BD1 receives executions for 2,000 contracts. (Execution total: 17,000 contracts).

Market Wide Risk Protection is triggered on Phlx due to exceeding 15,000 contracts in 2 seconds. All subsequent orders are rejected, and if BD1 has opted in to this functionality, all existing orders are cancelled. BD1 must contact the Exchange to resume trading.

Acceptable Trade Range

The Exchange proposes to amend the Acceptable Trade Range or “ATR” at Phlx Options 3, Section 15(b)(1) to note that ATR will not be available for All-or-None Orders. The Exchange notes that it would be difficult, from a

technical standpoint, to apply this feature to those orders because their particular contingency makes it difficult to automate their handling.⁸⁸ In 2023, the Exchange filed a rule change⁸⁹ to amend Phlx's All-or-None Orders so that they may only be submitted as an Immediate-or-Cancel Order. As a result of the 2023 rule change, All-or-None Orders no longer rest on the order book and instead execute in their entirety or are cancelled if it cannot execute.⁹⁰ The Exchange should have noted at that time that because of that change that ATR would not be available for All-or-None Orders. The Exchange is proposing this rule text to note similar to, ISE, GEMX and MRX Options 3, Section 15(a)(2)(A)(i) that the Acceptable Trade Range is not available for All-or-None Orders.⁹¹

Additionally, the Exchange proposes to account for quotes, in addition to orders in Options 3, Section 15(b)(1)(B) in the sentence that provides, “If the order/quote remains unexecuted after the Posting Period, a New Acceptable Trade Range will be calculated and the order/quote will execute, route, or post up to the new Acceptable Trade Range Threshold Price, unless a member organization has requested that their orders be returned if posted at the outer limit of the Acceptable Trade Range (in which case, the order will be returned).” In addition to orders, quotes are also subject to a request to be returned if posted at the outer limit of the Acceptable Trade Range. The addition of quotes clarifies the current System functionality.

The Exchange also proposes to remove the following phrase in Options 3, Section 15(b)(1)(B), “. . . unless a Quote Exhaust has occurred, in which case the Quote Exhaust process in Options 3, Section 6(a)(ii)(B)(3) will ensue, triggering a new Reference Price.” As noted above in this proposal, the Exchange would no longer have the Quote Exhaust functionality. Therefore, the Exchange notes that a Quote Exhaust would not impact the ATR functionality as a result of its removal.

⁸⁸ See Securities Exchange Act Release No. 79677 (December 22, 2016), 81 FR 96114 (December 29, 2016) (SR-ISEGemini-2016-17) (Notice of Filing of Proposed Rule Change To Amend Various Rules in Connection With a System Migration to Nasdaq INET Technology).

⁸⁹ See Securities Exchange Act Release No. 98142 (August 16, 2023), 88 FR 57140 (August 22, 2023) (SR-Phlx-2023-34) (Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Phlx's All-or-None Order) (“SR-Phlx-2023-34”).

⁹⁰ *Id.*

⁹¹ Similar to Phlx, ISE, GEMX and MRX All-or-None Orders are immediate or cancel. See ISE, GEMX and MRX Options 3, Section 7(c).

⁸⁷ See proposed Options 3, Section 15(a)(3). See also BX Options 3, Section 15(a)(3).

Anti-Internalization

The Exchange proposes to enhance the anti-internalization (“AIQ”) functionality at Phlx Options 3, Section 15(c)(1), provided to Market Makers on the Exchange by giving member organizations the flexibility to choose to have this protection apply at the market participant identifier (*i.e.*, existing functionality), at the Exchange account level, or at the firm level. The Exchange believes that this enhancement will provide helpful flexibility for Market Makers that wish to prevent trading against all quotes and orders entered by their firm, or Exchange account, instead of just quotes and orders that are entered under the same market participant identifier. Similar functionality is currently available on ISE, MRX and GEMX at Options 3, Section 15(a)(3)(A).

Currently, as provided in Phlx Options 3, Section 15(c)(1), the Exchange provides mandatory AIQ functionality that prevents Market Makers from trading against their own quotes and orders. In particular, quotes and orders entered by Market Makers using the same market participant identifier will not be executed against quotes and orders entered on the opposite side of the market by the same Market Maker using the same identifier. In such a case, the System cancels the oldest of the quotes or orders back to the entering party prior to execution. This functionality does not apply in any auction.

Today, this protection prevents Market Makers from trading against their own quotes and orders at the market participant identifier level. The proposed enhancement to this functionality would allow member organizations to choose to have this protection applied at the Market Maker identifier level (existing functionality), at the Exchange account level, or at the firm level. If member organizations choose to have this protection applied at the Exchange account level, AIQ would prevent quotes and orders from different market participant identifiers associated with the same Exchange account from trading against one another. Similarly, if the member organizations choose to have this protection applied at the member organization firm level, AIQ would prohibit quotes and orders from different market participant identifiers within the member organization firm from trading against one another. The Exchange believes that the proposed AIQ enhancement will provide member organizations with more tailored functionality that allows them to manage their trading as appropriate

based on the member organizations’ business needs. While the Exchange believes that some firms may want to restrict AIQ to trading against interest from the same Market Maker identifier (*i.e.*, as implemented today), other firms may find it helpful to be able to configure AIQ to apply at the Exchange account level or at the firm level so that they are protected regardless of which Market Maker identifier the order or quote originated from. ISE, GEMX and MRX Options 3, Section 15(a)(3)(A) offer identical flexibility.

The examples below illustrate how AIQ would operate based on the market participant identifier level protection, the Exchange account level, or for member organizations that choose to apply AIQ at the firm level:

Example: Market Participant Identifier Level

ABC (market participant identifiers 123A & 555B) with AIQ configured at the market participant identifier level.

123A Quote: \$1.00 (5) × \$1.10 (20).

555B Buy Order entered for 10 contracts at \$1.10.

555B Buy Order executes 10 contracts against 123A Quote. 123A and 555B are not prevented by the System from trading against one another because member organization ABC has configured AIQ to apply at the market participant identifier level. This is the same as existing functionality.

Example: Exchange Account Level

ABC (Account 999 with market participant identifiers 123A and 555B, and Account 888 with market participant identifier 789A) with AIQ configured at the Exchange account level.

123A Quote: \$1.00 (5) × \$1.10 (20).

789A Quote: \$1.05 (10) × \$1.10 (20).

555B Buy Order entered for 30 contracts at \$1.10.

555B Buy Order executes against 789A Quote but 555B Buy Order does not execute against 123A Quote. AIQ purges the 123A Quote and the remaining contracts of the 555B Buy Order rests on the book at \$1.10. 123A and 555B are not permitted trade against one another because member organization ABC has configured AIQ to apply at the Exchange account level. This is new functionality as the member organization has opted to have AIQ operate at the Exchange account level.

Example: Firm Level

ABC (Account 999 with market participant identifiers 123A and 555B, and Account 888 with market participant identifier 789A) with AIQ configured at the firm level.

123A Quote: \$1.00 (5) × \$1.10 (20).

789A Quote: \$1.05 (10) × \$1.10 (20).

555B Buy Order entered for 30 contracts at \$1.10.

AIQ purges the 123A Quote and the 789A Quote and the 555B Buy Order rests on the book at \$1.10. This is new functionality as the member organization has opted to have AIQ operate at the member organization firm level.

Quotation Adjustments

The Exchange proposes to amend Phlx Options 3, Section 15(c)(2), which sets forth the Exchange’s “Rapid Fire” risk protection for quotes, to expand existing functionality by introducing optional Delta and Vega (as defined below) curtailment measures in addition to the current percentage-based and volume-based curtailments. The new curtailment measures will be functionally similar to the Delta and Vega thresholds currently offered by BX pursuant to Options 3, Section 15(c)(2). The proposed new Delta and Vega thresholds are optional risk protections. In connection with this change, the Exchange also proposes to restructure its rules regarding Rapid Fire and “Multi-Trigger” risk protections to more closely align with the BX’s rule structure which has identical language to the proposed Phlx rule text.⁹² With the proposed changes, Rapid Fire and Multi-Trigger will be triggered only when a Market Maker exceeds its designated thresholds similar to BX’s approach, instead of when the thresholds are met or exceeded (as is currently the case).

Today, Rapid Fire is a risk protection that removes a Market Maker’s quotes and SQF interest⁹³ in all options series

⁹² As presently set forth in Phlx Options 3, Section 15(c)(2)(C), the Exchange’s Multi-Trigger functionality removes Market Maker quotes in all options series in all underlying issues when a specified number of Rapid Fire thresholds are triggered over a chosen interval.

⁹³ Today, the exchange’s SQF protocol permits Market Makers to submit both quotes and Immediate-or-Cancel or “IOC” Orders to the Exchange. Phlx Supplementary Material .03(A) of Options 3, Section 7 provides, “Specialized Quote Feed” or “SQF” is an interface that allows Lead Market Makers, Streaming Quote Traders (“SQTs”) and Remote Streaming Quote Traders (“RSQTs”) to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses into and from the Exchange. Features include the following: (1) options symbol directory messages (*e.g.*, underlying and complex instruments); (2) system event messages (*e.g.*, start of trading hours messages and start of opening); (3) trading action messages (*e.g.*, halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF

of an underlying security from the marketplace when certain designated percentage-based or volume-based thresholds are met or exceeded. Market Makers are required to utilize either the percentage-based threshold or the volume-based threshold.⁹⁴ The Exchange proposes to amend the current Rapid Fire functionality to no longer remove IOC Orders submitted through SQF and continue to remove quotes. Today, ISE, GEMX, MRX and BX only remove quotes through SQF and do not remove IOC Orders submitted through SQF.⁹⁵ The Exchange believes that preserving an IOC Order submitted through SQF is consistent with the Act as Market Makers quote to provide liquidity on the Exchange and the risk protection is intended to provide a protection to those participants when acting as liquidity providers. Market Makers utilizing IOC Orders may also provide liquidity but to a lesser extent. The Exchange believes that limiting the risk protection to quotes, similar to other Nasdaq affiliated markets, continues to protect investors while not also purging IOC orders which may interact against other interest on the Exchange.

The Exchange now proposes to introduce two optional thresholds which, in addition to the existing percentage-based and volume-based thresholds, will make up the suite of Rapid Fire thresholds that will be offered to Market Makers upon the technology migration. First, in new subparagraph (c)(2)(A)(iii) of Phlx Options 3, Section 15, the Exchange proposes to add:

(iii) Delta Threshold. A Market Maker may provide a Delta Threshold by which the System will automatically remove a Market Maker's quotes in all series of an options class. For each class of options, the System will maintain a Delta counter, which tracks the absolute value of the difference between (1) purchased call contracts plus sold put contracts and (2) sold call contracts plus purchased put contracts. If the Delta counter exceeds the Delta Threshold established by the member organization, the System will automatically remove a Market Maker's quotes in all series of the options class.

Purge Interface only receives and notifies of purge requests from the Lead Market Maker, SQT or RSQT. Lead Market Makers, SQTs and RSQTs may only enter interest into SQF in their assigned options series. Immediate-or-Cancel Orders entered into SQF are not subject to the Order Price Protection, the Market Order Spread Protection, or Size Limitation in Options 3, Section 15(a)(1), (a)(2) and (b)(2), respectively.

⁹⁴ See Phlx Options 3, Section 15(c)(2)(G). In contrast, the Multi-Trigger threshold is optional.

⁹⁵ See ISE, GEMX and MRX Options 3, Section 15(a)(3)(B)(i). See also BX Options 3, Section 15(c)(2)(A).

The proposed rule text for Delta Threshold is identical to BX Options 3, Section 15(c)(2)(A)(iii).

Second, in new subparagraph (c)(2)(A)(iv) of Phlx Options 3, Section 15, the Exchange proposes to add:

Vega Threshold. A Market Maker may provide a Vega Threshold by which the System will automatically remove a Market Maker's quotes in all series of an options class. For each class of options, the System will maintain a Vega counter, which tracks the absolute value of purchased contracts minus sold contracts. If the Vega counter exceeds the Vega Threshold established by the Member, the System will automatically remove a Market Maker's quotes in all series of the options class.

The proposed rule text for Vega Threshold is identical to BX Options 3, Section 15(c)(2)(A)(iv).

With the proposed changes to add the Delta and Vega Thresholds described above, the Exchange also proposes to amend its Rapid Fire and Multi-Trigger rules to align the rule structure with BX Options 3, Section 15(a)(2)(C). In restructuring these rules, the existing Phlx functionality will remain unchanged except with respect to when the Rapid Fire and Multi-Trigger thresholds will be triggered, and a minor change to the specified time period. Each will be discussed in more detail below. The Exchange will separately describe the Active Quote Protection amendment proposed in Options 3, Section 15(c)(2)(B) below.

To effect this change, the Exchange proposes to adopt new rule text in Phlx Options 3, Section 15(c)(2)(A), which will provide that Market Makers are required to utilize the Percentage Threshold or Volume Threshold. The Exchange will also replace each instance of "Percentage-Based Threshold" and "Volume-Based Threshold" with "Percentage Threshold" and "Volume Threshold" throughout Options 3, Section 15(c)(2) to align with BX terminology. The Exchange further proposes to add that Market Makers may utilize the new Delta and Vega Thresholds to make clear that these thresholds are optional for Market Makers. The Exchange has determined not to make the new Delta and Vega Thresholds mandatory under this proposal, and will continue to require Market Makers to utilize either the Percentage or Volume Threshold, for Market Makers who do not elect to use the Active Quote Protection discussed below in lieu of the Rapid Fire protections.

For each of these features, the System will automatically remove a Market Maker's quotes in all series in an options class when any of the

Percentage Threshold, Volume Threshold, Delta Threshold or Vega Threshold has been exceeded. As noted above, this is a change from current functionality where as amended, Rapid Fire will be triggered only when the Market Maker exceeds any of the designated thresholds. Currently, Rapid Fire is triggered when the designated thresholds are met or exceeded.⁹⁶ In addition, a Market Maker is required to specify a period of time not to exceed 30 seconds ("Specified Time Period") during which the System will automatically remove a Market Maker's quotes in all series of an options class. This is another change from current functionality where today, the Specified Time Period established by the Market Maker for the Percentage and Volume Thresholds must not exceed 15 seconds.⁹⁷ The proposed changes on Phlx relating to when Rapid Fire will be triggered and the Specified Time Periods will align with BX Options 3, Section 15(c)(2)(A). By harmonizing Phlx's Rapid Fire rule to BX's rule in this manner, the Exchange seeks to simplify the regulatory requirements and increase the understanding of the Exchange's operations related to Rapid Fire for market participants on Phlx and on BX. The Exchange believes more consistent rules with its affiliated exchange will contribute to less complexity for market participants and more efficient regulatory compliance.

Otherwise, the new rule text in Phlx Options 3, Section 15(c)(2)(A) will not change existing Rapid Fire functionality. In particular, the Specified Time Period will commence for an options class every time an execution occurs in any series in such option class and will continue until the System removes quotes as described in the Rule or the Specified Time Period expires. The Specified Time Period operates on a rolling basis among all series in an options class in that there may be Specified Time Periods occurring simultaneously for each Threshold and such Specified Time Periods may overlap. The Specified Time Periods will be the same value for each of the Percentage Threshold, Volume Threshold, Delta Threshold, and Vega Threshold.⁹⁸

The Exchange also proposes to replace the description of the existing Percentage Threshold in Phlx Options 3, Section 15(c)(2)(A) with new rule text in Options 3, Section 15(c)(2)(A)(i) as follows:

⁹⁶ See Phlx Options 3, Section 15(c)(2)(A) and (B).

⁹⁷ See Phlx Options 3, Section 15(c)(2)(A) and (B).

⁹⁸ See *id.* for similar features in the current Percentage and Volume Thresholds.

Percentage Threshold. A Market Maker must provide a specified percentage (“Percentage Threshold”), of not less than 1%, by which the System will automatically remove a Market Maker’s quotes in all series of an options class. For each series in an options class, the System will determine (1) during a Specified Time Period and for each side in a given series, a percentage calculated by dividing the size of a Market Maker’s quote size executed in a particular series (the numerator) by the Market Maker’s quote size available at the time of execution plus the total number of the Market Maker’s quote size previously executed during the unexpired Specified Time Period (the denominator) (“Series Percentage”); and (2) the sum of the Series Percentage in the options class (“Issue Percentage”) during a Specified Time Period. The System tracks and calculates the net impact of positions in the same options class; long call percentages are offset by short call percentages, and long put percentages are offset by short put percentages in the Issue Percentage. If the Issue Percentage exceeds the Percentage Threshold the System will automatically remove a Market Maker’s quotes in all series of the options class during the Specified Time Period.

With the proposed changes, the Percentage Threshold will be applied in the same manner as today, except with respect to the differences discussed above (*i.e.*, when the Percentage Threshold will be triggered and the threshold’s Specified Time Period). The proposed rule text is identical to BX Options 3, Section 15(c)(2)(A)(i).

The Exchange also proposes to replace the description of the existing Volume Threshold in Phlx Options 3, Section 15(c)(2)(A)(ii) with new rule text in Options 3, Section 15(c)(2)(A)(ii) as follows:

Volume Threshold. A Market Maker must provide a Volume Threshold by which the System will automatically remove a Market Maker’s quotes in all series of an options class when the Market Maker executes a number of contracts which exceeds the designated number of contracts in all series in an options class.

With the proposed changes, the Volume Threshold will be applied in the same manner as today, except with respect to the differences discussed above (*i.e.*, when the Volume Threshold will be triggered and the threshold’s Specified Time Period). The proposed rule text is identical to BX Options 3, Section 15(c)(2)(A)(ii).

In connection with the foregoing changes, current Phlx Options 3, Section 15(c)(2)(C), which describes the Exchange’s Multi-Trigger risk protection, will be amended throughout to add the Delta and Vega Thresholds wherever the Rule references Percentage and Volume Thresholds. In addition, the Exchange proposes to amend the

Multi-Trigger Specified Time Period from 15 seconds to 30 seconds to align with the Specified Time Periods proposed above. The Exchange further proposes in the Multi-Trigger rule to amend when Multi-Trigger will be triggered to align with the Rapid Fire changes proposed above. Specifically, the Exchange proposes to amend the provision, “[o]nce the System determines that the number of triggers equals or exceeds a number. . .” to instead state, “[o]nce the System determines that the number of triggers exceeds a number. . .” to make clear that Multi-Trigger will no longer remove Market Maker quotes when the Multi-Trigger threshold is met (and not exceeded).

Phlx Options 3, Section 15(c)(2)(D), which explains how the System purges quotes once the Rapid Fire and Multi-Trigger thresholds are triggered, will be amended to conform with the changes proposed above. In particular, the Exchange proposes conforming changes to add the Delta and Vega Thresholds wherever these provisions reference Percentage and Volume Thresholds, and to replace “reached” with “exceeded” in each instance where the language indicates that the Rapid Fire and Multi-Trigger thresholds have been reached.⁹⁹

Phlx Options 3, Section 15(c)(2)(E) will likewise be amended to add references to the Delta and Vega Thresholds, and will state that if a Market Maker requests the System to remove quotes in all options series in an underlying issue, the System will automatically reset the Specified Time Period(s) for the Percentage, Volume, Delta, or Vega Threshold.¹⁰⁰ As is the case today, the Multi-Trigger Specified Time Period(s) will not automatically reset for the Multi-Trigger Threshold.

Phlx Options 3, Section 15(c)(2)(F), which sets forth the re-entry process once Rapid Fire and Multi-Trigger are triggered, the Exchange will likewise add references to the Delta and Vega Thresholds wherever the provision refers to the Percentage and Volume Thresholds. The Exchange also proposes a clarifying change in the first sentence to add, “[w]hen the System removes quotes as a result of *exceeding* . . .” in order to align with BX Options 3, Section 15(c)(2)(F). The Exchange further proposes a non-substantive change in the first sentence to amend “reentry” to “re-entry”

⁹⁹ The Exchange will describe the amendments to proposed Options 3, Section 15(c)(2)(D)(i) and (ii) further below.

¹⁰⁰ The Specified Time Period(s) will also be automatically reset if Rapid Fire is triggered (and the System automatically removes quotes).

Lastly, Options 3, Section 15(c)(2)(G), will be amended to specify that the Exchange will require Phlx Market Makers to utilize either the Percentage Threshold, the Volume Threshold, or the Contract Limit. For Market Makers that elect to utilize the Contract Limit, the Percentage Threshold, Volume Threshold, Delta Threshold, and Vega Threshold will not be available for use on the Market Maker’s badge. The Delta, Vega, and Multi-Trigger Thresholds are optional. The Exchange is adding “Contract Limit” to the required risk protections that must be utilized by a Phlx Market Maker.

The following are examples to illustrate how the proposed Delta and Vega Thresholds would apply:

Example: Delta Threshold

MM1 has Delta Threshold set to 10 contracts
MM1 quotes IBM Call Option 2.55 (100) x 3.00 (1000)
FIX Order to Sell 11 @MKT trades with MM quote
Trade occurs for 11 @2.55, triggers Rapid Fire for MM1 since 11 calls purchased for MM1 > MM1’s Delta Threshold of 10

Example: Vega Threshold

MM1 has Vega Threshold set to 10 contracts
MM1 quotes IBM Call Option 2.55 (100) x 3.00 (1000)
FIX Order to Sell 11 @MKT trades with MM quote
Trade occurs for 11 @2.55, triggers Rapid Fire for MM1 since 11 calls purchased for MM1 > MM1’s Vega Threshold of 10

Active Quote Protection

The Exchange proposes to adopt an active risk counter functionality called active quote protection (“Active Quote Protection”), at Phlx Options 3, Section 15(c)(2)(B), which will be available to Market Makers as an alternative to existing passive risk counter functionality described in Options 3, Section 15(c)(2)(A) (*i.e.*, “Automated Quotation Adjustments” or Rapid Fire).¹⁰¹ The proposed Active Quote Protection functionality will be identical to BX Options 3, Section 15(c)(2)(B). Today, the Exchange requires Market Makers to configure risk exposure thresholds based on either percentage of executed quotes (“Percentage Threshold”) or total number of executed contracts (“Volume Threshold”). Also, as proposed herein,

¹⁰¹ As described below, the Exchange will specifically define this passive risk counter functionality as “Rapid Fire” within this Rule.

the Exchange proposes two optional risk exposure thresholds based on the absolute value of the difference between long and short positions (“Delta Threshold”), and absolute value of the difference between contracts bought and contracts sold (“Vega Threshold”) (collectively, “Thresholds”).¹⁰² As set forth in Options 3, proposed Section 15(c)(2)(A), the System tracks each Threshold with a corresponding risk counter over a Market Maker-specified rolling time period not to exceed 30 seconds. Furthermore, Section 15(c)(2)(A) describes that when a risk counter exceeds the corresponding Threshold during the specified time period, the System would automatically remove the Market Maker’s quotes in all series of the applicable options class (each, a “Purge Event”). As a result of a Purge Event, the corresponding risk counter and Threshold would reset upon such removal. The Exchange also notes that pursuant to Section 15(c)(2)(E) today, the Thresholds and risk counters can be completely reset if the Market Maker specifically requests the System to remove quotes in all options series in an underlying issue. This risk protection is passive in that the risk counters wait to reset until the expiry of a specified time period, a Purge Event, or when the Market Maker otherwise sends a specific instruction to the Exchange to remove quotes to completely reset the counters.

The Exchange now proposes to introduce a new risk protection, which is an alternative to Rapid Fire, called Active Quote Protection that would enable Market Makers to actively manage their executed contract limit (“Contract Limit”) by sending an electronic instruction to the Exchange to decrement their executed contract limit counter (“Limit Counter”) by a specified amount at any time, rather than waiting until the expiry of a defined time period, when the risk limit is exceeded (like a Purge Event), or when the Market Maker otherwise sends a specific instruction to purge quotes to completely reset the risk counter.¹⁰³

The Contract Limit, as set by the Market Maker, would apply for the duration of the trading day. Once the Market Maker’s Limit Counter exceeds

the Contract Limit set by the Market Maker, the System would automatically remove quotes in all series of the applicable options class submitted through the Exchange’s Specialized Quote Feed protocol,¹⁰⁴ identical to how the quote removal mechanism works for a Purge Event today.¹⁰⁵ Today, Purge Events are triggered under the existing Quotation Adjustments on the first execution that exceeds the applicable Threshold. Once an execution occurs, the System checks all Thresholds to see if they have been exceeded. If exceeded, the Market Maker’s quote would be purged pursuant to Phlx Options 3, Section 15(c)(2)(C). In order to remain consistent with the firm quote obligations of a broker-dealer pursuant to Rule 602 of Regulation NMS, any marketable orders or quotes that are executable against a Market Maker’s quotes that are received¹⁰⁶ prior to the time the applicable Threshold is triggered will be automatically executed up to the size of the Market Maker’s quote, regardless of whether the execution would cause the Market Maker to exceed their pre-set Percentage Threshold, Volume Threshold, Delta Threshold, or Vega Threshold.¹⁰⁷

Under Active Quote Protection, the System would similarly handle the Market Maker’s quote in that the quote could be filled one execution over the Contract Limit before the Market Maker’s remaining quotes are cancelled by the System in order to be consistent with the firm quote obligations under Rule 602 of Regulation NMS. Specifically, the Exchange notes that any marketable orders or quotes that are executable against a Market Maker’s quotes that are received¹⁰⁸ prior to the time the Contract Limit is triggered will be automatically executed up to the size of the Market Maker’s quote, regardless of whether the execution would cause the Market Maker to exceed the Contract Limit.¹⁰⁹

¹⁰⁴ Specialized Quote Feed or “SQF” is an interface that only Market Makers may use to submit quotes to the Exchange at renumbered Supplementary Material .03(B) to Options 3, Section 7.

¹⁰⁵ See Options 3, Section 15(c)(2)(C).

¹⁰⁶ The time of receipt for an order or quote is the time such message is processed by the Exchange’s order book.

¹⁰⁷ See proposed Phlx Options 3, Section 15(c)(2)(D)(ii).

¹⁰⁸ The time of receipt for an order or quote is the time such message is processed by the Exchange’s order book.

¹⁰⁹ For both the current Quotation Adjustments and proposed Active Quote Protection, the System will execute marketable interest up to the size of the Market Maker’s quote, but cannot guarantee interest will be fully executed, as is the case with any execution in the Exchange’s order book. There is

Additionally, under Active Quote Protection, Market Makers will be able to submit a request (i) to decrement their Limit Counter by a specified number of contracts, or (ii) to fully decrement their Limit Counter to zero.¹¹⁰ Market Makers that elect to use the proposed Active Quote Protection on a badge¹¹¹ will not be able to use the existing Threshold risk protections described above on the same badge (*i.e.*, the active and passive risk counter functionality would be mutually exclusive per badge) given that it would be unnecessarily complex to implement from a technology standpoint. Market Makers may be associated with multiple badges today, so if they want to use both risk protections for their activity on the Exchange, they will be able to set either the active or passive risk counter functionality on each badge.

To effectuate the foregoing changes, the Exchange proposes to set forth the new risk protection in paragraph (B) of Phlx Options 3, Section 15(c)(2), as follows:

In lieu of Rapid Fire, a Market Maker may provide an executed contract limit (“Contract Limit”) that, if exceeded, the System will automatically remove the Market Maker’s quotes in all series of an options class submitted through SQF. The System will apply the Contract Limit for the duration of the trading day. For each class of options, the System will maintain an active limit counter that will track the current number of contracts executed through the Market Maker’s quotes (“Limit Counter”). If the Limit Counter exceeds the Contract Limit established by the Market Maker, the System will automatically remove the Market Maker’s quotes as described in Section 15(c)(2)(D). Market Makers may submit a request (i) to decrement their Limit Counter by a specified number of contracts, or (ii) to fully decrement their Limit Counter to zero, including to re-enter the System as described in Section 15(c)(2)(E). For Market Makers that elect to utilize the Contract Limit, the Percentage Threshold, Volume Threshold, Delta Threshold, and Vega Threshold will not be available for use on the Market Maker’s badge.

The Exchange also proposes to amend proposed paragraph (G) of Phlx Options 3, Section 15(c)(2) to specify that the

always the possibility that the Market Maker’s quote size (and/or Market Maker’s quote plus other interest on the order book) may not be sufficient volume to fill the incoming interest.

¹¹⁰ As discussed later in this rule change, in order to re-enter the System after their quotes are purged pursuant to the Active Quote Protection, Market Makers will need to submit the same request to fully decrement their Limit Counter to zero.

¹¹¹ Phlx Options 1, Section 1(b)(6) provides that the term “badge” means an account number, which may contain letters and/or numbers, assigned to Lead Market Makers and Market Makers. A Lead Market Maker or Market Maker account may be associated with multiple badges.

¹⁰² The proposed Thresholds are described in detail in Phlx Options 3, Section 15(c)(2)(A)(i)—(iv). If a Market Maker does not provide a parameter for each Threshold, the Exchange will apply default parameters announced to member organizations.

¹⁰³ If the Market Maker opting to use Active Quote Protection does not provide a Contract Limit at the outset, the Exchange will apply a default parameter for the Active Quote Protection Contract Limit (which would be announced to member organizations). The Exchange will initially set the default Contract Limit at 100 contracts.

active and passive risk counter functionality will be mutually exclusive per badge). As amended, proposed paragraph (G) will provide:

The Exchange will require Phlx Market Makers to utilize either the Percentage Threshold, the Volume Threshold, or the Contract Limit. For Market Makers that elect to utilize the Contract Limit, the Percentage Threshold, Volume Threshold, Delta Threshold, and Vega Threshold will not be available for use on the Market Maker's badge. The Delta, Vega, and Multi-Trigger Thresholds are optional.

As described above, once the Limit Counter exceeds the Contract Limit set by the Market Maker under the proposed Active Quote Protection, the System would automatically remove quotes in the same manner as currently specified for a Purge Event in proposed paragraph (D) of Phlx Options 3, Section 15(c)(2). Accordingly, the Exchange proposes to add Active Quote Protection's Contract Limit throughout the proposed Rule as noted herein. Specifically, proposed paragraph (D) will provide that the System will automatically remove quotes in all series of an options class in an underlying security when the Percentage Threshold, Volume Threshold, Delta Threshold, Vega Threshold, or the Contract Limit has been exceeded. The System will automatically remove quotes in all series of an option class in all underlying securities when the Multi-Trigger Threshold¹¹² has been exceeded. The System will send a Purge Notification Message to the Market Maker for all affected options when the above thresholds have been exceeded. Proposed subparagraph (D)(i) will provide that the Percentage Threshold, Volume Threshold, Delta Threshold, Vega Threshold, Contract Limit, and Multi-Trigger Threshold are considered independently of each other.

Further, as discussed above, any marketable orders or quotes that are executable against a Market Maker's quotes that are received¹¹³ prior to the time the applicable Threshold or Contract Limit is triggered will be automatically executed up to the size of the Market Maker's quote, even if such execution would cause the Market Maker to exceed any of their pre-set risk

limits with respect to any of the foregoing risk parameters. The Exchange notes that proposed subparagraph (D)(ii) only mentions that quotes will execute up to the Market Maker's size, and is silent on marketable orders. In addition, the current Rule does not specify the time of receipt of such marketable interest that is executable against the size of the Market Maker's quote. As such, the Exchange proposes to add this specificity in proposed subparagraph (D)(ii) to better describe how the System operates today for Quotation Adjustments and how the System will operate for proposed Active Quote Protection. In particular, subparagraph (D)(ii) will provide:

The System will execute any marketable orders or quotes that are executable against a Market Maker's quote and received prior to the time the Percentage Threshold, Volume Threshold, Delta Threshold, Vega Threshold, or Contract Limit is triggered up to the size of the Market Maker's quote, even if such execution results in executions in excess of the Market Maker's applicable Threshold or Contract Limit with respect to any parameter.

In addition, when the System removes quotes as a result of exceeding the Contract Limit under Active Quote Protection, the Exchange proposes to require the Market Maker to submit a request to re-enter the System. This request will be the same type of message as the request described in proposed paragraph (B) where the Market Maker must request to fully decrement their Limit Counter back to zero in order to re-enter the System. This requirement will be added in proposed paragraph (F) of Phlx Options 3, Section 15(c)(2), and will be similar to how the existing quote purge mechanism works for the Thresholds today, except the Market Maker needs to send a separate message (*i.e.*, a re-entry indicator) to re-enter the System when their quotes are purged as a result of exceeding any of the existing Thresholds.

The Exchange also proposes that the new Active Quote Protection would leverage the existing and amended multi-trigger ("Multi-Trigger") functionality proposed in Phlx Options 3, Section 15(c)(2)(C). Today, Multi-Trigger is a risk protection offered alongside the current Quotation Adjustments. A Market Maker or Market Maker Group, which is defined as multiple affiliated Phlx Market Makers,¹¹⁴ may provide the specified

time period and number of allowable Purge Events by which the Exchange will automatically remove quotes in all options series in all underlying issues submitted through designated Phlx protocols as specified by the Exchange ("Multi-Trigger Threshold"). As proposed, Multi-Trigger is triggered when during a time period established by the Market Maker not to exceed 30 seconds, the total number of Quotation Adjustment Purge Events exceeds the Multi-Trigger Threshold provided to the Exchange by the Phlx Market Maker or Phlx Market Maker Group. When Multi-Trigger is triggered, the System automatically purges all of the Market Maker's or Group's quotes in all options series in an underlying issue. As set forth in proposed Phlx Options 3, Section 15(c)(2)(F), when the System removes quotes as a result of the Multi-Trigger Threshold, the Market Maker must manually request re-entry to the System by contacting the Exchange. Exchange staff must then set a re-entry indicator in this case to enable re-entry, which will cause the System to send a Reentry Notification Message to the Phlx Market Maker or Group for all options series in all underlying issues. The Market Maker's Clearing Firm will be notified regarding the trigger and re-entry into the System after quotes are removed as a result of the Multi-Trigger Threshold, provided the Market Maker's Clearing Firm has requested to receive such notification.

Today, Multi-Trigger is meant to provide Market Makers or a Group with protection from the risk of multiple executions across multiple series of an option or across multiple options. This risk protection recognizes that risk to Market Makers is not limited to a single series in an option or even to all series in an option; Market Makers that quote in multiple series of multiple options have significant exposure, requiring them to offset or hedge their overall positions. Market Makers are required to continuously quote in assigned options, and quoting across many series in an option or multiple options creates the possibility of executions that can create large, unintended principal positions that could expose Market Makers to unnecessary risk. Multi-Trigger is therefore intended to assist Market Makers or Groups in managing their market risk by tracking the number of Purge Events relative to the Multi-Trigger Threshold set by the Market Maker or Group. The Exchange believes that tracking the number of Active Quote Protection Purge Events for a

a list of such affiliated Phlx Market Makers to the Exchange.

¹¹² Multi-Trigger Threshold is defined in current paragraph (C) of Section 15(c)(2) as the number of allowable triggers by which the Exchange will automatically remove quotes in all options series in all underlying issues submitted through designated Phlx protocols as specified by the Exchange. This threshold is part of the Exchange's Multi-Trigger risk protection.

¹¹³ The time of receipt for an order or quote is the time such message is processed by the Exchange's order book.

¹¹⁴ This would be more than one Phlx Market Maker, but does not require the aggregation of all of the member organization's Market Makers. A Group would be comprised of Phlx Market Makers affiliated with one member organization (*i.e.*, one options member firm). The member organization would be required to define a Group by providing

Market Maker or Group against its Multi-Trigger Threshold would be similarly useful for managing market risk.

To that end, the Exchange proposes to further update Multi-Trigger to add purge events under Active Quote Protection to the Multi-Trigger counter such that Active Quote Protection purge events and Purge Events under the current Quotation Adjustments will be aggregated together as counting toward the specified Multi-Trigger Threshold. Accordingly, the Exchange proposes to add references to the Active Quote Protection rule (*i.e.*, proposed paragraph (B) of Options 3, Section 15(c)(2)) throughout the Multi-Trigger rule in proposed paragraph (C), specifically:

A Market Maker or Market Maker Group (multiple affiliated Market Makers is a “Group” as defined by a Phlx member and provided by such member to the Exchange) may provide a Specified Time Period and number of allowable triggers by which the Exchange will automatically remove quotes in all options series in all underlying issues submitted through designated Phlx protocols, as specified by the Exchange (“Multi-Trigger Threshold”). During a specified time period established by the Phlx Market Maker not to exceed 30 seconds (“Multi-Trigger Specified Time Period”), the number of times the System automatically removes the Phlx Market Maker’s or Group’s quotes in all options series will be based on the number of triggers of the Percentage Threshold described in paragraph (A)(i) above, the Volume Threshold described in paragraph (A)(ii) above, the Delta Threshold described in paragraph (A)(iii) above, the Vega Threshold described in paragraph (A)(iv) above, and the Contract Limit described in paragraph (B) above. Once the System determines that the number of triggers exceeds a number established by either the Phlx Market Maker or Group, during a Multi-Trigger Specified Time Period, the System will automatically remove all quotes in all options series in all underlying issues for that Phlx Market Maker or Group, during a Multi-Trigger Specified Time Period, the System will automatically remove all quotes in all options series in all underlying issues for that Phlx Market Maker or Group. A trigger is defined as the event which causes the System to automatically remove quotes in all options series in an underlying issue. A Multi-Trigger Specified Time Period will commence after every trigger of the Percentage Threshold, Volume Threshold, Delta Threshold, Vega Threshold, or Contract Limit and will continue until the System removes quotes as described in paragraph (D) below or the Multi-Trigger Specified Time Period expires. The System counts triggers within the Multi-Trigger Specified Time Period across all triggers for the Phlx Market Maker or Group. A Multi-Trigger Specified Time Period operates on a rolling basis in that there may be multiple Multi-Trigger Specified Time Periods occurring simultaneously and such Multi-Trigger Specified Time Periods may overlap.

The following example illustrates the proposed behavior of the Active Quote Protection risk protection:

Active Quote Protection Example

Market Maker AAPL

Contract Limit: 100

Market Maker trades a transaction for 10 contracts in AAPL; Limit Counter goes from 0 to 10.

Market Maker sends a request to decrement its Limit Counter in AAPL for 10 contracts; Limit Counter goes from 10 to 0.

Market Maker trades a transaction for 20 contracts in AAPL; Limit Counter goes from 0 to 20.

Market Maker trades a transaction for 50 contracts in AAPL; Limit Counter goes from 20 to 70.

Market Maker sends a request to decrement its Limit Counter in AAPL for 20 contracts; Limit Counter goes from 70 to 50.

Market Maker trades a transaction for 60 contracts in AAPL; Limit Counter goes from 50 to 110 and all Market Maker quotes in AAPL are automatically purged after the execution because the Limit Counter exceeded the Market Maker’s Contract Limit of 100 executed contracts.

At this point, the Market Maker must send a request to fully decrement its Limit Counter in AAPL back to zero in order to begin quoting again.

Multi-Trigger Active Quote Protection Example

Assume Market Maker in AAPL and SPY has Quotation Adjustments set for AAPL and Active QP set for SPY.

Market Maker sets its Multi-Trigger Threshold so that it is triggered at 25 purge events within a 20 second time period.

On a given trading day, if an Active Quote Protection Purge Event is triggered 15 times in SPY and a Quotation Adjustment Purge Event is triggered 11 times in AAPL, all within 20 seconds, then the Exchange will automatically remove all of the Market Maker’s quotes AAPL and SPY because 26 purge events were triggered for the Market Maker.

Lastly, the Exchange proposes to title paragraph (A) as “Rapid Fire” and paragraph (C) as “Multi-Trigger” to more clearly identify which rules apply to which risk protections.

Post-Only Quoting Protection

The Exchange proposes to adopt an optional quoting protection for Market Makers at Phlx Options 3, Section 15(c)(3) that will be identical to BX Options 3, Section 15(c)(3). This optional risk protection would allow

Market Makers to prevent their quotes from removing liquidity from the Exchange’s order book upon entry. As proposed, Market Makers may elect to configure their SQF protocols to prevent their quotes from removing liquidity (“Post-Only Quote Configuration”). A Post-Only Quote Configuration would re-price or cancel a Market Maker’s quote that would otherwise lock or cross any resting order or quote¹¹⁵ on the order book upon entry. Market Makers may elect whether to re-price or cancel their quotes with this functionality. When configured for re-price, quotes would be re-priced and displayed by the System to one MPV below the current best offer (for bids) or above the current best bid (for offers). Notwithstanding the aforementioned, if a quote with a Post-Only Quote Configuration would not lock or cross an order or quote on the System but would lock or cross the NBBO, the quote will be handled pursuant to Options 3, Section 4(b)(6).¹¹⁶ When configured for cancel, Market Makers will have their quotes cancelled whenever the quote would lock or cross the NBBO or be placed on the book at a price other than its limit price. Finally, the Exchange notes that similar to BX, this risk protection will not apply during an Opening Process because the order book is established once options series are open for trading. Below are some Post-Only Quote Configuration examples.

Re-Priced Post-Only Quote Configuration—Penny Interval Program Display and Execution Example

Penny Interval Program MPV in open trading state

Market Makers A and C do not have Post-Only Quote Configuration risk protection configured

Market Maker B is configured for Post-Only Quote Configuration re-price

Market Maker A quote \$0.98 (10) × \$1.00 (10)

ABBO \$0.96 × \$1.03

Market Maker B quote \$1.00 (10) × \$1.01 (10) arrives

¹¹⁵ This would include any re-priced orders pursuant to Phlx Options 3, Section 5(d), ALOs as described in proposed Options 3, Section 7(n), and any re-priced quotes as described in Phlx Options 3, Section 4(b)(6). As described above, ALOs may re-price.

¹¹⁶ Phlx Options 3, Section 4(b)(6) provides that a quote will not be executed at a price that trades through another market or displayed at a price that would lock or cross another market. If, at the time of entry, a quote would cause a locked or crossed market violation or would cause a trade-through violation, it will either be re-priced and displayed at one minimum price variance above (for offers) or below (for bids) the national best price, or immediately cancelled, as configured by the Member.

- Bid side of quote re-prices onto order book @0.99 and sets displayed NBBO to 10 quantity
- Offer side rests at 1.01 without issue

Market Maker C quote \$0.97 (20) × \$0.98 (20) arrives

Trades 10 with Market Maker B @\$0.99 and 10 with Market Maker A @\$0.98

Market Maker B avoids taking liquidity while Market Maker C, who chose not to be configured for such, removes liquidity by interacting with re-priced interest on Phlx's order book.

Re-Priced Post-Only Quote Configuration—Non-Penny Interval Program Display and Execution Example

Non-Penny Interval Program MPV in open trading state

Market Maker A quote \$0.95 (10) × \$1.00 (10)

ABBO \$0.85 × \$1.05

Market Maker B (configured for Post-Only Quote Configuration and selection of re-price upon quote) quote arrives \$1.00 (5) × \$1.05 (5)

- Bid side quote re-prices on order book to \$0.95
 - Displays on order book @\$0.95 (bid), which now shows (15 quantity)
 - Offer side quote books and displays in Depth of Market Feed at \$1.05
- Order to sell 10 contracts arrives @\$0.95
- 7 contracts execute with Market Maker A @\$0.95
 - 3 contracts execute with Market Maker B @\$0.95

In this example, the Market Maker avoided taking liquidity by deploying the Post-Only Quote Configuration with re-price.

Options 3, Section 23

The Exchange proposes to amend Phlx Options 3, Section 23, Data Feeds and Trade Information. The Exchange proposes to rename various market data feeds in Phlx Options 3, Section 23(a) to harmonize the names of the feeds to ISE, GEMX and MRX market data feeds at Options 3 Section 23(a). Specifically, the Exchange proposes to rename "Top of Phlx Options" to "Nasdaq Phlx Top of Market" but continue to utilize "TOPO" as the acronym. The Exchange proposes to rename "Phlx Orders" as "Nasdaq Phlx Order Feed." Finally, the Exchange proposes to rename "Phlx Depth of Market" as "Nasdaq Phlx Depth of Market." The Exchange proposes similar amendments to the name of the feeds at Options 7, Section 9, B.

The Exchange proposes to no longer offer TradeInfo, which is a user interface set forth in Phlx Options 3, Section 23(b)(2) that permits a member to: (i) search all orders submitted in a particular security or all orders of a

particular type, regardless of their status (open, canceled, executed, etc.); (ii) view orders and executions; and (iii) download orders and executions for recordkeeping purposes. Due to the lack of demand for this interface by member organizations the Exchange is retiring the interface. The Exchange seeks to decommission the TradeInfo interface when the Exchange migrates over to the enhanced technology platform with the technology migration. The Exchange notes that FIX and the Clearing Trade Interface ("CTI"),¹¹⁷ which are available to all member organizations, can be used today to obtain order information that is currently available within TradeInfo, and FIX can be used to cancel orders today.

Additionally, the Exchange proposes to remove the \$95 per user, per month TradeInfo Interface Fee in the Pricing Schedule at Options 7, Section 9, B. The fee would not be necessary once TradeInfo is discontinued.

Options 3, Section 28

The Exchange proposes to introduce optional quantity and notional value checks in new Phlx Options 3, Section 28, entitled "Optional Risk Protections." The proposed optional order risk protections will be identical to the protections currently offered by ISE, GEMX and MRX Options 3, Section 28. Member organizations may use this voluntary functionality through their FIX protocol to limit the quantity and notional value they can send per order and on aggregate for the day. Specifically, member organizations may establish limits for the following parameters, as set forth in proposed subparagraphs (a)(1)–(4):

- (1) Notional dollar value per order, which will be calculated as quantity multiplied by limit price multiplied by number of underlying shares;
- (2) Daily aggregate notional dollar value;
- (3) Quantity per order; and
- (4) Daily aggregate quantity

Proposed paragraph (b) will provide that member organizations may elect one or more of the above optional risk protections by contacting Market Operations and providing a per order value (for (a)(1) and (a)(3)) or daily

aggregate value (for (a)(2) and (a)(4)) for each order protection. Member organizations may modify their settings through Market Operations. Proposed paragraph (c) will provide that the System will reject all incoming aggregated member organization orders for any of the (a)(2) and (a)(4) risk protections after the value configured by the member organization is exceeded. Proposed paragraph (d) will provide that the System will reject all incoming member organization orders for any of the (a)(1) and (a)(3) risk protections upon arrival if the value configured by the member organization is exceeded by the incoming order. The Exchange notes that the difference in handling between aggregate and individual order protections is necessary to allow for complete processing of the final order that puts a member organization's configured value over the aggregate values configured. While individual orders can be directly measured against the configured values for (a)(1) and (a)(3), the aggregate values must be calculated after complete processing of an order and thus the rejection of orders begins upon the arrival of the next order after the aggregate values in (a)(2) or (a)(4) have been exceeded.

The following example shows how the System will reject all subsequent incoming aggregated orders after the (a)(2) or (a)(4) values configured by the member organization have been exceeded.

Optional Risk Protection Example

Aggregate Quantity Limit = 800.

Member organization enters an order to Buy 500—Accepted.

Member organization enters an order to Buy 400—Accepted (member organization did not meet the configured limit of 800 with the first order of 500 at the time Member organization entered the second order).

Member organization enters an order to Buy 1—Rejected (member organization already exceeded the configured limit of 800 with the second order of 400).

The following example shows how the System will reject all incoming orders upon arrival if the (a)(1) or (a)(3) values configured by the member organization have been exceeded by the arriving order:

Quantity per Order Limit = 800.

Member organization enters an order to Buy 801—Rejected (member organization exceeded the Quantity per order limit upon arrival with the order to buy 801 contracts).

Proposed paragraph (e) will provide that if a member organization sets a notional dollar value, a Market Order

¹¹⁷ CTI is a real-time clearing trade update message that is sent to a member after an execution has occurred and contains trade details specific to that member. The information includes, among other things, the following: (i) The Clearing Member Trade Agreement or "CMTA" or "OCC" number; (ii) Exchange badge or house number; (iii) the Exchange internal firm identifier; (iv) an indicator which will distinguish electronic and non-electronically delivered orders; (v) liquidity indicators and transaction type for billing purposes; and (vi) capacity. See Options 3, Section 23(b)(1).

would not be accepted from that member organization. This is because notional dollar value is calculated by using an order's specified limit price, and Market Orders by definition are priced at the best available price upon execution. Lastly, proposed paragraph (f) will provide that the proposed risk protections are only available for orders entered through FIX. Additionally, all of the proposed settings will be firm level.

Options 5, Section 4

The Exchange proposes to amend Options 5, Section 4, Order Routing, to align Phlx's routing to ISE Options 4, Section 5.

The Exchange proposes to amend Phlx Options 5, Section 4(a) to include Stop-Limit Orders in addition to Stop Orders in the list of order types that are not included in the PBBO because they have not been triggered. Today, Phlx's Stop Order description refers to both a market and limit order. The Exchange's proposal adopts the Stop Order at ISE Options 3, Section 7(d) and Stop Limit Order at ISE Options 3, Section 7(e). The Exchange proposes to reflect both order types. As is the case today, the Exchange proposes to note, similar to ISE Options 4, Section 5(a), that when checking the Order Book, the System will seek to execute at the price at which it would send the order to an away market. The Exchange believes that this sentence will bring greater clarity to the Exchange's rule. Similarly, the Exchange proposes to add text to clarify its current System behavior for TIFs. Today, routing options may be combined with all available order types and times-in-force, with the exception of order types and times-in-force whose terms are inconsistent with the terms of a particular routing option. The Exchange also believes this sentence will clarify the current operation of the routing System. Finally, as is the case today, the Exchange proposes to note the time the routing System is available, the ability to list an order as non-routable and cross-reference the locked and crossed rules. The Exchange would state, "The order routing process shall be available to members from 9:30 a.m. Eastern Time until market close and shall route orders as described below. Member organizations can designate orders as either available for routing or not available for routing. All routing of orders shall comply with Options 5, Options Order Protection and Locked and Crossed Market Rules." This proposed rule text provides greater transparency to the Exchange's current System operation and harmonizes Phlx's rule text to ISE Options 4, Section 5(a).

The Exchange proposes some modifications to its FIND Order in Phlx Options 5, Section 4(iii)(B) to conform to ISE Options 5, Section 4(iii)(B). By way of background, a FIND Order is an order that is: (i) routable at the conclusion of an Opening Process; and (ii) routable upon receipt during regular trading, after an option series is open. Phlx proposes to add the following language to the end of Options 5, Section 4(iii)(B) to reflect its current routing functionality, "FIND Orders that are not marketable with the ABBO upon receipt will be treated as DNR for the remainder of the trading day *and post to the order book, even in the event that there is a new Opening Process after a trading halt.*" Phlx also proposes to add rule text to the end of Phlx Options 5, Section 4(a)(iii)(B) which states, ". . . and post to the Order book, even in the event that there is a new Opening Process after a trading halt" to make clear that the FIND Order would post to the Order Book and not route again, even if there were a new Opening Process.¹¹⁸

The Exchange proposes to amend Phlx Options 5, Section 4(iii)(B)(1). The Exchange proposes to remove the following sentences, "With respect to an Opening Process, only a Public Customer and Professional FIND Order on the Order Book, whether it is received prior to the opening or it is a GTC FIND Order from a prior day, may be routed at the conclusion of an Opening Process. Non-Public Customer and non-Professional FIND Orders are not eligible for routing at the conclusion of an Opening Process." Phlx proposes to amend its routing functionality to permit all market participants to route, not just Public Customer and Professional FIND Orders. To this end, Phlx proposes to remove this limitation. The Exchange proposes to amend the next sentence which state, "At the end of an Opening Process, any FIND Order that is priced through the Opening Price, pursuant to Phlx Options 3, Section 8(a)(iii), will be cancelled, and any FIND Order that is at or inferior to the Opening Price will be executed pursuant to Options 3, Section 8(k)." The Exchange proposes to instead

provide, "At the end of an Opening Process, any FIND Order that is priced through the Opening Price, pursuant to Phlx Options 3, Section 8(a)(iii), will be cancelled, and any FIND Order that is at or inferior to the Opening Price *will execute or book* pursuant to Options 3, Section 8(k)." The Exchange noted in proposed Phlx Options 5, Section 4(iii)(B) that a FIND Order may post to the order book in certain cases. This rule text adds clarity to the rules by naming all possible scenarios. Finally, the Exchange proposes to remove the last sentence of this paragraph which states, "Such FIND Order will not be eligible for routing until the next time the option series is subject to a new Opening Process." The Exchange is removing this sentence because of the addition to the end of Options 5, Section 4(a)(iii)(B). The Opening Process at Phlx Options 3, Section 8(k), describes the manner in which orders route at the end of that process. This sentence is not necessary within this routing rule. FIND Orders that are not marketable with the ABBO upon receipt will be treated as DNR for the remainder of the trading day, and will not be subject to routing even in the event that there is a new Opening Process after a trading halt.¹¹⁹

Phlx Options 5, Section 4(iii)(B)(2) currently states,

With respect to an Opening Process, if during a route timer at the conclusion of an Opening Process pursuant to Options 3, Section 8(k) markets move such that the FIND Order is executable against Exchange interest, the FIND Order will immediately execute. If during a route timer, ABBO markets move such that the FIND Order is no longer marketable against the ABBO nor marketable against the PBBO, the FIND Order will post at its limit price. If the FIND Order is locked or crossed by away quotes, it will route at the completion of the route timer. If the ABBO worsens but remains better than the PBBO, the FIND Order will reprice and be reexposed at the new price(s) without interrupting the route timer.

In order to more efficiently display the various potential routing scenarios, without repeating certain rule text several times throughout the rule, the Exchange proposes to amend Phlx Options 5, Section 4(a)(iii)(B)(2), similar

¹¹⁸ FIND Orders that are not marketable with the ABBO upon receipt are handled differently than FIND Orders that are marketable with the ABBO upon receipt. FIND Orders that are marketable with the ABBO upon receipt would be eligible for routing the next time the option series is subject to a new Opening Process, which may include a re-opening after a trading halt. FIND Orders that are not marketable with the ABBO upon receipt will not be subject to routing even in the event that there is a new Opening Process after a trading halt. The handling of FIND Orders on Phlx is identical to ISE Options 5, Section 4(a)(iii)(B).

¹¹⁹ Orders that route during an Opening Process route at the end of the Opening Process, when the Exchange simultaneously opens an options series and routes. Thereafter, FIND Orders that were submitted after the Opening Process would attempt once to route until the FIND Order rests on the Order Book. Once it rests on the Order Book, the FIND Order would not route until the next Opening Process. Finally, an Opening Process may occur intra-day if there was a trading halt. After a trading halt BX would reopen with an Opening Process and the FIND Order would be eligible to route once again.

to ISE Options 5, Section 4(a)(iii)(B)(2), to describe the potential scenarios that may occur for a FIND Order. The proposed paragraph provides,

Generally, a FIND Order will be included in the displayed PBBO at its limit price, unless the FIND Order locks or crosses the ABBO, in which case it will be entered into the Order Book at the ABBO price and displayed one MPV inferior to the ABBO. If there exists a locked ABBO when the FIND Order is entered onto the Order Book, the FIND Order will be entered into the Order Book at the ABBO price and displayed one MPV inferior to the ABBO. If during a Route Timer, ABBO markets move such that the FIND Order is no longer marketable against the ABBO nor marketable against the BBO, the FIND Order will post at its limit price. If the FIND Order is locked or crossed by away quotes, it will route at the completion of the Route Timer. If the ABBO worsens but remains better than the BBO, the FIND Order will reprice and be re-exposed at the new price(s) without interrupting the Route Timer. If, during the Route Timer, any new interest arrives opposite the FIND Order that is equal to or better than the ABBO price, the FIND Order will trade against such new interest at the ABBO price, unless the ABBO is improved to a price which crosses the FIND Order's already displayed price, in which case the incoming order will execute at the previous ABBO price as the away market crossed a displayed price.

This paragraph utilizes the term "generally" because it always applies to FIND Orders. The Exchange proposes to state that a FIND Order will be included in the displayed BBO at its limit price, unless the FIND Order locks or crosses the ABBO, in which case it will be entered into the Order Book at the ABBO price and displayed one MPV inferior to the ABBO.¹²⁰ This statement will provide context to the FIND Order and would apply consistently to FIND Orders. The Exchange further proposes to provide that if there exists a locked ABBO when the FIND Order is entered onto the Order Book, the FIND Order will be entered into the Order Book at the ABBO price and displayed one MPV inferior to the ABBO.¹²¹ The Exchange further proposes to describe the possible scenarios that may occurring during a Route Timer, when ABBO markets move such that the FIND Order is no longer marketable against the ABBO nor marketable against the BBO, the FIND Order will always post at its limit price. If the FIND Order is locked or crossed by away quotes, it will route each time at the completion of the Route Timer. In the situation where an ABBO worsens, but remains better than the BBO, the FIND Order will reprice and be re-

exposed at the new price(s) without interrupting the Route Timer, each time. If, during the Route Timer, any new interest arrives opposite the FIND Order that is equal to or better than the ABBO price, the FIND Order will trade always against such new interest at the ABBO price, unless the ABBO is improved to a price which crosses the FIND Order's already displayed price, in which case the incoming order will execute at the previous ABBO price as the away market crossed a displayed price.¹²² The Exchange believes that describing these scenarios in this introductory paragraph will provide a basis to understand certain FIND Order behaviors in certain circumstances and eliminate the need to have these circumstances repeated throughout the rule. The Exchange proposes to remove the first sentence of Phlx Options 5, Section 4(a)(iii)(B)(2) because it is covered within Phlx Options 3, Section 8(k), which describes the Opening Process. The Exchange believes that this paragraph, as amended, will provide greater clarity as to all the possible scenarios and will harmonize Phlx's rule to ISE's rule.

The Exchange proposes to amend Phlx Options 5, Section 4(a)(iii)(B)(3) to add "A FIND Order received after an Opening Process that is not marketable against the PBBO or the ABBO will be entered into the Order Book at its limit price. The FIND Order will be treated as DNR for the remainder of the trading day, *even in the event that there is a new Opening Price after a trading halt*" to the end of the paragraph. This text is similar to ISE Options 5, Section 4(a)(iii)(B)(3). Phlx treats FIND Orders received after an Opening Process that are not marketable against the BBO or the ABBO in the same manner as ISE. Phlx is adding this rule text to make clear that the FIND Order will not route, even if there is a new Opening Process to reflect current System functionality. The Exchange will not allow a non-marketable order to route. The same sentence is being added to Phlx Options 5, Section 4(a)(iii)(B)(4) for clarity.

The Exchange proposes to amend Phlx Options 5, Section 4(a)(iii)(B)(5) to remove sentences that were relocated to Phlx Options 5, Section 4(a)(iii)(B)(2) as noted above.

The Exchange proposes to amend Phlx Options 5, Section 4(a)(iii)(B)(6) to amend the penultimate sentence to note that an Opening Process may occur after a trading halt. An Opening Process would occur intra-day if there was a trading halt. After a trading halt, Phlx would reopen with an Opening Process.

This is the case today and this rule text accounts for this potential scenario. The Exchange is removing the final sentence which states, "The remaining size of a non-Public Customer and non-Professional FIND Order will be cancelled upon an intra-day trading halt." As noted above, Phlx proposes to amend its routing functionality to permit all market participants to route, not just Public Customer and Professional FIND Orders. The Exchange is removing this sentence which is unnecessary as orders of all market participants will route. The same amendments were also made to Phlx Options 5, Section 4(a)(iii)(B)(8).

The Exchange proposes to amend Phlx Options 5, Section 4(a)(iii)(B)(7) to remove the final sentence as that concept was relocated to Phlx Options 5, Section 4(a)(iii)(B)(2) in the section that generally describes routing.

The Exchange proposes some modifications to its SRCH Order in Phlx Options 5, Section 4(iii)(C) to conform to ISE Options 5, Section 4(iii)(C). By way of background, a SRCH Order is routable at any time the option series is open for trading. Similar to the removal of restrictions related to Public Customer and Professional order for a FIND Order, the Exchange proposes to remove these limitations as to SRCH Order. The Exchange is adding a Good-Till-Date Order or GTD at proposed Supplementary Material .02(c) to Phlx Options 3, Section 7. Today, the Exchange does not offer a GTD Order. The GTD Order would be identical to ISE, GEMX and MRX's Good-Till-Date TIF at Supplementary Material .02(c) to Options 3, Section 7. The Exchange proposes to add GTD to into Phlx Options 5, Section 4(iii)(C), similar to ISE Options 5, Section 4(iii)(C), to reflect how a GTD TIF would be handled by the System for a SRCH Order.¹²³

The Exchange proposes to amend Phlx Options 5, Section 4(iii)(C)(1) to add a citation to the Opening Price at Options 3, Section 8(a)(iii). The Exchange also proposes to amend the rule text similar to the FIND Order to indicate that the SRCH Order would execute or book to account for all the scenarios that are possible today. The proposed rule text reflects current System functionality.

Similar to the FIND Order proposal, the Exchange proposes to amend Phlx Options 5, Section 4(a)(iii)(C)(2) to provide general guidelines for the behavior of SRCH Orders which apply consistently. This proposed paragraph

¹²⁰ This sentence is currently located in Phlx Options 5, Section 4(iii)(B)(5).

¹²¹ This sentence is currently located in Phlx Options 5, Section 4(iii)(B)(5).

¹²² This sentence is currently located in Phlx Options 5, Section 4(iii)(B)(5).

¹²³ A GTD SRCH Order may be routed as part of the Opening Process.

will allow the Exchange to more efficiently display the various potential scenarios without repeating certain rule text several times. The Exchange believes that describing these scenarios in this introductory paragraph will provide a basis to understand certain SRCH Order behaviors in certain circumstances and eliminate the need to have these circumstances repeated throughout the rule. Proposed Phlx Options 5, Section 4(a)(iii)(C)(2) provides,

Generally, a SRCH Order will be included in the displayed BBO at its limit price, unless the SRCH Order locks or crosses the ABBO, in which case it will be entered into the Order Book at the ABBO price and displayed one MPV inferior to the ABBO. If there exists a locked ABBO when the SRCH Order is entered onto the Order Book, the SRCH Order will be entered into the Order Book at the ABBO price and displayed one MPV inferior to the ABBO. Once on the Order Book, the SRCH Order is eligible for routing if it is locked or crossed by an away market. If during a Route Timer, ABBO markets move such that the SRCH Order is no longer marketable against the ABBO nor marketable against the PBBO, the SRCH Order will book at its limit price. If, during the Route Timer, any new interest arrives opposite the SRCH Order that is equal to or better than the ABBO price, the SRCH Order will trade against such new interest at the ABBO price, unless the ABBO is improved to a price which crosses the SRCH Order's already displayed price, in which case the incoming order will execute at the previous ABBO price as the away market crossed a displayed price. If the ABBO worsens but remains better than the BBO, the SRCH Order will reprice and be re-exposed at the new price(s) without interrupting the Route Timer. If an ABBO locks or crosses the SRCH Order during a new Route Timer, which would subsequently initiate at the conclusion of any Route Timer if interest remains, the SRCH Order may route to the away market at the ABBO at the conclusion of such Route Timer. If the SRCH Order is locked or crossed by away quotes, it will route at the completion of the Route Timer. The System will route and execute contracts contemporaneously at the end of the Route Timer.

Generally, a SRCH Order will be included in the displayed PBBO at its limit price, unless the SRCH Order locks or crosses the ABBO, in which case it will be entered into the Order Book at the ABBO price and displayed one MPV inferior to the ABBO, similar to other routing order types. Also, if there is a locked ABBO when the SRCH Order is entered onto the Order Book, the SRCH Order will be entered into the Order Book at the ABBO price and displayed one MPV inferior to the ABBO to avoid locking the away market. The Exchange proposes to generally state, "Once on the Order Book, the SRCH Order is eligible for routing if it is locked or

crossed by an away market." This provision is always true of SRCH Orders.

Next, the Exchange provides scenarios that generally may occur during a Route Timer. The first scenario is if during a Route Timer, ABBO markets move such that the SRCH Order is no longer marketable against the ABBO nor marketable against the PBBO. In this case, the SRCH Order will book at its limit price. The next scenario is whether during the Route Timer, any new interest arrives opposite the SRCH Order that is equal to or better than the ABBO price, the SRCH Order will trade against such new interest at the ABBO price, unless the ABBO is improved to a price which crosses the SRCH Order's already displayed price, in which case the incoming order will execute at the previous ABBO price as the away market crossed a displayed price. If new interest arrives that is equal to or better than the ABBO price, the SRCH Order will trade at the ABBO price. If new interest arrives that is marketable against the SRCH Order it will trade at the ABBO price unless the ABBO is improved to a price which crosses the SRCH Order's already displayed price, in which case the incoming order will execute at the previous ABBO price as the away market crossed a displayed price. This last sentence makes clear that the SRCH Order would execute at the previous ABBO price as the away market crossed a displayed price. Better priced incoming interest will execute against the SRCH Order, unless the ABBO crosses the SRCH Order, in which case any new interest will execute at the SRCH Order price. In this scenario, Phlx's price was already displayed when an away market subsequently crossed Phlx's displayed price. If the ABBO worsens but remains better than the BBO, the SRCH Order will reprice and be re-exposed at the new price(s) without interrupting the Route Timer. Also, if an ABBO locks or crosses the SRCH Order during a new Route Timer, which would subsequently initiate at the conclusion of any Route Timer if interest remains, the SRCH Order may route to the away market at the ABBO at the conclusion of such Route Timer, each time. Finally, if the SRCH Order is locked or crossed by away quotes, it will route at the completion of the Route Timer. The Exchange notes that the System will route and execute contracts contemporaneously at the end of the Route Timer. The proposed rule text is identical to ISE Options 5, Section 4(a)(iii)(C)(2).

The Exchange proposes to amend Phlx Options 5, Section 4(a)(iii)(C)(3),

which is being renumbered, to add "at its limit price" to specify at which price the SRCH Order would be entered on the Order Book if not marketable.

The Exchange proposes to amend Phlx Options 5, Section 4(a)(iii)(C)(4), which is being renumbered, to make a technical amendment to change "at" to "on". The Exchange also proposes to remove "price equal to the" because it is unnecessary. Finally, the Exchange proposes to remove the last sentence, "Once on the Order Book, the SRCH Order is eligible for routing if it is locked or crossed by an away market." This sentence was relocated to Phlx Options 5, Section 4(a)(iii)(C)(2).

The Exchange proposes to amend Phlx Options 5, Section 4(a)(iii)(C)(5), which is being renumbered, to make a technical amendment to change "at" to "on". The Exchange also proposes to add "the remainder of the" to make clear that this sentence is about size remaining on the order after exhausting the PBBO. Finally, the Exchange proposes to remove the last two sentences that were relocated to Phlx Options 5, Section 4(a)(iii)(C)(2).

The Exchange proposes to amend Phlx Options 5, Section 4(a)(iii)(C)(6), which is being renumbered, to add "to an away market" to more clearly state where the order is being routed to. The Exchange proposes to remove "locked or crossed by away quotes, it will route at the completion of the Route Timer. If the ABBO worsens but remains better than the PBBO, the SRCH Order will reprice and be re-exposed at the new price(s) without interrupting the Route Timer. If the SRCH Order" because this scenario was relocated to Phlx Options 5, Section 4(a)(iii)(C)(2). The Exchange is updating citations and capitalizing book and adding Order before it. The Exchange proposes to remove the last sentence that was relocated to Phlx Options 5, Section 4(a)(iii)(C)(2).

The Exchange proposes to amend Phlx Options 5, Section 4(a)(iii)(C)(7), which is being renumbered, to remove the second, fourth, fifth and final sentence that were relocated to Phlx Options 5, Section 4(a)(iii)(C)(2).

The Exchange proposes to amend Phlx Options 5, Section 4(a)(iii)(C)(8), which is being renumbered, to update citations and pluralize "price". The Exchange proposes to remove the last sentence that was relocated to Phlx Options 5, Section 4(a)(iii)(C)(2). The Exchange also proposes to remove current Phlx Options 5, Section 4(a)(iii)(C)(8) and (9) which were relocated to Phlx Options 5, Section 4(a)(iii)(C)(2). Finally, the Exchange proposes to renumber current relocated

to Phlx Options 5, Section 4(a)(iii)(C)(10) as “9”.

Options 6, Section 1

The Exchange proposes to amend Options 6, Section 1, Authorization to Give Up, to align Phlx’s process to that of ISE, GEMX and MRX Options 6, Section 1. The Exchange proposes to remove “with respect to floor trading only” from Options 6, Section 1(a). With this technology migration, for each transaction in which a member organization participates, the member organization may indicate, at the time of the trade, or through post trade allocation, any Options Clearing Corporation number of a Clearing Member through which a transaction will be cleared (“Give Up”), provided the Clearing Member has not elected to Opt In, as defined and described in paragraph (b) below, and restrict one or more of its OCC number(s) (“Restricted OCC Number”). With this change, the provision for “at time of trade” will apply to both floor and electronic trading, therefore, electronic only members may indicate a Give-Up at the time of trade. Today, electronic trading members indicate a Give-Up in the post allocation process. The Exchange’s automation of the Give-Up process will permit it to prevent an unauthorized Give-Up of a Restricted OCC Number that is submitted to the System from being processed. The Exchange proposes to amend Options 6, Section 1(c) to add the following sentence, “If an unauthorized Give Up with a Restricted OCC Number is submitted to the System, the System will process that transaction using the Member’s default OCC clearing number.” Because the Exchange is adding this automated feature, it proposes to remove the rule text in Options 6, Section 1(c)(ii) that provides, “For all other orders, the System will not allow an unauthorized Give Up with a Restricted OCC Number to be submitted at the firm mnemonic level at the point of order entry.” The Exchange will be able to prevent unauthorized Give Ups of Restricted OCC Numbers systematically, similar to ISE, GEMX and MRX Options 6, Section 1, and would not need this restriction in Options 6, Section 1(c)(ii).

Options 8, Section 32

The Exchange proposes some minor numbering amendments to Options 8, Section 32, Types of Floor-Based (Non-System) Orders. The Exchange proposes to renumber Options 8, Section 32(b), Contingency Order, as “5.” The Exchange proposes to renumber Options 8, Section 32(b)(1), Stop-Limit Order as “i.” The Exchange proposes to

renumber Options 8, Section 32(b)(2), Stop (stop-loss) Order as “ii.” The Exchange proposes to renumber Options 8, Section 32(b)(3), All or None Order as “iii.” The Exchange proposes to renumber Options 8, Section 32(b)(4), Cancel-Replacement Order as “iv.” The Exchange proposes to renumber Options 8, Section 32(b)(5), Immediate or Cancel Order as “v.” The Exchange proposes to renumber Options 8, Section 32(c), Time in Force or “TIF” as “b”. Finally, the Exchange proposes to re-letter current Options 8, Section 32(d), Not Held Orders, as “c” and reserve “d”.

The Exchange proposes to amend All-Or-None Orders at current Phlx Options 8, Section 32(b)(3) to remove the restriction that only a Public Customer can only submit it. Consistent with the amendment to electronic All-or-None Orders, Phlx proposes to remove this restriction so that any market participant may enter an All-or-None Order. The Exchange also proposes to add an OPG TIF as an available TIF for the trading floor. Today, the TIF is available for floor participants. Any floor participant may enter the TIF of OPG on the trading floor. The Exchange’s proposal to add the OPG TIF will provide greater clarity to the Exchange’s rules.

Implementation

The Exchange will implement this rule change on or before December 20, 2025. Phlx would commence its implementation with a limited symbol migration and continue to migrate symbols over several weeks. The Exchange will issue an Options Trader Alert to Members to provide notification of the symbols that will migrate and the relevant dates.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹²⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹²⁵ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. As it relates to the elimination of fees for TradeInfo, the Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹²⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5)

of the Act,¹²⁷ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Generally, the Exchange’s proposal is intended to add or align certain System functionality with functionality currently offered on ISE, GEMX, MRX, BX or NOM in order to provide a more consistent technology offering across affiliated Nasdaq options exchanges. A more harmonized technology offering, in turn, will simplify technology implementation, changes, and maintenance by market participants of the Exchange that are also participants on Nasdaq affiliated options exchanges. The Exchange’s proposal also seeks to provide greater harmonization between the rules of the Exchange and its affiliates, which would result in greater uniformity, and less burdensome and more efficient regulatory compliance by market participants. As such, the proposal would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that more consistent rules will increase the understanding of the Exchange’s operations for market participants that are also participants on the Nasdaq affiliated options exchanges, thereby contributing to the protection of investors and the public interest. The proposal also seeks to memorialize existing functionality and add more granularity in the Exchange’s rules to describe how existing functionality operates today. The Exchange believes that such changes would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed changes would promote transparency in Exchange rules and reducing potential confusion, thereby ensuring that members, regulators, and the public can more easily navigate the Exchange’s Rulebook and better understand how options trading is conducted on the Exchange.

Options 2, Section 6

The Exchange believes that permitting Market Makers to enter all eligible order types, except Reserve Orders, in both appointed and non-appointed options classes is consistent with the Act. Today, ISE, GEMX and MRX Options 2,

¹²⁴ 15 U.S.C. 78f(b).

¹²⁵ 15 U.S.C. 78f(b)(5).

¹²⁶ 15 U.S.C. 78f(b).

¹²⁷ 15 U.S.C. 78f(b)(4) and (5).

Section 6 only restricts Market Makers from entering Reserve Orders. The Exchange proposes to permit Market Makers to enter Market Orders and Stop Orders similar to all other market participants on Phlx. Today, all market participants, including Market Makers, may transact Market Orders and Stop Orders on other options markets.¹²⁸ The Exchange does not believe there is any reason to restrict Market Makers from entering Market Orders or Stop Orders. In 2019, Phlx noted in its rule change¹²⁹ that it believes that continuing the practice of prohibiting Market Makers from entering Market Orders is consistent with the Act because Market Orders are designed to remove liquidity from the Order Book. Further, Stop Orders are non-displayed order types until they are triggered which does not benefit the role of a Market Makers in displaying liquidity on the Order Book. At this time, the Exchange believes that because there are restrictions on the number of contracts that a Market Maker may enter in a quarter,¹³⁰ Market Makers should be permitted to utilize Market Orders and Stop Orders to remove liquidity from its order book without impacting their ability to provide liquidity.

Today, Phlx restricts all market participants from entering All-or-None Orders except Public Customers. Similar to other options markets, the Exchange proposes to permit all market participants to enter All-or-None Orders. The Exchange is proposing to amend the All-or-None Order type in Options 3, Section 7 to reflect this proposed change. In 2019, the Exchange amended its All-or-None Order to no longer offer the order type to Professionals.¹³¹ At the time, the Exchange noted that permitting Public

Customers to enter All-or-None Orders with specific size limitations that rest on the Order Book would continue to allow Public Customers the opportunity to obtain fills for their orders when the market moves even if the All-Or-None Order was not immediately executable upon entry. The Exchange notes since the 2019 rule change, the All-or-None Order was amended so that it would no longer rest on the order book, rather the order type would be executed in its entirety, or it will cancel if it cannot execute. The Exchange notes that with the change to an immediate-or-cancel order there is no longer a need to permit the All-or-None Orders to be limited to Public Customers. At this time, the Exchange also proposes to reflect in Phlx Options 2, Section 6 the ability of Market Makers to also trade All-or-None Orders. The Exchange notes that Directed Orders are orders directed to a Market Maker by an Order Flow Provider. An order becomes a Directed Order when it interacts with a Market Maker quote that is at the NBBO at the time of receipt of the Directed Order. The Exchange believes it is misleading to include a Directed Order in this list because a Directed Order may be executed by a Market Maker.

Today, Market Makers execute certain orders directed to them pursuant to Phlx Options 2, Section 10, provided they were quoting at the NBBO at the time the order arrived. Upon execution, these orders are treated as Directed Orders pursuant to Phlx rules. A two-sided order with a Public Customer on both sides may by its own terms only be entered by a Public Customer. That restriction remains in the rules. The Exchange notes that there is no reason to restrict Market Makers in entering order types, except for the restriction related to Reserve Orders, in options classes in which they are appointed and non-appointed. Unlike other order types, the Reserve Order is a limit order that contains both a displayed portion and a non-displayed portion. Both the displayed and non-displayed portions of a Reserve Order are available for potential execution against incoming marketable orders. When the displayed portion of a Reserve Order is decremented, either in full or in part, it shall be refreshed from the non-displayed portion of the resting Reserve Order. The Exchange believes that because a Reserve Order contains a non-displayed portion, Market Makers should not be permitted to enter this order type. Market Makers are required to make markets that, absent changed market conditions, will be honored for the number of contracts entered into the

Exchange's System in all series of options classes to which the market maker is appointed. The Exchange believes that markets should be transparent.

Market Makers continue to be obligated to add liquidity on the Exchange. Options 2, Section 6(b) restricts the number of contracts that a Market Maker may enter in an options class to which the Market Maker is not appointed. Options 2, Section 5 requires Market Makers to abide by certain quoting requirements, in the options classes in which they are appointed, in order to maintain the status of a Market Maker. The Exchange believes that permitting a Market Maker to enter additional eligible order types, except Reserve Orders, in their appointed options class will permit Market Makers additional latitude to conduct business on the Exchange and effectively compete with other market makers on other options exchanges. Quotes and orders entered by a Market Maker may not interact against quotes and orders entered on the opposite side of the market by the same Market Maker.

Options 3, Section 4

Phlx's proposal to amend Options 3, Section 4(b)(6) to permit member organizations to configure their ports to instruct the Exchange to immediately cancel a quote that would otherwise cause a locked or crossed market violation in lieu of re-pricing the quote is consistent with the Act. This proposal would continue to protect investors and the public interest because the functionality would prevent a quote from locking and crossing an away market while also providing member organization with more flexibility in handling their quotes.

Options 3, Section 6

The Exchange's proposal to discontinue Quote Exhaust is consistent with the Act because, today, Phlx offers various risk protections in its System limit executions at far away prices. Phlx offers an Acceptable Trade Range protection at Options 3, Section 15(b)(1), an Anti-Internalization protection at Options 3, Section 15(c)(1), and an Automated Quotation Adjustments protection at Options 3, Section 15(b)(2). Phlx is also proposing additional risk protections with this proposal. Other Nasdaq affiliated exchanges do not offer Quote Exhaust. Once discontinued, the Exchange's quoting functionalities will abide by Phlx's Options 3, Section 4 rules governing the entry and display of orders and the allocation methodology in Phlx Options 3, Section 10.

¹²⁸ See Nasdaq ISE, LLC ("ISE"), Nasdaq GEMX, LLC ("GEMX") and Nasdaq MRX, LLC ("MRX") Options 2, Section 6 and NYSE Arca, Inc. Rule 6.37B-O and NYSE American LLC Rule 925.2NY.

¹²⁹ See Securities Exchange Act Release No. 87691 (December 9, 2019), 85 FR 68197 (December 13, 2019) (SR-Phlx-2019-52) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Order Types and Remove and Relocate Certain Rule Text Currently Located Within Rule 1080).

¹³⁰ Pursuant to Phlx Options 2, Section 6, the total number of contracts executed during a quarter by a Market Maker and Lead Market Maker in options series to which it is not appointed may not exceed twenty-five percent (25%) of the total number of contracts executed by the Market Maker and Lead Market Maker in options series.

¹³¹ See Securities Exchange Act Release No. 85262 (March 7, 2019), 84 FR 9192 (March 13, 2019) (SR-Phlx-2019-03) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Option Floor Procedure Advice A-9 and Phlx Rules 1000 and 1066 and To Adopt a New Phlx Rule 1078). Prior to this rule change, All-or-None Orders were available to Public Customers and Professionals.

The Exchange's proposal to adopt a new rule in Phlx Options 3, Section 6 that is identical to ISE, GEMX and MRX Options 3, Section 6 is consistent with the Act and will protect investors and the general public by stating in its rules the manner in which Phlx would comply with Rule 602 of Regulation NMS. Additionally, providing Phlx with the ability to act in the case of unusual market conditions to maintain fair and orderly markets is consistent with the Act and would allow Phlx to manage trading in the same manner as ISE, GEMX and MRX in the event of unusual market conditions.

Options 3, Section 7

The Exchange believes that the proposed changes to the rules governing Exchange order types are consistent with the Act. As discussed above, the proposed changes consist of several functional enhancements to align the Exchange's order types to existing ISE, GEMX and MRX order types, and rule adjustments that add more specificity and clarity to existing order types.

Market Orders

The Exchange believes that the proposed changes to the definition of Market Orders in proposed Options 3, Section 7(a) are consistent with the Act. The proposed intra-day cancel timer feature mirrors existing ISE, GEMX and MRX functionality at Options 3, Section 7(a)(5), and would provide member organizations with additional flexibility and control to bring the Market Order back to the member organization so they can get an execution on another venue by canceling unexecuted Market Orders after a certain period of time. The Exchange believes it is appropriate to offer this feature intra-day because the Exchange already has a separate opening delay timer that provides protection to the market during the Opening Process as discussed above.

In addition to the amendments to the definition of Market Orders, the Exchange proposes to permit Lead Market Makers, Market Makers, and Off-Floor Broker Dealers to enter Market Orders similar to all other market participants on Phlx. The Exchange's proposal to no longer restrict Lead Market Makers, Market Makers, and Off-Floor Broker Dealers from transacting Market Orders on Phlx is consistent with the Act because it would permit all market participants on the Exchange to enter Market Orders. Today, ISE, GEMX and MRX do not prohibit Lead Market Makers, Market Makers, and Off-Floor Broker Dealers from entering Market Orders and those markets have not observed any adverse consequences.

Also, current Phlx Options 2, Section 6 restricts the number of contracts that a Market Maker (or Lead Market Maker) may enter in a quarter,¹³² thereby preventing Market Makers from entering an unlimited quantity of orders. The Exchange does not believe there is any reason to restrict Lead Market Makers, Market Makers, or Off-Floor Broker Dealers from entering Market Orders.

Limit Orders

The Exchange's proposal to relocate "Limit Orders" from current Options 3, Section 7(b)(2) to proposed Options 3, Section 7(b) without change. The Exchange also proposes to break out Limit Order further to define a Marketable Limit Order at proposed Options 3, Section 7(b)(1) as a Limit Order to buy (sell) at or above (below) the best offer (bid) on the Exchange. Finally, the Exchange proposes to define a Fill-or-Kill Order at proposed Options 3, Section 7(b)(2) as a Limit Order that is to be executed in its entirety as soon as it is received and, if not so executed, treated as cancelled. This proposed new rule text aligns this Phlx order type to ISE, GEMX and MRX Options 3, Section 7(b)(2) and will provide Phlx member organizations the same ability to send this type of IOC order as ISE, GEMX and MRX Members.

Intermarket Sweep Orders

The Exchange's proposal to relocate an Intermarket Sweep Order from current Options 3, Section 7(b)(3) to proposed Options 3, Section 7(b)(3) with some additions is consistent with the Act. The Exchange proposes to reorder some sentences to closely resemble ISE, GEMX and MRX Options 3, Section 7(b)(3). The Exchange proposes to add an additional sentence to make clear that ISOs must have a TIF designation of IOC. Additionally, the Exchange proposes to define the "regular order book" as the "single-leg order book." The Exchange believes that its proposal will promote transparency in the Exchange's rules and consistency across the rules of the Nasdaq affiliated options exchanges. Furthermore, the proposed changes do not amend current ISO functionality except for the proposed stipulation that ISOs must have a TIF designation of IOC. Today, Options 5, Section 1(h) provides that ISOs may be either an IOC or an order that expires on the day it is entered. The

Exchange believes it is appropriate to no longer allow non-IOC ISOs, as an ISO is generally used when trying to sweep a price level across multiple exchanges in an effort to post the balance of an order without locking an away market. The Exchange therefore believes that ISOs have a limited purpose and should be cancelled if they do not execute or do not entirely execute. This is also consistent with how ISE, GEMX and MRX currently handle ISOs in that they only allow ISOs to be entered as IOC.

All-or-None Orders

The Exchange's proposal to relocate and amend the All-or-None Orders from current Options 3, Section 7(b)(5) to proposed Options 3, Section 7(c) is consistent with the Act. Today, Phlx restricts All-or-None Orders to be entered only by Public Customers. At this time, the Exchange proposes to permit any member or member organization to submit an All-or-None Order similar to ISE, GEMX, and MRX Options 3, Section 7(c). The Exchange believes that allowing all member organizations to utilize an All-or-None Order removes impediments to and perfects the mechanism of a free and open market and a national market system. Similar to ISE, GEMX and MRX, the Exchange proposes to modify All-or-None Orders so that they would execute against multiple, aggregated orders if the executions would occur simultaneously. The proposed description of the handling of All-or-None Orders is consistent with the Exchange's allocation methodology in Options 3, Section 10 by making clear that because of the size contingency of the All-or-None Order (*i.e.*, executed in its entirety or not at all), those orders must be satisfied simultaneously to avoid any priority conflict on the order book, which considers current displayed NBBO prices to avoid locked and crossed markets as well as trade-throughs. Finally, the proposed changes to add that AON Orders may not be submitted during the Opening Process will better articulate current System behavior, and aligns to the level of detail currently in ISE, MRX, and GEMX Options 3, Section 7(c).

Stop and Stop Limit Orders

The Exchange believes that the proposed changes to the definition of Stop Orders and Stop Limit Orders in Options 3, Sections 7(d) and 7(e), respectively, are consistent with the Act. Today, Phlx's Stop Order may be a Limit or Market Order. Also, the Stop Order may not be elected by a trade that is reported late or out of sequence or by a Complex Order trading with another

¹³² Pursuant to Phlx Options 2, Section 6, the total number of contracts executed during a quarter by a Market Maker and Lead Market Maker in options series to which it is not appointed may not exceed twenty-five percent (25%) of the total number of contracts executed by the Market Maker and Lead Market Maker in options series.

Complex Order. At this time, the Exchange proposes to amend its Stop Order to mirror the order type that is in use on ISE, GEMX and MRX at Options 3, Section 7(d) and (e). Phlx will permit all member organizations to utilize a Stop Order and Stop Limit Order and not restrict Lead Market Makers, Maker Makers, and Off-Floor Broker-Dealers from using the order type which removes impediments to and perfects the mechanism of a free and open market and a national market system. Also, the Exchange will not separately specify a Stop Market Limit Order, rather it will describe an elected Stop Order as a Market Order. Therefore, the Exchange will describe a Stop Order and Stop Limit Order. Aligning Phlx's current functionality for a Stop Order and Stop Market Order to that of ISE, GEMX and MRX will create consistent rules and will increase the understanding of the Exchange's operations for market participants that are also participants on the Nasdaq affiliated options exchanges, thereby contributing to the protection of investors and the public interest.

Cancel and Replace Orders

The Exchange's proposal to relocate the Cancel and Replace Order description from Options 3, Section 7(b)(7) to proposed Options 3, Section 7(f) and mirror the functionality on ISE, GEMX and MRX at Options 3, Section 7(f). Aligning Phlx's current functionality for a Cancel and Replace Order to that of ISE, GEMX and MRX will create consistent rules and will increase the understanding of the Exchange's operations for market participants that are also participants on the Nasdaq affiliated options exchanges, thereby contributing to the protection of investors and the public interest.

Reserve Orders

The Exchange's proposal to adopt a Reserve Order at Options 3, Section 7(g) that is identical to the order type in ISE, GEMX and MRX Options 3, Section 7(g) is consistent with the Act as it will align Phlx's current functionality for a Reserve Order to that of ISE, GEMX and MRX will create consistent rules and will increase the understanding of the Exchange's operations for market participants that are also participants on the Nasdaq affiliated options exchanges, thereby contributing to the protection of investors and the public interest. Both the displayed and non-displayed portions of a Reserve Order would be available for potential execution against incoming marketable orders. A non-marketable Reserve Order would rest on the order book. The displayed portion of

a Reserve Order would be ranked at the specified limit price and the time of order entry. This new order type will be available to all member organizations, except Market Makers as noted herein. The proposed rule change will promote competition as Reserve Orders will provide member organizations with additional flexibility to manage and display their orders and additional control over their executions on the Exchange. This may encourage market participants to bring additional liquidity to the market, which benefits all investors.

Attributable Orders

The Exchange's proposal to adopt Attributable Orders at Options 3, Section 7(h) that is identical to the order type in ISE, GEMX and MRX Options 3, Section 7(h) is consistent with the Act. An Attributable Order would be a market or limit order which displays the user firm ID for purposes of electronic trading on the Exchange. Use of Attributable Orders is voluntary. Attributable Orders may not be available for all Exchange Systems. This new order type will be available to all member organizations and the proposed rule change will promote competition, as Attributable Orders will provide member organizations with additional flexibility to manage their orders on the Exchange. This new order type may encourage market participants to bring additional liquidity to the market, which benefits all investors.

Directed Orders

The Exchange proposes to relocate the reference to Directed Orders currently in Options 3, Section 7(b)(11) to Options 3, Section 7(l) without change aligns the Phlx order type to ISE, GEMX and MRX Options 3, Section 7(l).

Add Liquidity Orders

The Exchange's proposal to adopt ALOs at Options 3, Section 7(n) that are identical to ISE, GEMX and MRX Options 3, Section 7(n) is consistent with the Act. ALOs are limit orders that will only be executed as a "maker" on the Exchange. An Add Liquidity Order is a limit order that is to be executed in whole or in part on the Exchange (i) only after being displayed on the Exchange's limit order book; and (ii) without routing any portion of the order to another market center. The ALO order type would provide market participants greater control over the circumstances in which their orders are executed. The purpose of an ALO is to provide liquidity. For investors and market participants that elect only to provide liquidity in certain

circumstances, such as to receive a maker fee (or rebate) upon execution of an order, the Exchange believes that ALOs will accommodate this strategy. This new order type will be available to all member organizations. This new order type may encourage market participants to bring additional liquidity to the market, which benefits all investors.

PIXL Order

The Exchange's proposal to relocate the description of a PIXL Order from Options 3, Section 7(b)(9) to Options 3, Section 7(y) without change aligns the Phlx order type to ISE, GEMX and MRX Options 3, Section 7(y).

Day Order

The Exchange's proposal to relocate Day Order from current Options 3, Section 7(c)(1) to Supplementary Material .02(a) to Options 3, Section 7 with minor amendments is consistent with the Act. The Exchange is rewording the rule text of Day Order to mirror the text in ISE, GEMX and MRX Supplementary Material .02(a) to Options 3, Section 7.

Good-Till-Cancelled

The Exchange's proposal to relocate Good Till Cancelled from Options 3, Section 7(c)(4) to Supplementary Material .02(b) to Options 3, Section 7 and amend the description is consistent with the Act. The Exchange's proposal to provide that a Good-Till-Canceled Order is an order to buy or sell entered with a TIF of "GTC" and remains in force until the order is filled, canceled or the option contract expires; provided, however, that GTC orders will be canceled in the event of a corporate action that results in an adjustment to the terms of an option contract would address a corporate event, noting that GTC orders are canceled in the event of a corporate action that results in an adjustment to the terms of an option contract. This rule text clarifies the current System behavior. The proposed GTC description is identical to the rule text in ISE, GEMX and MRX Supplementary Material .02(b) to Options 3, Section 7. There is no System change as a result of the change to the description of the GTC order.

Good-Till-Date

The Exchange's proposal to adopt a new TIF designation, Good-Till-Date Supplementary Material .02(c) to Options 3, Section 7 which is identical to ISE, GEMX and MRX's Good-Till-Date TIF at Supplementary Material .02(c) to Options 3, Section 7 is consistent with the Act. A Good-Till-

Date TIF is an order to buy or sell entered with a TIF of “GTD,” which, if not executed, would be cancelled at the sooner of the end of the expiration date assigned to the order, or the expiration of the series; provided, however, that GTD orders would be canceled in the event of a corporate action that results in an adjustment to the terms of an option contract. GTD orders may be entered through FIX. The Exchange believes this additional TIF will provide member organizations with additional opportunities when trading on Phlx.

Immediate-or-Cancel

The Exchange’s proposal to relocate Immediate-or-Cancel from Options 3, Section 7(c)(2) to Supplementary Material .02(d) to Options 3, Section 7 and amend the description is consistent with the Act. These modifications are non-substantive and simply bring more clarity to the text. These changes align with rule text in ISE, GEMX and MRX, as applicable.

Opening Only

The Exchange’s proposal to relocate Opening Only from Options 3, Section 7(c)(3) to proposed Supplementary Material .02(e) of Options 3, Section 7 is consistent with the Act. Opening Only Orders would be subject to the Size Limitation and Market Wide Risk Protections thereby protecting investors and the general public. Of note, the Market Wide Risk Protection is a new protection being adopted by this proposal.

Order Entry Protocols

The Exchange’s proposal to amend the rule text currently in Supplementary Material .03(a) of Options 3, Section 7 is consistent with the Act. The addition of post trade allocation messages to the list of features that will be included in FIX will enhance that feature at no cost. Today, ISE, GEMX and MRX provides for post trade allocation messages through FIX.¹³³

Routing

The Exchange’s proposal to relocate the rule text at Options 3, Section 7(d) to Supplementary Material .04 of Options 3, Section 7 without change is a non-substantive amendment.

Options 3, Section 8

The Exchange’s proposal to amend Options 3, Section 8, Options Opening Process, at Options 3, Section 8(b) to note the eligible interest that will be included in the Opening Process, is

consistent with the Act. The Exchange proposes to note that “Eligible interest during the Opening Process includes Valid Width Quotes, Opening Sweeps, and orders, *including Opening Only Orders, but excluding orders with a Time-In-Force of “Immediate or Cancel” and Add Liquidity Orders.* Quotes, other than Valid Width Quotes, will not be included in the Opening Process. *The displayed and non-displayed portions of the Reserve Orders are considered for execution and in determining the Opening Price throughout the Opening Process.* Non-SQT Market Makers may submit orders.” The Exchange notes that today, Opening Only Orders are eligible for the Opening Process but not Immediate or Cancel Orders. With the addition of the Add Liquidity Orders and the Reserve Orders, the Exchange is proposing to note how those order types are accepted by the System for the Opening Process. The proposed eligibility of these orders mirror ISE, GEMX and MRX Options 3, Section 8(b). Also, similar to ISE, GEMX and MRX Options 3, Section 8(g), the Exchange proposes to account for the addition of Reserve Orders with respect to the Potential Opening Price¹³⁴ in Phlx Options 3, Section 8(h). The Exchange notes that to calculate the Potential Opening Price, the System will take into consideration all Valid Width Quotes and orders (including Opening Sweeps *and displayed and non-displayed portions of Reserve Orders*) for the option series and identify the price at which the maximum number of contracts can trade (“maximum quantity criterion”). The Exchange believes that the addition of this rule text will make clear the manner in which the System will handle a Reserve Order during the Opening Process.

The Exchange’s proposal to amend Options 3, Section 8(h)(A), which currently describes how the Potential Opening Price would be calculated when there is more than one Potential Opening Price is consistent with the Act. Today, Section 8(h)(A) provides that when two or more Potential Opening Prices would satisfy the maximum quantity criterion and leave no contracts unexecuted, the System takes the highest and lowest of those prices and takes the mid-point; if such mid-point is not expressed as a permitted minimum price variation, it will be rounded to the minimum price variation that is closest to the closing price for the affected series from the immediately prior trading session. If

there is no closing price from the immediately prior trading session, the System will round up to the minimum price variation to determine the Opening Price. The Exchange now proposes to no longer round in the direction of the previous trading day’s closing price and simply round up to the minimum price variation if the mid-point of the high/low is not expressed as a permitted minimum price variation. The proposed changes are intended to simplify and bring greater transparency to the Opening Process, as market participants can now have a better sense of how the Potential Opening Price will be calculated without having to account for the closing price of each options series.

Amending Options 3, Section 8(j)(7), which currently describes the determination of Opening Quote Range (“OQR”) boundaries, in certain scenarios is consistent with the Act. Specifically, the Exchange proposes to amend the last sentence of Options 3, Section 8(j)(7) which currently states, “The System will route routable Public Customer and Professional interest pursuant to Options 3, Section 10(a)(1)(A).” The Exchange proposes to remove the current limitation that only allows routable Public Customer and Professional interest to route during the Opening Process thereby permitting all market participants to route and removes the impediments to and perfects the mechanism of a free and open market and a national market system. All routable market participant interest will be allowed to route to align the Exchange’s opening functionality with ISE, GEMX and MRX which does not limit orders that may route in the Opening Process within Options 3, Section 8. The Exchange will also update the cross-cite to Options 3, Section 10(a)(1)(A), currently pointing to the Public Customer priority overlay, to the more general priority rule in Options 3, Section 10(a).

Similar to other changes noted herein, the Exchange proposes to amend Options 3, Section 8(k)(C)(6) to note how Reserve Orders will be handled in the Opening Process for purposes of execution. This rule text will add transparency to Phlx’s rule text similar to ISE, GEMX and MRX Options 3, Section 8(j)(6). Additionally, the Exchange proposes an amendment to the last sentence of Options 3, Section 8(k)(C)(6) which currently states, “The System will only route non-contingency Public Customer and Professional orders.” In line with proposed amendments to permit the System to route all market participant interest, thereby removing the limitation that

¹³³ See Supplementary Material .03(a) of Options 3, Section 7.

¹³⁴ The Potential Opening Price indicates a price where the System may open once all other Opening Process criteria is met.

only allows routable Public Customer and Professional interest to route, and in line with the addition of rule text related to the handling of Reserve Orders.

The Exchange proposes to amend Options 3, Section 8(k)(D) to mirror rule text in Options 3, Section 8(j)(6)(i) which states, “The System will cancel any order or quote that is priced through the Opening Price. All other interest will be eligible for trading after opening.” Today, the System will cancel any order or quote priced through the Opening Price on Phlx. Also, today, all other interest will be eligible for trading after the Opening Process and will remain on the order book. The Exchange believes that this rule text will bring greater transparency to Phlx’s Opening Process.

Finally, the Exchange proposes to amend rule text in the Opening Process Cancel Timer in Options 3, Section 8(l). With the adoption of the Good-Til-Cancel Order and Good-Till-Date Order, the Exchange proposes to rename the order types in the last sentence of Options 3, Section 8(l) for consistency.

Options 3, Section 9

The Exchange’s proposal to amend Options 3, Section 9, Trading Halts, at (d)(3) to amend the manner in which a Stop Order will be treated during a trading halt is consistent with the Act. The Exchange proposes to mirror the treatment of Stop Orders in ISE, GEMX and MRX Options 3, Section 9(d)(3). Today, after the opening, the Exchange will elect Stop Orders, as defined in Options 8, Section 32(c)(2), and, because they become Market Orders, shall cancel them back and notify member organizations of the reason for such cancellation. The Exchange proposes to note that Stop Orders become elected as provided for in proposed Options 3, Section 7(d).¹³⁵ The Exchange currently cites to Options 8, Section 32 erroneously, as those rules refer to Stop Orders on the trading floor. The Exchange proposes to instead cite proposed new Options 3, Section 7(d) which describes electronic Stop Orders. The Exchange also proposes to note that the System cancels orders. Also, the Exchange proposes to change the word rejection to cancellation because the order would be cancelled not rejected. These proposed changes are intended to

bring greater clarity to the Exchange’s rules.

Options 3, Section 10

The Exchange’s proposal to amend Options 3, Section 10, Electronic Execution Priority and Processing in the System, is consistent with the Act. Phlx proposes to amend its rounding methodologies to round up to the nearest integer throughout the Rule. The Exchange is opting to round up and not down, uniformly, and disclose that rounding methodology directly within Options 3, Section 10, so that all member organizations are aware of the rounding methodology that would be utilized by the System. In addition, if the result of an allocation is not a whole number, it will now be rounded up to the nearest whole number instead of down. Finally, with respect to rounding, because it is rounding up, the provisions which describe allocations for remainders of less than one contract cannot occur and therefore this rule text is being removed, as such remainders would not be mathematically possible. The Exchange believes that rounding up uniformly is consistent with the Act because it provides for the equitable allocation of contracts among the Exchange’s market participants. The Exchange proposes to provide market participants with transparency as to the number of contracts that they are entitled to receive as the result of rounding. Further, the Exchange believes that this methodology produces an equitable outcome during allocation that is consistent with the protection of investors and the public interest because all market participants are aware of the methodology that will be utilized to calculate outcomes for allocation purposes. The Exchange proposes to amend Options 3, Section 10(a)(1)(B) to change a reference to “DROT” to “Directed Market Maker” for consistency.

The Exchange proposes to amend Options 3, Section 10(a)(1)(C) to provide that “After all Public Customer orders have been fully executed, upon receipt of a Directed Order pursuant to Options 2, Section 10, provided the Directed Market Maker’s quote is at the better of the internal PBBO or the NBBO, the Directed Market Maker will be afforded a participation entitlement. This participation entitlement will be considered after the Opening Process.” Today, a Directed Market Maker’s quote or market maker order must be at the better of the internal PBBO or NBBO. The Exchange believes that similar to ISE, GEMX and MRX Options 3, Section 10(c)(1)(C), that market maker orders should not be considered when offering

Directed Market Maker Priority. The Exchange proposes to only offer the Directed Market Maker allocation if a Directed Market Maker’s quote is at the better of the internal PBBO or the NBBO and not an order. Consistent with this change, the Exchange proposes to remove “or order(s)” after quote throughout Options 3, Section 10(a)(1)(C). Only offering a Directed Market Maker an enhanced allocation on quotes is consistent with the obligations of a Directed Market Maker, to be quoting at the better of the internal PBBO or the NBBO at the time of receipt of the Directed Order.¹³⁶

The Exchange’s proposal to amend the Entitlement for Orders of 5 contracts or fewer to align with ISE, GEMX and MRX Options 3, Section 10(a)(1)(D) is consistent with the Act. The Exchange proposes to amend the last sentence to provide, “On a quarterly basis, the Exchange will evaluate what percentage of the volume executed on the Exchange is comprised of orders for 5 contracts or fewer allocated to Lead Market Makers, and will reduce the size of the orders included in this provision if such percentage is over 40%.” Today, the percentage is 25%. Phlx notes that currently Lead Market Makers are not approaching the 25% threshold noted in Options 3, Section 10(a)(1)(D)(ii) related to the quarterly review of 5 contracts or fewer by the Exchange, which percentage is based on total volume executed. With this proposal, Phlx will monitor the frequency in which Lead Market Makers receive orders for 5 contracts or fewer. Specifically, the Exchange will review the proposed provision quarterly and will maintain the orders for 5 contracts or fewer at a level that will not allow these small size orders executed by Lead Market Makers to account for more than 40% of the volume executed on the Exchange. The Exchange does not believe the proposal raises any new or novel issues as other options exchanges also offer the same allocation for orders for 5 contracts or fewer.¹³⁷ The Exchange believes that providing this benefit offers Lead Market Makers an incentive for vigorous quoting since a Lead Market Maker must be quoting at the NBBO in order to receive the allocation. Incentivizing Lead Market Makers to provide liquidity on Phlx, in turn, provides greater opportunity for executions, tighter spreads, and better pricing for all member organizations. While the Commission has, in the past, been concerned about locking up larger

¹³⁵ As proposed in Phlx Options 3, Section 7(d) a Stop Order becomes a Market Order when the stop price is elected. A Stop Order to buy is elected when the option is bid or trades on the Exchange at, or above, the specified stop price. A Stop Order to sell is elected when the option is offered or trades on the Exchange at, or below, the specified stop price.

¹³⁶ See Phlx Options 2, Section 10.

¹³⁷ See ISE, GEMX and MRX Options 3, Section 10(a)(1)(D).

portions of order flow from intra-market price competition, the Exchange believes that the enhancement would remain adequately balanced by the increased 40% threshold that limits the volume of orders of five contracts or fewer that are executed by Lead Market Makers to account for no more than 40% of the volume executed on the Exchange. The proposed increased limitation of 40% continues to strike a reasonable balance between encouraging vigorous price competition by Lead Market Makers and rewarding those Lead Market Makers for their unique duties. Lead Market Maker are also subject to the heightened quoting requirements specified in Options 2, Section 5(c)(2)(B). Finally, changing the percentage from 25% to 40% will align Phlx with ISE, GEMX and MRX and permit market makers to have the same compliance across the Nasdaq exchanges.¹³⁸

Similar to ISE, GEMX and MRX Options 3, Section 10(c)(1)(E), the Exchange proposes to account for Reserve Orders in proposed Options 3, Section 7(g)(3). The Exchange proposes to cite to proposed Section 7(g)(3) which provides that the displayed portion of a Reserve Order will trade in accordance with Options 3, Section 10(a)(1)(A) for Public Customer Orders and this subparagraph (F) for non-Public Customer Orders. The Exchange also proposes to add a citation to 10(a) in this paragraph for clarity.

Options 3, Section 15

Order Price Protection

The Exchange's proposal to amend its Order Price Protection or "OPP" (also known as the fat finger check) in Options 3, Section 15(a)(1) to align certain features with the OPP functionality currently offered by its affiliates, NOM and BX, is consistent with the Act. The Exchange believes that the proposed changes to OPP to introduce an alternative threshold that uses a configurable dollar amount, as discussed above, will allow Phlx to establish appropriate boundaries for rejecting potentially erroneous orders while continuing to allow member organizations to access liquidity. As discussed above, OPP is intended to prevent orders entered at clearly unintended prices from executing in the System to the detriment of market participants. OPP was not intended to reject legitimate orders which are otherwise capable of executing at a fair price. The Exchange's proposal will establish a fixed dollar amount as an

alternative threshold in addition to the current percentage-based threshold, similar to NOM and BX Options 3, Section 15(a)(1). The Exchange believes its proposal will continue to protect investors and the public interest against erroneous executions while also allowing orders, including lower-priced orders, to execute where appropriate.

The Exchange believes that its proposal is consistent with the Act because the fixed amount provides for a larger range of executions that would otherwise be rejected by the application of a percentage which would not capture the potential incremental executions. As illustrated above, orders could be rejected that were intentional and not erroneous. Similar to NOM and BX, the Exchange believes that the proposed approach will accomplish the goal of limiting erroneous executions while permitting intentional executions at reasonable prices.

The Exchange also believes that its proposal to add rule text relating to Exchange discretion to temporarily deactivate OPP on an intra-day basis is consistent with the Act. As noted above, NOM and BX have identical language in Options 3, Section 15(a)(1)(A), and similar to NOM and BX, the Exchange believes that having this discretion will be useful if the Exchange determined that unusual market conditions warranted deactivation in the interest of a fair and orderly market. Like NOM and BX, the Exchange believes that it will be useful to have the flexibility to temporarily disable OPP intra-day in response to an unusual market event (for example, if dissemination of data was delayed and resulted in unreliable underlying values needed for the Reference BBO) to maintain a fair and orderly market. This will promote just and equitable principles of trade and ultimately protect investors.

Lastly, the Exchange's proposal to amend Options 3, Section 15(a)(1) to remove the current exclusion of ISOs and Complex Orders from the OPP rule is consistent with the Act. The proposed changes to remove the exclusion of ISOs so that OPP would apply to them going forward is consistent with the Act as this will promote the goal of limiting erroneous executions on the Exchange and in general, extend more protections to ISOs. As discussed above, the Exchange believes this is appropriate given that the proposed alternative threshold will permit more lower-priced ISOs to execute at reasonable prices. Finally, the Exchange is removing Complex Orders as the simple risk protections do not apply to Complex Orders, rather the Complex Order risk

protections in Options 3, Section 16 would apply.

Market Wide Risk Protection

The Exchange believes that the proposed rule change to adopt MWRP would assist with the maintenance of a fair and orderly market by establishing new activity based risk protections for orders. The proposed MWRP is similar to risk management functionality provided in ISE, GEMX and MRX Options 3, Section 15(a)(1)(C). Similar to ISE, GEMX and MRX, the Exchange believes that the proposed rule change may reduce member organization risk by allowing them to effectively manage their exposure to excessive risk. In particular, the proposed rule change would implement two new risk protections based on the rate of order entry and order execution, respectively. The Exchange believes that both of these new protections, which together encompass the proposed MWRP, would enable member organizations to better manage their risk when trading options on the Exchange by limiting the member organization's risk exposure when systems or other issues result in orders being entered or executed at a rate that exceeds predefined thresholds. In today's market, the Exchange believes that robust risk management is becoming increasingly more important for all member organizations. The proposed rule change would provide an additional layer of risk protection for market participants that trade on the Exchange.

In particular, the MWRP is designed to reduce risk associated with system errors or market events that may cause member organizations to send a large number of orders, or receive multiple, automatic executions, before they can adjust their exposure in the market. Without adequate risk management tools, such as those proposed in this filing, member organizations could reduce the amount of order flow and liquidity that they provide. Such actions may undermine the quality of the markets available to customers and other market participants. Accordingly, the proposed functionality is designed to encourage member organizations to submit additional order flow and liquidity to the Exchange, thereby removing impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, protecting investors and the public interest.

Anti-Internalization

The Exchange believes that the proposed rule change to enhance AIQ is consistent with the protection of

¹³⁸ BX also utilizes 40%. See Options 3, Sections 10(a)(1)(C)(1)(c) and 10(a)(2)(iii).

investors and the public interest as it is designed to provide Market Makers with additional flexibility with respect to how to implement self-trade protections provided by AIQ. Currently, all Market Makers are provided functionality that prevents quotes and orders from one market participant identifier from trading with quotes and orders from the same market participant identifier. This allows Market Makers to better manage their order flow and prevent undesirable executions where the Market Maker, using the same market participant identifier, would be on both sides of the trade. While this functionality is helpful to member organizations, some member organizations may prefer not to trade with quotes and orders entered by different market participant identifiers within the same Exchange account or member organization firm. The Exchange is therefore proposing to provide member organizations with flexibility with respect to how AIQ is implemented. As such, member organizations can continue to use current functionality, or member organizations that prefer to prevent self-trades across different market participant identifiers within the same Exchange account or at the member organizations firm level will now be provided with the means to do so under this proposal. Similar flexibility is offered on ISE, GEMX and MRX.¹³⁹ Similar to ISE, GEMX and MRX, the Exchange believes that flexibility to apply AIQ at the Exchange account or member organization firm level would be useful for the Exchange's member organizations as well. The Exchange believes that the proposed rule change is designed to promote just and equitable principles of trade and will remove impediments to and perfect the mechanisms of a free and open market as it will further enhance self-trade protections provided to Market Makers similar to those protections provided on other markets.

Quotation Adjustments

The Exchange believes that the proposed rule change is consistent with the Act because it will enhance the risk protection tools available to Market Makers by introducing new Delta and Vega Thresholds that will be offered in conjunction with the current Percentage and Volume Thresholds, thereby strengthening a Market Maker's ability to manage their risk on the Exchange. The proposed thresholds are functionally identical to the Delta and

Vega Thresholds provided in ISE, GEMX and MRX Options 3, Section 15(a)(3)(B). Similar to ISE, GEMX and MRX, the Exchange believes that the proposed rule change may reduce Market Maker risk by allowing them to effectively manage their exposure to excessive risk. Accordingly, the Exchange believes that the proposal removes impediments to, and perfects the mechanism of, a free and open market and a national market system, and protects investors and the public interest.

The proposed changes to amend when Rapid Fire and Multi-Trigger will be triggered and the modification to the Specified Time Periods, as discussed above, will bring greater harmonization between the Exchange's rules and ISE's, GEMX's and MRX's rules. Amending the current Rapid Fire functionality to no longer remove IOC Orders submitted through SQF, identical to ISE, GEMX, MRX and BX, is consistent with the Act as Market Makers quote to provide liquidity on the Exchange and the risk protection is intended to provide a protection to those participants when acting as liquidity providers. Market Makers utilizing IOC Orders may also provide liquidity but to a lesser extent. The Exchange believes that limiting the risk protection to quotes, similar to other Nasdaq affiliated markets, continues to protect investors while not also purging IOC orders which may interact against other interest on the Exchange. With the proposed changes, Phlx's Rapid Fire and Multi-Trigger will be triggered when their respective thresholds are exceeded (instead of when they are met or exceeded, as is currently the case) and the Specified Time Periods will be amended from 15 to 30 seconds, all of which will be substantially similar to ISE's, GEMX's and MRX's current approach. The Exchange believes that having more consistent rules will result in greater uniformity as well as less burdensome and more efficient regulatory compliance. In addition, offering more consistent functionality across Phlx, ISE, GEMX and MRX will contribute to less complexity and reduce potential confusion for market participants on Phlx that are also participants on ISE, GEMX and MRX. As such, the Exchange believes that the proposed changes would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

Active Quote Protection

The Exchange believes that the proposed Active Quote Protection risk protection is consistent with the Act because it will enhance the risk protection tools available to Market Makers and Groups by introducing a new method of establishing and monitoring for risk parameters that will be offered as an alternative to existing Rapid Fire risk parameters, thereby supporting a Market Maker's ability to manage their risk on the Exchange, and also providing them with flexibility to use additional tools to manage risk. As noted above, while the passive (Rapid Fire) and active (Active QP) risk counter functionality will be mutually exclusive on each badge, Market Makers will still be able to use both to cover their activity on the Exchange by getting multiple badges and setting each risk counter by badge. The Exchange believes that offering more risk management tools to Market Makers would mitigate their exposure to excessive risk. The Exchange further believes that having the new Active Quote Protection functionality leverage the existing Multi-Trigger functionality will similarly support a Market Maker's ability to manage their risk on the Exchange by including Active Quote Protection purge events to the Multi-Trigger counter. As noted above, the risk to Market Makers is not limited to a single series in an option or even multiple series in an option as Market Makers that quote in multiple series of multiple options have significant exposure, requiring them to offset or hedge their overall positions. Market Makers are required to continuously quote in assigned options, and quoting across many series in an option or multiple options creates the possibility of executions that can create large, unintended principal positions that could expose Market Makers to unnecessary risk. Today, Multi-Trigger is designed to assist Market Makers or a Group in managing their market risk by tracking the number of Purge Events relative to the market-wide parameter set by the Market Maker or the Group. The Exchange therefore believes that tracking the number of Active Quote Protection purge events for a Market Maker against its Multi-Trigger Threshold would be similarly useful for managing market risk so that they can provide deep and liquid markets to the benefit of all investors. Ultimately, the Exchange believes that providing Market Makers with additional tools in the manner described above to manage their risk parameters serves to perfect the mechanism of a free and open

¹³⁹ See ISE Options 3, Section 15(a)(3)(A). See also NOM and BX Options 3, Section 15(c)(1), which provide similar flexibility.

market and a national market system, and, in general to protect investors and the public interest because Market Makers will be better able to manage risks with these tools.

The Exchange further represents that its proposal will continue to operate consistently with the firm quote obligations of a broker-dealer pursuant to Rule 602 of Regulation NMS. Specifically, any marketable interest that is executable against a Market Maker's quotes that are received¹⁴⁰ by the Exchange prior to the time this functionality is triggered will be automatically executed at the price up to the Market Maker's size, regardless of whether such execution results in executions in excess of the Market Maker's pre-set Contract Limit.¹⁴¹ As discussed above, this is also in line with how current Rapid Fire operates today. The Exchange believes that the proposed changes in proposed subparagraph (D)(ii) to specify that this Rule will apply to marketable orders and quotes (currently silent on marketable orders), and to specify the time of receipt of such marketable interest that is executable against the size of the Market Maker's quote, will promote clarity in how the System currently operates for Rapid Fire and will operate for Active Quote Protection. As noted above, the proposed Active Quote Protection functionality is similar to existing active risk counter functionality on ISE, GEMX and MRX Options 3, Section 15(c)(2)(B).

Post-Only Quoting Protection

The Exchange's proposal to amend Options 3, Section 15, Risk Protections, to codify new paragraph (c)(3) to permit Phlx Market Makers to prevent their quotes from removing liquidity from the Exchange's order book promotes equitable principles of trade and protects investors and the public interest by enhancing the risk protections available to Phlx Market Makers. The proposal also promotes the policy goals of the Commission which has encouraged execution venues, exchanges, and non-exchanges alike, to enhance risk protection tools and other mechanisms to decrease risk and increase stability. While Market Makers may manage their risk by utilizing the Post-Only Quote Configuration to avoid removing liquidity from the Exchange's order book if their quote would otherwise lock or cross any resting order or quote on the Phlx order book upon

entry, there are also downstream benefits to market participants. Additionally, the benefits of enhanced risk protections flow downstream to counterparties both within and away from the Exchange, thereby increasing systemic protections as well.

The proposed risk protection allows Market Makers the ability to avoid removing liquidity from the Exchange's order book if their quote would otherwise lock or cross any resting order or quote on Phlx's order book upon entry, thereby protecting investors and the general public as Phlx Market Makers transact a large number of orders on the Exchange and bring liquidity to the marketplace. Market Makers would utilize the proposed risk protection to avoid unexpectedly taking liquidity off of the order book. As a result of taking liquidity, Market Makers would incur a taker fee that may impact the Market Maker's ability to provide liquidity and meet quoting obligations. Phlx Market Makers are required to add liquidity on the Exchange and, in turn, are rewarded with lower pricing and enhanced allocations. Specifically, the risk protection would permit Market Makers to add liquidity only and avoid removing interest on the order book thereby maximizing the benefit of their quoting to bring liquidity to Phlx by allowing Market Makers to provide as much liquidity as possible, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system and protecting investors and the public interest. There is no impact to other market participants by introducing this Post-Only Quote Configuration as other non-Market Makers may utilize the proposed Add Liquidity Only order type that will continue to benefit downstream counterparties, both within and away from the Exchange, who may interact with interest on Phlx's order book and thereby interact with order flow that is priced better than the NBBO. Also, other market participants may interact with the liquidity provided by Market Makers.

Unlike other market participants, Market Makers have certain obligations on the market. Market Makers are required to provide continuous two-sided quotes on a daily basis¹⁴² and are subject to various obligations associated with providing liquidity on the market.¹⁴³ Market Makers are the sole liquidity providers on the Exchange and, therefore, are offered certain quote risk protections noted within Phlx Options 3, Section 15 to allow them to

manage their risk more effectively. The proposed Post-Only Quote Configuration is another risk protection afforded to Market Makers to assist them in managing their risk while continuing to comply with their obligations. The Exchange notes that enhancing the ability of Market Makers to add liquidity and avoid taking liquidity from the order book promotes just and equitable principles of trade on the Exchange and protects investors and the public interest, thereby enhancing market structure by allowing Market Makers to add liquidity only. Greater liquidity benefits all market participants by providing more trading opportunities and attracting greater participation by Market Makers. Also, an increase in the activity of Market Makers in turn facilitates tighter spreads.

Options 3, Section 23

The Exchange's proposal to amend Phlx Options 3, Section 23, Data Feeds and Trade Information, is consistent with the Act. Amending the name of various market data feeds in Phlx Options 3, Section 23(a) is a non-substantive amendment that will harmonize the names of the feeds to ISE, GEMX and MRX Options 3 Section 23(a).

The Exchange believes that it is consistent with the Act to no longer offer TradeInfo when the Exchange migrates over the enhanced Nasdaq functionality, as there is a lack of demand from member organizations.¹⁴⁴ As noted above, member organizations use FIX and CTI to obtain order information currently available in TradeInfo, and to cancel orders through FIX. The Exchange further believes that the proposed decommission of TradeInfo will remove impediments to and perfect the mechanism of a free and open market and a national market system by allowing the Exchange to reallocate System capacity and resources currently used to maintain this functionality to the development and maintenance of other business initiatives and risk management products.

Further, the Exchange's proposal to eliminate TradeInfo pricing from Options 7, Section 9B in its entirety is reasonable, equitable, and not unfairly discriminatory because TradeInfo would no longer be available to any member organization. It is reasonable to remove all references to TradeInfo pricing from the Exchange's Pricing Schedule as the Exchange is removing this functionality

¹⁴⁰ The time of receipt for an order or quote is the time such message is processed by the Exchange's order book.

¹⁴¹ See proposed subparagraph (D)(ii) of Phlx Options 3, Section 15(c)(2).

¹⁴² See Phlx Options 2, Section 5.

¹⁴³ See Phlx Options 2, Section 4.

¹⁴⁴ As noted above, the Exchange will provide prior notice of the decommission to all member organizations through an Options Trader Alert.

from its Rulebook. Additionally, it is equitable and not unfairly discriminatory to remove the references to TradeInfo pricing from the Pricing Schedule because no member organization would be able to utilize this functionality once it is removed from the System.

Options 3, Section 28

The Exchange believes that introducing the optional risk protections as described above will protect investors and the public interest, and maintain fair and orderly markets, by providing market participants with another tool to manage their order risk. In addition, providing member organizations with more tools for managing risk will facilitate transactions in securities because member organizations will have more confidence that risk protections are in place. As a result, the new functionality has the potential to promote just and equitable principles of trade. ISE, GEMX and MRX offer identical optional risk protections at Options 3, Section 28.

Options 5, Section 4

The Exchange's proposal to amend Options 5, Section 4, Order Routing, to align Phlx's routing to ISE Options 4, Section 5 is consistent with the Act. The Exchange's proposal to align its rules with ISE will provide Phlx member organizations the same flexibility for routing orders that is afforded to ISE Members today.

With respect to FIND and SRCH, the Exchange is adding more detail to its routing rule to provide market participants with greater transparency. The Exchange believes the added scenarios will provide more context to routing in general and for the specific routing strategies for the benefit of investors and the public interest. The Exchange continues to offer various choices to its market participants with respect to routing. A member organization may elect either (1) to not route their orders and mark those orders "DNR"; or (2) to route their orders. If a member organization elects to route their orders, then a member organization may select to mark their orders as "FIND" or "SRCH" Orders, as proposed herein. Once booked, a FIND Order that is not marketable with the ABBO upon receipt will be treated as DNR for the remainder of the trading day, *even in the event that there is a new Opening Price after a trading halt.*

The FIND Order would route once and then post to the Order Book. A SRCH Order may route during and after an Opening Process. A SRCH Order on the Order Book may be routed to an

away market if it is locked or crossed by an away market. With respect to the addition of FIND Orders, the Exchange proposes various scenarios related to FIND Orders to account for various routing scenarios, as is the case today with respect to SEEK Orders. Various scenarios are also proposed to explain System functionality in locked and crossed markets and organized in such a manner to make the rule text efficient and organized. The Exchange also accounts for scenarios both during and after the Opening Process. The Exchange notes that it is consistent with the Act to account for the behavior of FIND Orders with respect to locked and crossed markets. The Exchange will not trade-through an away market's price. This behavior is consistent with the protection of investors and the general public because it affords member organizations the ability to obtain the best price offered among the various options markets.

The Exchange's proposal to amend Options 5, Section 4(a) to include Stop-Limit Orders in addition to Stop Orders in the list of order types that are not included in the PBBO because they have not been triggered is consistent with the Act as the Exchange's proposal adopts the Stop Order at ISE Options 3, Section 7(d) and Stop Limit Order at ISE Options 3, Section 7(e). The Exchange proposes to reflect both order types. As is the case today, the Exchange proposes to note, similar to ISE Options 4, Section 5(a) that when checking the order book, the System will seek to execute at the price at which it would send the order to an away market. The Exchange believes that this sentence will bring greater clarity to the Exchange's rule. Similarly, the Exchange proposes to add text to clarify its current System behavior for TIFs. Today, routing options may be combined with all available order types and times-in-force, with the exception of order types and times-in-force whose terms are inconsistent with the terms of a particular routing option. The Exchange also believes this sentence will clarify the current operation of the routing System. Finally, as is the case today, the Exchange proposes to note the time the routing System is available, the ability to list an order as non-routable and cross-reference the locked and crossed rules. The Exchange would state, "The order routing process shall be available to members from 9:30 a.m. Eastern Time until market close and shall route orders as described below. Member organizations can designate orders as either available for routing or not available for routing. All routing of

orders shall comply with Options 5, Options Order Protection and Locked and Crossed Market Rules." This proposed rule text merely provides greater transparency to the Exchange's current System operation and harmonizes Phlx's rule text to ISE Options 4, Section 5(a).

Options 6, Section 1

The Exchange's proposal to amend Options 6, Section 1, Authorization to Give Up, to align Phlx's process to that of ISE, GEMX and MRX Options 6, Section 1 by permitting electronic only members to systematically indicate a Give-Up at the time of trade, instead of in the post allocation process, is consistent with the Act as it will remove impediments to and perfect the mechanism of a free and open market and a national market system and align the process for electronic members to that of floor members while continuing to honor the Clearing Member's instruction. The Exchange's alignment of its process will continue to provide proper safeguards and protections for Clearing Members as well as controls for Clearing Members to restrict access to their OCC clearing numbers, allowing access only to those Authorized Members upon their request. The proposal will harmonize Phlx's Options 6, Section 1 rule to ISE, GEMX and MRX Options 6, Section 1.

Options 8, Section 32

The Exchange's proposal to amend an All-Or None Order at current Options 8, Section 32(b)(3) to remove the restriction that only a Public Customer can submit it is consistent with the Act. The Exchange proposes to remove this restriction so that any market participant may enter this order type. The Exchange believes that making these order types available to all market participants removes impediments to and perfects the mechanism of a free and open market and a national market system. The Exchange's proposal to add an OPG TIF as an available TIF for the trading floor will provide greater clarity to the Exchange's rules as this TIF is available on the trading floor and was erroneously omitted from the list of order types. Today, the TIF is available for floor participants. Any floor participant may enter the TIF of OPG on the trading floor. The remainder of the proposed changes are non-substantive numbering amendments.

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. As discussed above, the Exchange is re-platforming its System in connection with the technology migration to enhanced Nasdaq functionality, which the Exchange believes would promote competition among options exchanges by potentially attracting additional order flow to the Exchange with the enhanced trading platform. The basis for the majority of the proposed rule changes are the rules of the Nasdaq affiliated options exchanges, which have been previously filed with the Commission as consistent with the Act.

Options 2, Section 6

The Exchange believes that this proposal does not impose an undue burden on inter-market competition because each options exchange generally determines permissible order types for market makers in its trading environment based on the exchange's individual business policy, objectives, and trading system.

The Exchange's proposal reflects its policy and objectives, and does not impose an undue burden on intra-market competition because it treats all Market Makers uniformly with respect to permissible order types. Market Makers, unlike other market participants, are required to abide by certain quoting requirements in the options classes in which they are appointed pursuant to Options 2, Section 5, in order to maintain the status of a Market Maker. The Exchange also notes that Options 2, Section 6(b) restricts the number of orders that a Market Maker may enter in an options class to which the Market Maker is not appointed. The Exchange believes that permitting a Market Maker to enter additional eligible order types, except Customer Cross Orders and Reserve Orders, in their appointed options class will permit Market Makers additional latitude to conduct business on Phlx and effectively compete with other market makers on other options exchanges.

Options 3, Section 4

Phlx's proposal to amend Options 3, Section 4(b)(6) to permit member organizations to configure their ports to instruct the Exchange to immediately cancel a quote that would otherwise cause a locked or crossed market violation in lieu of re-pricing the quote does not impose an undue burden on inter-market competition because other options exchanges may offer similar functionality.

The proposal does not impose an undue burden on intra-market

competition because all Market Makers may utilize the functionality when entering quotes into the System.

Options 3, Section 6

The Exchange's proposal to discontinue Quote Exhaust does not impose an inter-market burden on competition as other exchanges may determine to adopt or discontinue a similar functionality.

The Exchange's proposal to discontinue Quote Exhaust does not impose an intra-market burden on competition as no member organization would be subject to the Quote Exhaust functionality. Further, with respect to the interaction between the Quote Exhaust and risk protections, the proposal does not impose an intra-market burden on competition because instead of first being posted at the Quote Exhaust Reference Price, aggressively priced orders would be able to post to the order book immediately at the ATR Threshold, which would allow for quicker order execution while still providing order exposure and pauses between price bands, which continues to allow for risk mitigation. Once discontinued, the Exchange's quoting functionalities will abide by Phlx Options 3, Section 4 which governs the entry and display of orders and the allocation methodology in Options 3, Section 10. Finally, Phlx offers other risk protections to member organizations including an Acceptable Trade Range protection at Options 3, Section 15(b)(1), an Anti-Internalization protection at Options 3, Section 15(c)(1), and an Automated Quotation Adjustments protection at Options 3, Section 15(b)(2).

The Exchange's proposal to adopt a new rule in Options 3, Section 6 that is identical to ISE, GEMX and MRX Options 3, Section 6 does not impose an inter-market burden on competition as other exchanges may adopt a similar rule.

The Exchange's proposal to adopt a new rule in Options 3, Section 6 that is identical to ISE, GEMX and MRX Options 3, Section 6 does not impose an intra-market burden on competition as this rule will apply uniformly to all quotations entered on the Exchange.

Options 3, Section 7

The Exchange's proposal to amend Phlx's existing order types so that they are identical to order types available on ISE, GEMX and MRX Options 3, Section 7 and to adopt new order types such as a Fill-or-Kill Order, Reserve Order, and Attributable Order does not impose an inter-market burden on competition as

other exchanges may determine to adopt similar order types.

The Exchange's proposal to amend Phlx's existing order types so that they are identical to order types available on ISE, GEMX and MRX Options 3, Section 7 and to adopt new order types such as a Fill-or-Kill Order, Reserve Order, and Attributable Order does not impose an intra-market burden because all market participants would be able to utilize all of the order types, except Market Makers with respect to Reserve Orders. The Exchange's proposal would permit Market Makers (and Lead Market Makers) to enter Market Orders and Stop Orders. All non-Public Customers would be permitted to enter AON Orders and Off-Floor Broker Dealers would not be restricted from entering AON Orders, Market Orders, Stop Market Orders, and public customer-to-public customer cross orders. Restricting Market Makers (and Lead Market Makers) from entering Reserve Orders does not impose an intra-market burden on competition because Market Maker (and Lead Market Maker) liquidity should be displayed, and Reserve Orders have non-displayed portions of liquidity.

Finally, the Exchange would no longer classify a market participant as an Off-Floor Broker Dealer because it is eliminating that category.

Options 3, Section 8

The Exchange's proposal to amend Options 3, Section 8, Options Opening Process, to make clarifying rule changes, add System detail concerning new order types, and adjust rounding does not impose an inter-market burden because other exchanges may adopt similar functionality. Today, ISE, GEMX and MRX Options 3, Section 8 contains similar functionality.

The Exchange's proposal to amend Options 3, Section 8, Options Opening Process, to make clarifying rule changes, add System detail concerning new order types, and adjust rounding does not impose an intra-market burden because all market participants would be subject to the Opening Process. The Exchange is removing limitations to routing Public Customer and Professional interest from the Opening Process.

Options 3, Section 9

The Exchange's proposal to amend Options 3, Section 9, Trading Halts, to mirror the treatment of Stop Orders in ISE, GEMX and MRX Options 3, Section 9(d)(3) and make other minor changes does not impose an inter-market burden because other exchanges may adopt similar functionality.

The Exchange's proposal to amend Options 3, Section 9, Trading Halts, to mirror the treatment of Stop Orders in ISE, GEMX and MRX Options 3, Section 9(d)(3) and make other minor changes does not impose an intra-market burden because all market participants would be subject to the Trading Halts rule.

Options 3, Section 10

The Exchange's proposal to amend Options 3, Section 10, Electronic Execution Priority and Processing in the System, to round up does not impose an inter-market burden because other exchanges may adopt similar rounding. The Exchange's proposal to amend Options 3, Section 10, to only offer the Directed Market Maker allocation if a Directed Market Maker's quote is at the better of the internal PBBO or the NBBO and not an order does not impose an inter-market burden because ISE, GEMX and MRX Options 3, Section 10(c)(1)(C) also allocate the Directed Market Maker enhancement in this manner. The Exchange's proposal to amend the Entitlement for Orders of 5 contracts or fewer to increase the percentage from 25% to 40% does not impose an inter-market burden on competition because ISE, GEMX and MRX Options 3, Section 10(a)(1)(D) provides for the same percentage.

The Exchange's proposal to amend Options 3, Section 10, Electronic Execution Priority and Processing in the System, to round up does not impose an intra-market burden because the Exchange is opting to round up and not down, uniformly and the proposed rounding methodology provides for the equitable allocation of contracts among the Exchange's market participants. The Exchange's proposal to amend Options 3, Section 10, to only offer the Directed Market Maker allocation if a Directed Market Maker's quote is at the better of the internal PBBO or the NBBO and not an order does not impose an intra-market burden because the Directed Market Maker only has corresponding obligations related to quoting. The Exchange's proposal to amend the Entitlement for Orders of 5 contracts or fewer to increase the percentage from 25% to 40% does not impose an intra-market burden on competition because the Exchange will continue to evaluate all Market Makers in accordance with the proposed new obligation which is the same obligation that exists on other options exchanges today such as ISE, GEMX and MRX Options 3, Section 10(a)(1)(D). If Phlx were to continue to review its member organizations for compliance with the 25% threshold it would remain at a competitive disadvantage to other options markets

that have a 40% threshold thereby making Phlx a less attractive venue for market making.

Options 3, Section 15

As it relates to inter-market competition, the Exchange notes that the basis for the majority of the proposed rule changes in this filing are aligning with the rules of BX, NOM, ISE, GEMX or MRX, which have been previously filed with the Commission, and therefore promotes fair competition among the options exchanges. As noted above, the proposed changes to the risk protections will provide more consistent technology offerings across the Nasdaq affiliated exchanges, and for this reason, the Exchange does not believe its proposal will impose an undue burden on intermarket competition. The Exchange also notes that market participants on other exchanges are welcome to become participants on the Exchange if they determine if this proposed rule change has made Phlx a more attractive or favorable venue.

All of the proposed changes related to the risk protections (OPP, MWRP, Acceptable Trade Range, Anti-Internalization, Quotation Adjustments, Post-Only Quoting Protection and Active Quote Protection) do not impose an undue burden on intra-market competition as they are all aimed at mitigating market participant risk associated with trading on the Exchange. The proposed changes are designed to benefit market participants in that they will provide a more consistent technology offering for market participants on Nasdaq affiliated exchanges. The Exchange also notes that some of the proposed risk controls (e.g., Delta and Vega Thresholds and Post Only Quoting Protection) are completely voluntary. The Post-Only Quoting Protection proposal does not impose a burden on inter-market competition, because member organizations may choose to become market makers on a number of other options exchanges, which may have similar but not identical features. The Exchange does not believe that the proposed Active Quote Protection functionality will impose any undue burden on intra-market competition as it is aimed at mitigating exposure to excessive risk when trading on the Exchange. While the Exchange will offer the proposed functionality to Market Makers only, the proposed risk protection is intended to provide Market Makers with an additional tool to manage their risk parameters in a manner they deem appropriate. As such, the Exchange believes that the proposed functionality may facilitate Market Makers' provision

of liquidity on the Exchange, thereby benefitting all market participants through additional execution opportunities at potentially improved prices. Offering Market Makers the ability to configure their quotes as Post-Only will allow all market participants on Phlx to add liquidity only if desired. Further, the proposed risk protection allows Market Makers the ability to avoid removing liquidity from the Exchange's order book if their quote would otherwise lock or cross any resting order or quote on the order book upon entry, thereby protecting investors and the general public as Market Makers transact a large number of orders on the Exchange and bring liquidity to the marketplace. Market Makers are required to add liquidity on the Exchange and, in turn, are rewarded with lower pricing and enhanced allocations. Specifically, the risk protection would permit Market Makers to add liquidity only and avoid removing interest on the order book thereby maximizing the benefit of their quoting to bring liquidity to Phlx by allowing Market Makers to provide as much liquidity as possible. Unlike other market participants, Market Makers have certain obligations on the market. Market Makers are required to provide continuous two-sided quotes on a daily basis¹⁴⁵ and are subject to various obligations associated with providing liquidity on the market.¹⁴⁶ Market Makers are the sole liquidity providers on the Exchange and, therefore, are offered certain quote risk protections noted within Options 3, Section 15 to allow them to manage their risk more effectively.

Options 3, Section 23

As it relates to the elimination of fees for TradeInfo from Options 7, the Exchange believes that its proposal does not impose an undue burden on competition because TradeInfo would no longer be available to any Members. The Exchange notes that members can continue to receive similar information through CTI, which is available to all member organizations, and FIX can be used to cancel orders today, which is also available to all members.

Options 3, Section 28

The Exchange believes that introducing the optional quantity and notional value risk protections does not impose an undue burden on inter-market competition as the identical functionality exists on ISE, GEMX and MRX at Options 3, Section 28.

¹⁴⁵ See Phlx Options 2, Section 5.

¹⁴⁶ See Phlx Options 2, Section 4.

The Exchange believes that introducing the optional quantity and notional value risk protections does not impose an undue burden on intra-market competition as it will provide market participants with another tool to manage their order risk.

Options 5, Section 4

The Exchange's proposal to amend its routing rule, similar to ISE Options 5, Section 4, with respect to FIND Orders and SRCH Orders, does not impose an undue burden on inter-market competition because the Exchange will provide Phlx member organizations the same choices with respect to routing that is afforded to ISE members today.

The Exchange's proposal to amend its routing rule, similar to ISE Options 5, Section 4, with respect to FIND Orders and SRCH Orders does not impose an undue burden on intra-market competition because the proposed routing rules apply to all market participants including routing during an Opening Process. The Exchange believes that adding greater detail to its rules does not impose an undue burden on intra-market competition, rather it provides greater transparency as to the potential outcomes when utilizing different routing strategies. As is the case today, market participants may elect not to route their orders.

Options 6, Section 1

The Exchange's proposal to amend Options 6, Section 1, Authorization to Give Up, does not impose an undue burden on inter-market competition because other market today have the same Give-Up process.¹⁴⁷

The Exchange's proposal to amend Options 6, Section 1, Authorization to Give Up, does not impose an undue burden on intra-market competition, rather it will permit both floor and electronic members to indicate a Give-Up at the time of trade. Today, electronic trading members indicate a Give-Up in the post allocation process. The proposal will create a uniform process for Give-Up for all member organizations and harmonize Phlx's Options 6, Section 1 rule to ISE, GEMX and MRX Options 6, Section 1.

Options 8, Section 32

The Exchange's proposal to amend an All-Or None Order at current Options 8, Section 32(b)(3) to remove the restriction that it can only be submitted by a Public Customer does not impose an undue burden on inter-market competition because other markets

today offer the All-or-None Order to all market participants.¹⁴⁸

The Exchange's proposal to amend an All-Or None Order at current Options 8, Section 32(b)(3) to remove the restriction that it can only be submitted by a Public Customer does not impose an undue burden on intra-market competition because all Phlx members will be able to utilize this order type. The Exchange's proposal to add an OPC TIF as an available TIF for the trading floor does not impose an undue burden on intra-market competition because all Phlx members will be able to utilize this TIF.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁴⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁵⁰

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-Phlx-2024-71 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-Phlx-2024-71. 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-Phlx-2024-71 and should be submitted on or before January 21, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵¹

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-30904 Filed 12-27-24; 8:45 am]

BILLING CODE 8011-01-P

¹⁴⁷ See ISE, GEMX and MRX Options 6, Section 1.

¹⁴⁸ ISE, GEMX and MRX offer All-or-None Orders to all market participants. See ISE, GEMX and MRX Options 3, Section 7(c).

¹⁴⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁵⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁵¹ 17 CFR 200.30-3(a)(12).



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Part V

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Gross Proceeds Reporting by Brokers That Regularly Provide Services
Effectuating Digital Asset Sales; Final Rule

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[TD 10021]

RIN 1545–BR39

Gross Proceeds Reporting by Brokers That Regularly Provide Services Effectuating Digital Asset Sales**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Final regulations.

SUMMARY: This document contains final regulations regarding information reporting by brokers that regularly provide services effectuating certain digital asset sales and exchanges. The final regulations require these brokers to file information returns and furnish payee statements reporting gross proceeds on dispositions of digital assets effected for customers in certain sale or exchange transactions.

DATES:

Effective date: These regulations are effective on February 28, 2025.

Applicability dates: For dates of applicability, see § 1.6045–1(q).

FOR FURTHER INFORMATION CONTACT:

Roseann Cutrone or Jessica Chase of the Office of the Associate Chief Counsel (Procedure and Administration) at (202) 317–5436 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Authority**

This document contains amendments to the Income Tax Regulations (26 CFR part 1) by adding final regulations under section 6045 of the Internal Revenue Code (Code) to require certain decentralized finance industry participants to file and furnish information returns as brokers. Section 6045(a) provides an express delegation of authority to the Secretary of the Treasury or her delegate (Secretary) to require every person doing business as a broker to make returns, in accordance with such regulations as the Secretary may prescribe, showing the name and address of each customer, with such details regarding gross proceeds and such other information as the Secretary may by forms or regulations require. Section 80603 of the Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429, 1339 (2021) (Infrastructure Act) amended section 6045 clarify the definition of broker as it relates to persons responsible for regularly providing services effectuating transfers of digital assets, to expand the categories of assets for which basis

reporting is required to include all digital assets, and to provide a definition for the term digital assets. Finally, the Infrastructure Act provided that these amendments apply to returns required to be filed, and statements required to be furnished, after December 31, 2023, and provided a rule of construction stating that these statutory amendments shall not be construed to create any inference for any period prior to the effective date of the amendments with respect to whether any person is a broker under section 6045(c)(1) or whether any digital asset is property which is a specified security under section 6045(g)(3)(B).

The final regulations are also issued under the express delegation of authority under section 7805(a) of the Code. Section 7805(a) authorizes the Secretary to “prescribe all needful rules and regulations for the enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.” The Infrastructure Act amended section 6045, and the Secretary has determined that these final regulations are needful for the enforcement of the Code because tax compliance would be increased if brokers were required to file information returns, and furnish payee statements, under section 6045. See Proposed Rules, Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions, 88 FR 59576 (August 29, 2023) (describing need for regulation and its anticipated impact on tax administration).

Background

On August 29, 2023, the Treasury Department and the IRS published in the **Federal Register** (88 FR 59576) proposed regulations (REG–122793–19) (proposed regulations) relating to information reporting under section 6045 by brokers. These proposed regulations included rules that would apply to brokers that generally act as agents and dealers in transactions with their customers involving digital assets, which are defined generally as any digital representation of value that is not cash and is recorded on a cryptographically secured distributed ledger (that is, a database that records transactions across multiple computers) or any similar technology. The proposed regulations also included rules that would apply to brokers that act as digital asset middlemen, a new category of broker proposed to address the use of digital assets to make certain payments and to reflect the clarified definition of broker under the Infrastructure Act.

This proposed new category of broker would include certain participants that operate within the segment of the digital assets industry that is commonly referred to as decentralized finance (DeFi).¹ The DeFi industry offers services that allow for transactions that use automatically executing software commonly referred to as smart contracts based on distributed ledger technology without any participant in the DeFi industry (DeFi participant) taking custody of the private keys used for accessing the digital asset customer’s digital assets on a distributed ledger. Additionally, the proposed regulations included specific rules under section 1001 of the Code for determining the amount realized in a sale, exchange, or other disposition of digital assets and under section 1012 of the Code for calculating the basis of digital assets.

The proposed regulations stated that written or electronic comments provided in response to the proposed regulations must be received by October 30, 2023. The due date for comments was extended until November 13, 2023. In response to the proposed regulations, the Treasury Department and the IRS received over 44,000 written comments.² All posted comments were considered and are available at <https://www.regulations.gov> or upon request. A public hearing was held on November 13, 2023. In addition, the Treasury Department and the IRS continued to accept late comments through noon eastern time on April 5, 2024.

On July 9, 2024, the Treasury Department and the IRS published in the **Federal Register** (89 FR 56480) final regulations (REG–122793–19) (TD 10000) regarding information reporting by certain brokers and the determination of amount realized and basis for certain digital asset sales and exchanges. TD 10000 generally applies to digital asset brokers that act as agents for a party in the transaction, such as operators of custodial digital asset trading platforms, certain digital asset hosted wallet providers, and certain processors of digital asset payments (PDAPs), as well as persons that interact with their customers as counterparties to transactions, such as owners of digital asset kiosks, brokers who accept digital

¹ This preamble’s use of the DeFi term is not intended to create any inference as to whether or not this segment of the digital assets industry operates without any centralized participants.

² Although <https://www.regulations.gov> indicated that over 125,000 comments were received, the Treasury and the IRS did not actually receive over 125,000 comments. Instead, 125,000 reflects the number of “submissions” that each comment self-reported as being included in the comment, whether or not the comment actually included such separate submissions.

assets as payment for commissions and certain other property, brokers that transact as dealers in digital assets, and certain issuers of digital assets who regularly offer to redeem those digital assets. Additionally, TD 10000 finalized specific rules under section 1001 for determining the amount realized in a sale, exchange, or other disposition of digital assets and under section 1012 for calculating the basis of digital assets.

TD 10000 did not finalize the definition of digital asset middleman from the proposed regulations as applied to DeFi participants (referred to in the preamble to TD 10000 as non-custodial industry participants) because the Treasury Department and the IRS determined that additional consideration of the issues and comments received with respect to these participants was warranted. Instead, TD 10000 reserved on the proposed definition of digital asset middleman that would have treated these participants as brokers. The preamble to TD 10000 also indicated that the Treasury Department and the IRS intend to expeditiously issue separate final regulations with respect to these participants.

The *Summary of Comments and Explanation of Revisions* of these final regulations summarizes the digital asset middleman provisions in the proposed regulations that were reserved in TD 10000, which provisions are explained in greater detail in the preamble to the proposed regulations. After considering the comments to these provisions, the reserved portion of the proposed regulations relating to the definition of a digital asset middleman is adopted as amended by this Treasury decision in response to such comments as described in the *Summary of Comments and Explanation of Revisions*.

These final regulations concern Federal tax laws under the Internal Revenue Code only. No inference is intended with respect to any other legal regime, including the Federal securities laws and the Commodity Exchange Act, or the Bank Secrecy Act and its implementing regulations, which are outside the scope of these regulations.

Summary of Comments and Explanation of Revisions

I. Comparison of the Decentralized Digital Asset Ecosystem With the Securities Industry

A few comments received in response to the proposed regulations asserted that the definition of broker in the final regulations should not extend beyond the scope of the definition of broker in the regulations that apply to securities

industry participants in carrying out securities transactions. The Treasury Department and the IRS disagree with these comments and address them in Part II of this *Summary of Comments and Explanation of Revisions*. Before turning to that discussion, however, the Treasury Department and the IRS believe that a comparison of the functions carried out by brokers and other participants in the securities industry with the functions carried out by DeFi participants is useful in analyzing how the broker definition should apply to DeFi participants.

A. The Securities Industry

In the securities industry, the sale of a security typically involves three fundamental functions, each of which is necessary for the trade to take place. First, a customer will give a trade order to sell its securities to a securities broker, specifying the details of the order, such as the quantity and identity of the securities to be sold. Second, the securities broker will route the order details to a trading center, such as a national securities exchange or an alternative trading center, for example in the case of U.S. equities the New York Stock Exchange (NYSE) or the Nasdaq Stock Market, to execute the order. Third, once the exchange or other trading center finds a counterparty to the customer's order, the matched trade will be sent to a clearing organization that will record and settle the transaction by moving the traded securities and funds between the accounts of the two brokers representing the matched customers. While other financial institutions may be involved in the sale transaction, and the functions involved may involve additional steps, these three functions are core functions.³

The securities broker that receives the customer's order may offer additional services. For example, while retail customers many years ago held physical stock and bond certificates themselves

or with third-party custodians, today a securities broker or affiliate of that broker typically will hold a retail customer's securities as a custodian, although there are still limited circumstances under which an individual may hold physical securities certificates. For institutional customers, it is common for a financial institution other than the securities broker that receives the customer's trade order to hold the customer's securities. In some cases, for example in the case of an insurance company or pension plan, the customer's securities may be held by a bank that offers specialized custodial services. In other cases, for example in the case of a hedge fund, the customer's securities may be held by its primary securities broker, referred to as a prime broker, but the customer may give the order to a different broker, referred to as an executing broker, that offers lower fees or other terms preferred by the customer. If the securities broker taking the customer's order does not hold the customer's securities, the executing broker and the financial institution holding the customer's securities will communicate with each other to ensure that the trade is executed smoothly by the exchange or other trading center.

The market that executes the transaction may be a national securities exchange, as described above. Alternatively, the trade may be executed on an alternative trading center or by a single-dealer platform or wholesale broker. The function of all these trading centers is to match a sale order with a buy order.⁴ Another possibility is that the securities broker may not go to an external trading center to execute the trade. Instead, if the securities broker is also a dealer in those securities, it may fill the order by acting as the counterparty to the customer's trade. Alternatively, the securities broker may match the sell order with a buy order from another customer.

The last step in the transaction is for the sale to be cleared and settled. Clearing and settlement of a sale of securities involves verifying that the terms of the buy and sell orders match and carrying out the movement of securities from the account of the seller's securities broker to the account of the buyer's securities broker (which credits those securities to the buyer) and the movement of cash in the reverse direction. This function is carried out by a specialized financial institution that may be referred to as a clearing organization.

³ See DTCC, *Accelerating the U.S. Securities Cycle to T+1*, Figure 2: Illustrative T+1 settlement trade flow, at page 8 (December 1, 2021), available at <https://www.dtcc.com/-/media/Files/PDFs/T2/Accelerating-the-US-Securities-Settlement-Cycle-to-T1-December-1-2021.pdf>; Financial Industry Regulatory Authority (FINRA), *The Lifecycle of a Trade* (November 21, 2017), available at <https://www.finra.org/investors/insights/online-trade-lifecycle> (describing the steps as the placement of an order by a customer and the receipt of the order by the broker, the sending of the order by a broker to an exchange or other trading center and the execution of the order on that exchange or other trading center, and the clearing and settling of the trade); Securities & Exchange Commission, *Trade Execution: What Every Investor Should Know* (January 15, 2013), available at <https://www.sec.gov/about/reports-publications/investorpubstradexec>.

⁴ See FINRA, *Where Do Stocks Trade?* (September 28, 2023), available at <https://www.finra.org/investors/insights/where-do-stocks-trade>.

Historically, communications between securities brokers and their customers took place in person or by telephone. Customers now may communicate a trade order to a securities broker through a mobile device application (mobile device app) or a website accessible via a computer or mobile device. The mobile device app or website provides a user interface with visual elements that enable customers to see the services offered and buttons and fill-in screens to enable customers to communicate trading instructions to the broker through the mobile device app or website. For example, a customer may access a mobile device app or website offered by a securities broker to select among a number of possible transactions, make its selection via buttons and fill-in screens, and authorize the purchase or sale of securities by clicking a button. Doing so generates a trade order in the form of software code which is transmitted to the broker's systems and used to initiate the remaining steps in the transaction. Similarly, each of the other steps in the sale of a security typically now take place electronically, through specialized software.

B. The Decentralized Digital Asset Ecosystem

DeFi service providers use distributed ledger technologies to offer investment and other financial services, similar to those provided in the securities industry by securities brokers and exchanges, that enable customers to carry out trades of digital assets using applications,⁵ sometimes referred to as DeFi applications or dApps, without relying on a traditional centralized financial intermediary. The services provided generally involve multiple DeFi participants performing various functions throughout the process in order to complete a customer's transaction, including: the intake of a customer's trade order details and communication of that order to the validation network for execution of the trade using the automatically executing contracts of the DeFi protocol and for recordation and settlement of the trade via a consensus mechanism. Because these steps do not require the involvement of a centralized financial intermediary (although some participants may in fact be structured as such), they rely on software programs. Additional services and/or service providers may also be involved in the

transaction. For example, another type of DeFi application, commonly referred to as a DeFi aggregator, may communicate the customer's trade to the DeFi protocol with the most favorable trade execution terms.

Several comments received in response to the proposed regulations referenced or described a model, referred to by some in the DeFi industry as the DeFi technology stack model or the DeFi stack reference model, which describes the components and functions involved in the communication, execution, and settlement of a typical DeFi transaction. This DeFi technology stack model is also described in several scholarly papers.⁶ The DeFi technology stack model classifies the technologies involved in the communication, execution, and settlement of a typical DeFi transaction into different technology layers, with each layer representing the performance of a different function in carrying out the overall transaction. In its simplest form, the DeFi technology stack model describes three primary technology layers—the interface layer, the application layer, and the settlement layer—even though these layers can be further subdivided into sub-layers. See BIS Paper at 4 (describing the application layer as having three sublayers). Other scholars describe the DeFi technology stack model as having more than three primary technology layers without subdivision within each layer. See e.g., FRB Review at 155 (describing five primary layers). Regardless of the number of layers described by any given model, the functionality provided by each layer is generally needed to complete the communication, execution, and settlement of a digital asset transaction involving DeFi participants. See BIS Paper at 4. For simplicity's sake, this preamble describes the DeFi technology stack model with three primary layers because that model is sufficient for the purpose of analyzing the issues raised by the comments received in response to the proposed regulations.

In general terms, the three-layer DeFi technology stack model places the interface layer at the top of the DeFi

technology stack model because this is the layer with which most users of digital assets interact. The interface layer is the layer that enables digital asset users to communicate with DeFi participants operating on the other layers for ultimate execution and settlement of the transaction. The interface layer does so by providing software (sometimes referred to as front-end services) that provides the digital asset user with tools—including screens, buttons, forms, and other visual elements incorporated in websites, mobile device apps, and browser extensions—that users can use to trade digital assets in their unhosted wallets⁷ using DeFi protocols or DeFi aggregators operating on the application layer. The application layer is the layer that executes the user's trade order as part of the validation process. It is comprised of DeFi protocols that consist of automatically executing software programs or smart contracts that, when called upon, perform a predetermined series of actions, for example exchanging digital asset A for digital asset B, when certain conditions are met. Finally, the settlement layer is generally responsible for recording financial transactions on the distributed ledger, including transactions conducted by users that trade digital assets using DeFi protocols. Each of these layers are described in more detail in Parts I.B.1., 2., and 3. of this *Summary of Comments and Explanation of Revisions*.

While not included in the three-layer model described in the BIS Paper, an important component of a DeFi transaction is the use of an unhosted wallet by digital asset users. A wallet is a means of storing, electronically or otherwise, a user's private keys to digital assets (more technically, the private keys to distributed ledger digital asset addresses as defined in § 1.6045–1(a)(20)) held by or for the user. Private keys are required to conduct transactions with the digital assets associated with those keys and are sometimes analogized to a password to a bank or investment account. In contrast to a hosted wallet, in which a custodial service electronically stores the private keys to digital assets held on behalf of digital asset users, an unhosted wallet is a non-custodial means of storing a user's private keys to digital assets held by or for the user. See § 1.6045–1(a)(25)(i) and (iii). A broadly

⁵ In the context of the DeFi ecosystem, these final regulations use the term *execute* to refer to the activation of the automatically executing contracts of DeFi applications and not to the simultaneous activities of validators that initiate this activation.

⁶ See e.g., R. Auer, B. Haslhofer, S. Kitzler, P. Saggese, and F. Victor, *The Technology of Decentralized Finance (DeFi)*, Bank for International Settlements (January 2023) (BIS Paper), at 3, available at: <https://www.bis.org/publ/work1066.htm>, and F. Schär, *Decentralized Finance: On Blockchain—and Smart Contract-Based Financial Markets*, Federal Reserve Bank of St. Louis Review, at 153, 156 (2d Qtr. 2021) (FRB Review), available at: <https://research.stlouisfed.org/publications/review/2021/02/05/decentralized-finance-on-blockchain-and-smart-contract-based-financial-markets>.

⁷ References in this preamble to an owner holding digital assets generally or holding digital assets in a wallet are meant to refer to holding or controlling the keys to the digital assets and, thus, the ability to transfer those digital assets. See § 1.6045–1(a)(25)(iv).

analogous fact pattern (disregarding the technological differences) in the securities industry would be the use of a home safe by an investor to store the investor's securities certificates, so that only the investor controls what happens with those certificates. Unhosted wallets also typically include software that enables digital asset users to use their private keys, generally by signing or authorizing a transaction. Unhosted wallets may also provide wallet users with other services, such as tools that enable users to interact with the DeFi marketplace.

1. The Interface Layer

While DeFi protocols execute exchanges of digital assets, interacting directly with a DeFi protocol requires the ability to write software code that will communicate with other participants in the DeFi ecosystem. Although some digital asset users possess these technical skills, most retail digital asset users do not. Instead, most retail digital asset users use the services provided by other participants in the DeFi ecosystem that offer a more user-friendly way to specify the details of the transaction they wish to carry out and to communicate that order so that it can be carried out. These services are generally referred to as front-end services because they are provided at the front end of a transaction and are classified as the interface layer because they are the services that most users face.

Providers of front-end services typically offer a suite of services that enable their customers to view the market conditions relating to a customer's proposed trade, to input their proposed trade, and then to initiate the additional steps necessary to trade their digital assets (trading front-end services). Providers of these trading front-end services are referred to here as trading front-end service providers. This suite of services may be offered as part of the enhanced services offered by an unhosted wallet or alternatively by a website or mobile app to which customers connect their unhosted wallets. In either case, this service is provided through software that assists customers in initiating digital asset transactions, such as an exchange of digital asset A for digital asset B using a DeFi protocol. For example, when digital asset user C seeks to trade digital assets in C's unhosted wallet using a DeFi protocol, C may use a mobile device app or a website accessible via computer or mobile device that is designed for that purpose. Embedded in that mobile device app or website is software that provides C with visual

elements that enable C to see the services offered, such as screens to view the distributed ledger market and potential trade transactions and buttons for C to press to communicate C's desired transaction order.

When customers use trading front-end services, they will typically be provided with an array of available digital asset trading pairs applicable to the digital assets they hold in their unhosted wallets. For example, a customer that wishes to exchange a digital asset will be shown a menu of the trading pairs available for exchange of the customer's digital asset for different digital assets as well as the current exchange rate for each potential trade. Some trading front-end services also offer customers the ability to choose the DeFi trading application that will execute their transaction. After a customer reviews the available trading pairs and decides on a potential transaction, the customer will input the necessary trade order information. Thereafter, the trading front-end service will typically ask the customer to confirm the specific trade order details. If the trade order details are confirmed by the customer, the trading front-end service will convert that trade order information into software code in the form of a data object, referred to here as coded trade order instructions. The coded trade order instructions include all of the details of the transaction, including how many digital assets to remove from the customer's unhosted wallet, the fees (if any) payable to the trading front-end service provider, and whether these fees will be withheld from the amount of digital assets disposed or the digital assets received in the trade. The coded trade order instructions must specify the particular DeFi trading protocol that will execute the customer's trade. The coded trade order instructions also specify the type of digital assets the customer will receive at the completion of the transaction and may specify the digital asset address into which the received digital assets should be transferred. In advance of certain transactions requested by the customer, the provider of trading front-end services will also obtain the customer's permission for the particular DeFi protocol to move digital assets out of the customer's wallet in one or more transactions. Without this service, many customers' trades cannot be executed.

After the coded trade order instructions are complete, the next step is for the customer to authorize or sign the transaction, for example by clicking a button in the customer's wallet. Once the customer authorizes the transaction in their wallet, the unhosted wallet then

forwards the signed transaction to a communication node for broadcast to the distributed ledger network, where it will stay as a pending transaction until a validator chooses to include it in a block, and the block is added to the distributed ledger. As part of the validator's processing of a DeFi protocol transaction, the coded trade order instructions provided through the trading front-end services call the applicable DeFi protocol's automatically executing smart contracts, which execute the transaction by performing the operations it was coded to perform without human intervention. In less technical terms, once the customer authorizes the transaction, the coded trade order instructions determine the subsequent steps in the transaction as it is processed. In short, trading front-end services permit a customer to select, confirm, and communicate the details of a trade transaction that it wishes to carry out using a DeFi protocol so that the transaction can be executed and settled by other DeFi participants. Notwithstanding differences in the technology used and the details of the mechanisms by which a customer's order is carried out, these services are similar to those provided to a customer by a traditional securities broker that does not hold or custody a customer's assets.

In some cases, a trading front-end service provider might take control of the customer's digital assets by routing the customer's digital assets to an address controlled by the trading front-end service provider, for example, where the trading front-end services include DeFi aggregator services.

Unhosted wallet providers do not necessarily offer the trading front-end services described in the previous paragraphs. Unhosted wallet providers may offer only more limited, basic wallet services or they may offer both basic wallet services and trading front-end services. As discussed in Part III.A.2. of this *Summary of Comments and Explanation of Revisions*, a core function of an unhosted wallet is to store private keys to distributed ledger digital asset addresses, so that wallet users can securely hold their digital assets at those addresses. In addition, as part of the basic wallet services, unhosted wallet providers typically include software that enables their customers to use those private keys to sign or authorize a transaction, similar to inputting a password or passcode to authorize other types of online transactions. Many providers of unhosted wallets also provide basic wallet services that enable their customers to transfer digital assets from

one wallet to another wallet. A customer that wishes to use trading front-end services but whose unhosted wallet provider does not offer the desired services or does not offer them at a competitive price, can use the trading front-end services provided by a third-party website or a mobile device app by connecting their unhosted wallet to that third-party website. To carry out any transaction that will be recorded on the distributed ledger, the unhosted wallet will broadcast the signed transaction to the distributed ledger network, often through the use of specialized communication nodes. The basic wallet services described in this paragraph can be distinguished from the enhanced wallet services in which the trading front-end services used to interact with a DeFi protocol (described in the previous paragraphs in this part) or a DeFi aggregator that communicates the customer's trade to the DeFi protocol with the most favorable trade execution terms are provided by the unhosted wallet.

2. The Application Layer

The application layer is in the middle of the three-layer DeFi technology stack model. One of the core functions of the application layer is to provide DeFi protocols that users can interact with to trade digital assets. DeFi protocols provide a function that is analogous to the function provided by a stock exchange or other trading center for matching buy and sell orders in the securities industry, although there are technological differences as to how that function is carried out.

A DeFi protocol is comprised of computer software that utilizes distributed ledger technology to provide digital asset exchange services through automatically executing software that performs a predetermined series of actions when certain conditions are met. BIS Paper at 2. One type of DeFi protocol is an automated market maker. BIS Paper at 4. Some DeFi protocols create an exchange marketplace by pooling digital assets provided by multiple digital asset users to create market liquidity. *Id.*

As discussed in I.B. of this *Summary of Comments and Explanation of Revisions*, another type of DeFi application relevant to the purchase and sale of digital assets is a DeFi aggregator. DeFi aggregators interact with, and use the services of, other DeFi protocols. BIS Paper at 4. A DeFi aggregator communicates a user's trade order to a DeFi protocol that may offer the most favorable trade execution terms.

Although DeFi applications can facilitate many types of activities, such

as non-custodial staking and re-staking, this preamble focuses only on DeFi protocols and DeFi aggregators that enable digital asset users to exchange digital assets for different digital assets, referred to respectively as DeFi trading protocols and DeFi trading aggregators and collectively as DeFi trading applications.

Many of the comments describe DeFi trading applications as having immutable software that cannot be changed. However, many of these DeFi trading applications can simply be replaced by other applications that have new or different features, thus allowing for software upgrades in practice. In other cases, a DeFi trading application may have an "administration key" or similar tool that allows developers, founders, or other persons to modify the software, such as by changing or updating certain variables within the software. The details of the changes that can be made to the software, and who can make them, however, are different with each DeFi trading application.

3. The Settlement Layer

The settlement layer is at the bottom of the three-layer DeFi technology stack model. The settlement layer is generally responsible for completing financial transactions and discharging the obligations of all involved parties. BIS Paper at 4. Settlement involves recording financial transactions on the distributed ledger. This function is comparable to the clearing and settling of securities transactions, some of which are now being settled through distributed ledger technology. Settlement of a digital asset transaction is achieved by validators including the transaction in a block and adding that block to the blockchain through a consensus mechanism that resolves potential conflicts using consensus standards developed by the distributed ledger network. *Id.* In addition to validators, there are other DeFi participants, such as block builders, that may participate in this process. Once recorded, transactions are generally immutable, meaning they cannot be reversed. The recording of a transaction on the settlement layer generally effects a "state change" in a distributed ledger.

II. Statutory Authority To Treat DeFi Participants as Brokers

A. Background

Before the amendments made to the Infrastructure Act, the definition of broker in section 6045(c)(1) included a dealer, a barter exchange, and a person who (for consideration) regularly acts as a middleman with respect to property or

services. See section 6045(c)(1)(A), (B), and (C). The Infrastructure Act, in section 6045(c)(1)(D), added a new clause to the definition of broker: any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person.

Section 1.6045-1(a)(1)⁸ defines brokers that are required to report under section 6045. Under this section, "any person . . . that, in the ordinary course of a trade or business during the calendar year, stands ready to effect sales to be made by others" is a broker obligated to file information returns under section 6045. Section 1.6045-1(a)(10) of the pre-TD 10000 regulations defined effect for this purpose to mean either to act as a principal with respect to a sale (for example, a dealer in securities who buys a security from one customer and then sells that security to another customer) or to act as an agent with respect to a sale if the nature of the agency is such that the agent ordinarily would know the gross proceeds of the sale. Because the regulatory definition of the term broker includes a reference to effecting sales, the definition of the term effect affects the types of persons who are treated as brokers. In addition, § 1.6045-1(a)(4) further defines a barter exchange that is a broker under section 6045(c)(1)(B) as any person with members or clients that contract either with each other or with such person to trade or barter property or services either directly or through such person.

In § 1.6045-1(a)(10)(i)(D), TD 10000 added to the definition of effect: to act as a digital asset middleman for a party in a sale of digital assets. Section 1.6045-1(a)(21)(i) defined a digital asset middleman for this purpose as any person who, with respect to a sale of digital assets, provides a facilitative service. Section 1.6045-1(a)(21)(iii)(B)(1) through (4) defined a facilitative service by referencing five specific services in which the broker acts either as an agent or a counterparty in a digital asset sale.

Proposed § 1.6045-1(a)(21)(iii)(A) would have also included in the facilitative services definition any service that directly or indirectly effectuates a sale of digital assets, such as providing a party in the sale with access to an automatically executing contract or protocol, providing access to digital asset trading platforms, providing an automated market maker

⁸ Unless otherwise qualified, regulation section references refer to the final regulations in effect before the effective date of these final regulations. The final regulations in effect before the effective date of TD 10000 will collectively be referred to as the pre-TD 10000 regulations.

system, providing order matching services, providing market making functions, providing services to discover the most competitive buy and sell prices, or providing escrow or escrow-like services to ensure both parties to an exchange act in accordance with their obligations. To be covered by this proposed rule, under proposed § 1.6045–1(a)(21)(i), the person providing facilitative services would have to ordinarily know or be in a position to know the identity of the party making the sale and the nature of the transaction. Proposed § 1.6045–1(a)(21)(iii)(A) would have excepted from the definition of facilitative services certain validation services if conducted by a person engaged in the business of providing distributed ledger validation services and certain sales of hardware or licenses of software by persons engaged in the business of selling hardware or licensing software, for which the sole function is to permit persons to control private keys which are used for accessing digital assets on a distributed ledger. TD 10000 reserved on both the facilitative service definition under proposed § 1.6045–1(a)(21)(iii)(A) and the definition of the ordinarily would know or position to know standard (together referred to herein as the position to know standard) under proposed § 1.6045–1(a)(21)(ii). The proposed text for these provisions is discussed more fully in Parts III.A.2., III.A.3., and III.A.4. of this *Summary of Comments and Explanation of Revisions*.

B. Comments Received

1. The Statutory Language

The Treasury Department and the IRS received numerous comments directed at the facilitative services definition under the proposed new digital asset middleman rules. As a threshold matter, several comments argued that this definition is inconsistent with the plain meaning of the broker definition under section 6045(c)(1)(D). Other comments asserted that the broker definition under section 6045(c)(1)(D) is limited to persons acting as agents in digital asset transactions. One comment cited Merriam-Webster Dictionary's definition of broker, as "someone who acts as an intermediary: such as . . . an agent who negotiates contracts of purchase and sale . . . [or] an agent who arranges marriages,"⁹ as support for this assertion. Other comments reasoned that the term effectuate was meant to be synonymous with the term "effect" in

§ 1.6045–1(a)(10) of the pre-TD 10000 regulations, which, the comment stated, for over 35 years has required the broker to act as an agent (or principal) in the transaction. *See* TD 7873, 48 FR 10302 (March 11, 1983). Another comment also focused on the definition of "customers" in the pre-TD 10000 regulations to similarly argue that section 6045(c)(1)(D) should not expand the scope of the broker definition beyond persons acting as agents or principals in a transaction. Specifically, the term customer is defined in § 1.6045–1(a)(2) to mean the person that makes the sale if the broker acts as an agent for such person in the sale, as a principal in the sale, or as a participant in the sale responsible for paying to such person or crediting to such person's account the gross proceeds on the sale. Because the definition of customer under the pre-TD 10000 regulations requires that the broker-customer relationship be an agency, principal, or payor relationship, this comment argued that section 6045(c)(1)(D) should similarly be limited to persons acting as agents or principals in the sale.

As discussed in Parts II.B.1.a. and II.B.1.b. of this *Summary of Comments and Explanation of Revisions*, the Treasury Department and the IRS do not agree that the statutory language defining broker under section 6045(c)(1)(D) is limited only to persons that act as the customer's agent (or as a principal/dealer) in a digital asset transaction.

a. The Definition of Broker Prior to the Infrastructure Act

For over 35 years, the Code has set forth a broad definition of broker under section 6045(c)(1). Under this definition, the term broker is not limited to conventional securities brokers. Rather, the statutory language defines the term broker to include several other types of market participants. First, section 6045(c)(1)(A) treats a dealer as a broker. Dealers typically hold inventory and act as principals in sale transactions. *George R. Kemon v. Commissioner*, 16 T.C. 1026 (1951).

Second, under section 6045(c)(1)(B), the term broker includes a barter exchange, which is defined in section 6045(c)(3) to mean any organization of members providing property or services who jointly contract to trade or barter such property or services. Long-standing regulations define a barter exchange to mean any person with members or clients that contract either with each other or with such person to trade or barter property or services either directly or through such person. *See*

§ 1.6045–1(a)(4). The regulations require these barter exchanges to report an exchange of property or services if the barter exchange arranges a direct exchange of property or services among its members or clients. *See* § 1.6045–1(e)(2). That is, a barter exchange is treated as a broker if it merely provides the service of bringing together the parties to the exchange, without acting as either an agent or a principal to the exchange.

Third, under section 6045(c)(1)(C), the statutory broker definition includes certain middlemen with respect to property or services. Because the statutory language must be given meaning, the term middleman must include persons who would not otherwise be considered brokers under the definition without section 6045(c)(1)(C). Pursuant to this authority, the section 6045 regulations treat certain payors and agents as brokers, including professional custodians as well as dividend reinvestment agents that do not take custody of customer securities. *See* § 1.6045–1(b)(1)(ii) and (v) (*Example 1*). Additionally, the flush language in section 6045(c) expressly exempts a person that manages a farm on behalf of another person from the definition of broker with respect to their farm management activities. *See* H.R. Rep. No. 100–795, at 360 (1988) (the bill exempts farm managers from the requirement of filing a Form 1099–B with respect to their farm management activities because this information must already be filed, in a more useful format, by these farm managers on a Schedule F, thus, making the Form 1099–B duplicative). This farm-manager exemption shows that Congress broadly construed the term middleman beyond conventional securities brokers. In addition, § 1.6045–1(b)(2)(ii) and (vii) (*Example 2*) provide specific exclusions for stock exchanges and clearing organizations, which, absent those exclusions, would be middlemen treated as brokers. Indeed, virtually all other persons that § 1.6045–1(b)(2) (*Example 2*) illustrates as non-brokers, including certain stock transfer agents for a corporation, certain escrow agents or nominees, and certain floor brokers on a commodities exchange, are examples of persons that could be considered middlemen.

Thus, prior to the Infrastructure Act, the term broker under section 6045(c)(1) included specified types of principals, custodial agents, non-custodial agents, payors, and service providers, pursuant to the statute and long-standing implementing regulations. *See e.g.*, § 1.6045–1(c)(3)(iv) and (c)(4)(iii), (iv), and (v) (*Examples 3, 4, and 5*) (multiple

⁹ Merriam-Webster Dictionary, "broker," accessed October 25, 2023, <https://www.merriam-webster.com/dictionary/broker>.

broker examples involving one broker that holds the customer's assets and another broker that does not hold the customer's assets). The term broker was not defined by reference to any particular type of property or services. Accordingly, statutory authority existed before the enactment of the Infrastructure Act to treat centralized digital asset exchanges that act as traditional brokers or dealers as brokers for purposes of section 6045(c)(1).

In addition, section 6045(c)(1) also provided statutory authority to treat as a broker any other person that satisfied the definition of broker, dealer, or a middleman with respect to property or services if the middleman regularly acted as such for consideration. See Part II.B.2. of this *Summary of Comments and Explanation of Revisions*, for a discussion of the scope of this authority with respect to DeFi participants.

b. The Definition of Broker Under Section 6045(c)(1)(D) as Enacted by the Infrastructure Act

Section 6045(c)(1)(D) treats as a broker any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person. This statutory language explicitly addresses certain types of activities not previously addressed expressly by section 6045(c)(1) that are relevant to determining broker status. Section 6045(c)(1)(D) refers to persons who provide specified types of digital asset services, when regularly provided for consideration on behalf of another person. The relevant services are those that effectuate transfers of digital assets. The statutory language treats the person providing those services as a broker.

Statutory language must be construed to avoid rendering it as surplusage. See *TRW, Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (noting the “cardinal principle” of statutory interpretation requires that “if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.”). Accordingly, the Treasury Department and the IRS understand the statutory language to define the term broker in a manner that does not merely restate what was the law prior to the Infrastructure Act.

One comment asserted that the text in section 6045(c)(1)(D) merely expands the broker definition with respect to the new types of assets (digital assets) that must be reported and clarifies that the persons reporting these new types of digital asset transactions must be conducting otherwise similar activities to brokers included in the existing definition of broker. The Treasury

Department and the IRS do not agree that section 6045(c)(1)(D) applies only to digital asset brokers that fall within the broker definition under section 6045(c)(1) prior to the Infrastructure Act amendments. As described in Part II.B.1.a. of this *Summary of Comments and Explanation of Revisions*, section 6045(c)(1) already provided authority to address at least some digital asset brokers prior to the Infrastructure Act amendments. Section 6045(c)(1)(D) was added to the Code because Congress recognized that, in certain respects, the digital asset industry works differently from the securities industry and that explicit statutory language providing that certain additional digital asset service providers should be treated as brokers was essential to providing clarity on how information reporting rules apply to transactions involving digital assets. Nothing in the text of section 6045(c)(1)(D) limits the scope of digital asset brokers to those that fall within the broker definition under section 6045(c)(1) prior to the Infrastructure Act. Additionally, section 6045(c)(1)(D) does not limit the scope of digital asset brokers to persons who act as agents, because by its terms the statutory language refers to service providers. A person providing services to a customer may or may not be acting as an agent for the customer. Many service providers are not agents for their customers. Section 6045(c)(1)(D) refers to persons providing services and, therefore, is not limited to persons providing services only as agents. Moreover, because persons acting as agents are already included in the broker definition under section 6045(c)(1)(C), limiting section 6045(c)(1)(D) to persons providing services as agents for digital asset transactions would render its text entirely superfluous.

Section 6045(c)(1)(D) also is not limited to persons who effectuate transfers of digital assets. Section 6045(c)(1)(D) applies to any person who provides “any service effectuating transfers,” not “any person who effectuates transfers.” That is, the statutory language in section 6045(c)(1)(D) applies to persons who provide services to others, which services effectuate digital asset transfers. Given this textual distinction, the Treasury Department and the IRS have determined that section 6045(c)(1)(D) properly applies to persons that supply customers with services that are used by those customers to carry out digital asset transactions. As described in Part I.B.1. of this *Summary of Comments and Explanation of Revisions*, that is exactly

the function provided by trading front-end service providers. For the reasons described in that part, most digital asset users could not easily carry out a DeFi sale or exchange of digital assets without the services of a trading front-end service provider. Although trading front-end service providers may not act as agents for their customers in these transactions, the services provided by these trading front-end service providers with respect to digital assets enable their customers to trade their digital assets through other DeFi participants, just as the services provided by securities brokers enable their customers to trade their securities through other securities market participants. That is, both trading front-end service providers and securities brokers make it possible for a customer to review a range of options for possible transactions, to make a selection and confirm that selection, and to communicate the details of the transaction that the customer wishes to carry out so that the transaction can be executed and settled by other market participants. Similarly, in both cases, the means by which those services are provided may include a website or mobile device app that provides a series of visual elements, such as forms, buttons that initiate actions, and dynamic page updates, that enable customers to view the market conditions relating to their proposed trades and to interact with that market by inputting their trade orders.

Several comments argued that merely providing customers with software that the customer can use to engage in digital asset transactions does not constitute a “service effectuating transfers.” The Treasury Department and the IRS do not agree that the definition of broker should turn on the technological implementation of the services provided because the statute makes no reference to a particular form of technology. Instead, the definition should turn on what those services do. For example, the fact that, currently, a securities broker or dealer takes customer orders or routes these orders electronically does not change the nature of the services that the securities broker or dealer provides. The provision of a suite of software that enables a customer to interact with a distributed ledger network and effectuate transactions using DeFi trading applications is an example of providing a service that effectuates transfers.

Numerous comments argued that the term effectuate in section 6045(c)(1)(D) prevents the application of the broker definition to DeFi participants because these participants do not control the

private keys to the customer's digital assets being traded. As support for this argument, one comment cited a dictionary's definition of effectuate as "to cause or bring about (something)" and a Supreme Court interpretation of the meaning of "effect" as requiring a "reasonably close causal relationship between a change in the physical environment and the effect." See *Effectuate*, *Merriam-Webster Online*, <https://www.merriam-webster.com/dictionary/effectuate>; *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1984). This comment also compared transactions in which DeFi participants do not control the private keys to the customer's digital assets with those carried out by traditional securities brokers in which the brokers hold custody of the customer's securities and then asserted that the definition of effectuate cannot apply to the services provided by DeFi participants. Other comments argued that the word effectuate was meant to apply only to the one person who carries out the transaction. These comments concluded that expansion of the reporting regime under section 6045 to persons that do not possess traditional characteristics of a broker in carrying out transactions exceeds the scope of the statute.

The Treasury Department and the IRS do not agree that the actions of only one person, whether within the traditional securities industry or within the DeFi industry, causes a transaction to be carried out (or effectuated), which is why the pre-TD 10000 regulations contain a multiple broker rule. The Treasury Department and the IRS do agree, however, that a comparison of the persons involved in the steps necessary to carry out a securities transaction with the services involved in the steps necessary to carry out a DeFi transaction is helpful to understanding what it means to effect or effectuate a transaction. For purposes of this analysis as well as throughout these final regulations, the term person has the meaning provided by section 7701(a)(1) of the Code, which provides that the term generally includes an individual, a legal entity, and an unincorporated group or organization through which any business, financial operation or venture is carried on, such as a partnership. The term person includes a business entity that is treated as an association or a partnership for Federal tax purposes under § 301.7701-3(b). Accordingly, a group of persons providing services that together carry out a customer's digital asset transaction may be treated as a broker whether or

not the group operates through a legal entity if the group is treated as a partnership or other person for U.S. Federal income tax purposes.

As discussed in Part I.A. of this *Summary of Comments and Explanation of Revisions*, in the securities industry, the steps of a transaction typically begin when an investor communicates a trade order to a securities broker, who may or may not have custody of the investor's securities, and authorizes the securities broker to carry out the trade. The securities broker generally will assess how to obtain the best execution for the customer. That assessment could lead the broker to fill the order from its own account or match the trade with an offsetting trade order from another customer. The broker could also decide to route the investor's order to a trading center, such as a national securities exchange, an alternative trading system, or a dealer. The exchange or other trading center generally will attempt to find a counterparty to the investor's order. If the order is executed, transaction information typically will be sent to a clearing organization that will move the funds and securities between the appropriate accounts at the clearing organization to settle the transaction. The regulations under section 6045 treat only one of these securities industry participants as the broker with reporting obligations. See § 1.6045-1(b)(2)(ii) and (vii) (*Example 2*) (not treating certain stock exchanges and clearing organization as brokers). Notwithstanding this rule, each of these participants technically meets the definition of a person who effects (or "act[s] as . . . an agent for a party [albeit not the customer] in the sale" if it ordinarily would know from its services the gross proceeds from the sale). See § 1.6045-1(a)(10)(i)(A). Accordingly, it is the actions of all these securities industry participants—along with those of the customer—that collectively cause the transaction to be carried out.

Similarly, as discussed in Parts I.B. and I.B.1. through I.B.3. of this *Summary of Comments and Explanation of Revisions*, the DeFi technology stack model shows that, in addition to the customer, there are multiple DeFi participants involved in causing a digital asset transaction to be carried out. In the DeFi industry, when a customer inputs a trade order on a mobile device app or a website accessible via computer or mobile device, a trading front-end service provider receives that trade order and has the customer confirm the trade order details. Once the trade order

details are confirmed by the customer on the customer's computer or mobile device, the trading front-end services translate those details into coded trade order instructions which are sent to the customer's unhosted wallet to obtain the customer's signature or authorization. Thereafter, the wallet transmits the coded trade order instructions to the distributed ledger network for the eventual interaction with the applicable DeFi trading application for matching and for settlement pursuant to the services of DeFi participants operating at the settlement layer. Importantly, like the traditional securities transaction, the actions of the customer and all these DeFi participants collectively cause the transaction to be carried out. Accordingly, like in the securities industry, in which the customer, the securities broker, the securities exchange, and the clearing organization are all typically needed to carry out a securities transaction, in a DeFi transaction, the customer, the trading front-end service provider, the DeFi application, and the validator are all typically needed to carry out the DeFi transaction.

Regarding the comment that the definition of effectuate cannot apply to DeFi participants that do not control the private keys to the customer's digital assets, as discussed in Part II.B.5. of this *Summary of Comments and Explanation of Revisions*, the Treasury Department and the IRS do not agree with this comment because the current broker rules as applied to the securities industry treat persons without custody of a customer's assets as a broker under section 6045. See e.g., § 1.6045-1(c)(3)(iv) and (c)(4)(iii), (iv), and (v) (*Examples 3, 4, and 5*) (examples treating persons that do not hold the customer's assets as brokers).

2. Title of the Broker Definition in the Infrastructure Act

Several comments argued that the existing scope of activities that give rise to treating a person as a broker should not be expanded to cover DeFi participants because section 80603(a) of the Infrastructure Act titled the new broker definition as a "clarification of [the] definition of broker." One comment stated that the definition of broker under section 6045(c)(1)(D) is limited to agents and principals. Another comment stated that a broker under section 6045(c)(1)(D) must be a middleman. Another comment stated that a middleman under section 6045(c)(1)(D) must be an intermediary. The Treasury Department and the IRS do not agree that limiting the meaning of section 6045(c)(1)(D) to persons

acting as the customer's agent or a principal in the transaction is required by the definition of broker under section 6045(c)(1)(A) through (C) because, except for section 6045(c)(1)(A), which is specifically limited to dealers, the definition of broker includes no such limitation. As discussed in Part II.B.1.a. of this *Summary of Comments and Explanation of Revisions*, under section 6045(c)(1)(B) and the regulations thereunder, the term broker includes a barter exchange that is not acting as a customer's agent or as a dealer or principal. Similarly, under section 6045(c)(1)(C), the term broker includes any other person who (for a consideration) regularly acts as a middleman with respect to property or services.

Although the term middleman is not defined in the statute, the term is used in other tax information reporting rules to refer generally to persons acting in a variety of capacities relevant to the particular function, for example, making payment. *See e.g.*, § 1.6049–4(a)(2)(ii) (the term “payor” includes a middleman as defined in § 1.6049–4(f)(4)); § 1.6049–4(f)(4)(i) (middleman means any person who makes payment of interest for, or collects interest on behalf of, another person, or who otherwise acts in a capacity as intermediary between a payor and a payee, and also includes a trustee). Outside tax law, however, the term is used more broadly to include persons that make referrals to others so that these others can negotiate a sale between themselves in addition to those that act as agents for others. *See e.g.*, *Dickson Marine Inc. v. Panalpina*, 179 F.3d 331 (5th Cir. 1999). In *Dickson Marine Inc.*, the court found that an intermediary making a referral was a middleman and not the agent of another person where that other person did not assert sufficient control over the intermediary to establish an agency relationship. *See also Rauscher Pierce Refsnes, Inc. v. Great Sw. Savs., F.A.*, 923 S.W2d 112, 115 (Tex. App. 1996) (middleman means a broker whose “duty consists merely of bringing the parties together so that, between themselves, they may negotiate a sale, . . . [without that broker] necessarily [acting as] the ‘agent’ of either party.”)

Thus, the middleman reference in section 6045(c)(1)(C) can be understood as broad enough to cover a person that is not an agent or principal to a transaction but brings parties together so that those parties can negotiate and finalize the transaction. That is, DeFi participants provide persons with technological services that enable those persons to carry out DeFi transactions.

Treating section 6045(c)(1)(D) as a clarification of section 6045(c)(1)(C) renders it unnecessary to determine the full scope of the term middleman in section 6045(c)(1)(C) as applied to digital asset brokers. The legislative history to section 6045(c)(1)(D) supports this interpretation of section 6045(c)(1)(D) as a clarifying change intended to eliminate the need to determine which digital asset participants might qualify as middlemen. *See* the Joint Committee on Taxation's description of section 6045(c)(1)(D) as a clarification of the then-existing broker definition to resolve uncertainty over whether certain market participants are brokers, as entered into the Congressional Record. 167 Cong. Rec. S5702, 5703 (daily ed. August 3, 2021) (Joint Committee on Taxation, Technical Explanation of Section 80603 of the Infrastructure Act). This conclusion is also supported by the fact that the clarified broker definition, along with the other changes made by the Infrastructure Act to sections 6045, 6045A, and 6050I, were estimated by the Joint Committee on Taxation to raise \$28 billion over 10 years.¹⁰ In contrast, an interpretation of section 6045(c)(1)(D) as confined to just middlemen acting as agents or principals would not have raised as much revenue because digital asset brokers acting in this capacity were already covered by the definition of broker under section 6045(c)(1)(C).

The policy behind the statute's clarification of the broker definition also supports this broader interpretation of section 6045(c)(1)(D). Congress extended the information reporting rules under section 6045 to digital assets to close or significantly reduce the income tax gap from unreported income and to provide information about these transactions to taxpayers. *See* 167 Cong. Rec. S5702, 5703 (daily ed. August 3, 2021) (Joint Committee on Taxation, Technical Explanation of Section 80603 of the Infrastructure Act). According to the Government Accountability Office (GAO), limits on third party information reporting to the IRS is an important factor contributing to the tax gap. GAO, *Tax Gap: Multiple Strategies Are Needed to Reduce Noncompliance*, GAO–19–558T at 6 (Washington, DC: May 9, 2019). Third party information reporting generally leads to higher

levels of taxpayer compliance because the income earned by taxpayers is made transparent to both the IRS and taxpayers. An information reporting regime requiring reporting to the IRS on digital asset transactions would benefit tax compliance by helping to close the information gap with respect to digital assets. *See* TIGTA, Ref. No. 2020–30–066, *The Internal Revenue Service Can Improve Taxpayer Compliance for Virtual Currency Transactions*, 10 (September 2020); GAO, *Virtual Currencies: Additional Information Reporting and Clarified Guidance Could Improve Tax Compliance*, 28, GAO–20–188 (Washington, DC: February 2020). Reducing the tax gap and providing information to taxpayers is no less important when a DeFi participant, acting as a middleman, provides parties with technological services that enable those parties to carry out the DeFi transaction. Indeed, clear information reporting rules that require reporting of gross proceeds from a sale of digital assets in DeFi transactions will help the IRS identify taxpayers who have engaged in these transactions. These rules will also remind taxpayers who engage in DeFi transactions that the transactions are taxable, thereby reducing the number of inadvertent errors or noncompliance on their Federal income tax returns. Any exception to the information reporting rules for DeFi participants that have access to the necessary information about the transactions simply because they are offering their services through software, instead of through human interaction, would reduce the effectiveness of the information reporting rules. Moreover, such an exception could have the unintended effect of incentivizing taxpayers to change how they undertake digital asset transactions, thus thwarting voluntary compliance and IRS enforcement efforts to identify taxpayers engaged in digital asset transactions that have not reported their income properly.

3. Legislative History

As support for interpreting section 6045(c)(1)(D) as applicable only to persons acting as agents (or principals/dealers), several comments cited to several statements made by Senators as the Infrastructure Act was being considered. For example, one comment cited Senator Portman's statements made during a colloquy with Senator Warner (the colloquy), which referred to the intended purpose of the reporting rule not being “to impose new reporting requirements on people who do not meet the definition of brokers.” 167 Cong. Rec. S6095 (daily ed. August 9,

¹⁰ *See* JCT, JCX–33–21, *Estimated Revenue Effects of the Provisions in Division H of an Amendment in the Nature of a Substitute to H.R. 3684*, Offered by Ms. Sinema, Mr. Portman, Mr. Manchin, Mr. Cassidy, Mrs. Shaheen, Ms. Collins, Mr. Tester, Ms. Murkowski, Mr. Warner and Mr. Romney, The “Infrastructure Investment and Jobs Act” (August 2, 2021).

2021). Several comments cited Senator Warner's statements made during the colloquy referencing the intended application of the reporting rule to "digital asset exchanges or hosted wallet providers, often called custodians, or other agents involved in effectuating digital asset transactions." 167 Cong. Rec. S6095 (daily ed. August 9, 2021). Finally, another comment argued that Congress meant to limit the definition of broker to custodial brokers and referenced as support an article that quoted Senator Toomey saying that the definition of broker in the legislation was overly broad and "sweeps in nonfinancial intermediaries like miners, network validators, and other service providers . . . [that] never take control of a consumer's assets and don't even have the personal-identifying information needed to file a 1099 with the IRS." ¹¹

The Treasury Department and the IRS do not agree that these statements limit the Secretary's authority under section 6045(c)(1)(D) to only persons acting as agents (or principals/dealers). The plain language of the statute is the authoritative statement of a statute's meaning, and that language does not impose any such limitation. Moreover, the Senators' statements referred to in these comments, when read in full, reflect a fundamental concern with the potential application of section 6045(c)(1)(D) to persons that do not have access to the information needed to be reported, such as certain validators and developers of computer hardware and software for unhosted wallets. This fundamental concern was also reflected in a compromise amendment the Senate considered that would have revised the broker definition to "any person who (for consideration) regularly effectuates transfers of digital assets on behalf of another person." Importantly, this compromise amendment also included two rules of construction providing that the amended definition of broker shall not be construed to create any inference that such definition includes any person "solely engaged in the business of—(A) validating distributed ledger transactions, without providing other functions or services, or (B) selling hardware or software for which the sole function is to permit persons to control private keys which are used for accessing digital assets on a distributed ledger." See 167 Cong. Rec. S6131–2 (daily ed. August 9, 2021) (Senate

Amendment 2656). See also 167 Cong. Rec. S6096 (daily ed. August 9, 2021) (Senator Warner's statement in the colloquy that persons solely engaged in validating transitions and persons solely engaged in selling hardware or software with the sole function of permitting someone to control private keys used to access digital assets will not be treated as brokers under the proposed compromise amendment).

Although this compromise amendment was not adopted due to issues unrelated to the broker definition, the Treasury Department and the IRS have long held the view that the broker definition under section 6045(c)(1) should not apply to ancillary parties who cannot get access to information that is useful to the IRS. Indeed, notwithstanding the authority provided by section 6045(c)(1)(C) to treat middlemen as brokers, the section 6045 regulations impose broker reporting obligations only on those market participants in the securities industry that have the requisite information about the securities sales of their customers even though other market participants that do not have this information also act as middlemen in carrying out these sales. See e.g., § 1.6045–1(b)(2)(i) (stock transfer agent that ordinarily would not know the gross proceeds from sales not treated as broker); 1.6045–1(b)(2)(v) (floor broker that maintains no records with respect to the terms of sales not treated as broker).

Several comments cited to private sector publications describing unenacted prior drafts of the Infrastructure Act legislation and in particular drafts of the broker definition to argue that the definition in section 6045(c)(1)(D) cannot be interpreted to apply to DeFi platforms. According to a source cited by one comment, one prior draft would have provided that a broker includes "any person who (for consideration) regularly provides any service responsible for effectuating transfers of digital assets, including any decentralized exchange or peer-to-peer marketplace." ¹² According to another source cited by a different comment, another prior draft would have provided that a broker includes "any person who (for consideration) regularly provides any service or application (even if noncustodial) to facilitate transfers of

digital assets, including any decentralized exchange or peer-to-peer marketplace." ¹³ The Treasury Department and the IRS do not agree that these reported drafts of the broker definition support the more limited definition proposed by the comments. The text of the bills referred to in these comments does not reflect consideration by any member of Congress because these draft bills were not introduced. As such, they are not legislative history for the enacted amendments to section 6045.

One comment referenced several proposals to amend the current definition of broker that were introduced after the Infrastructure Act was enacted. These post-enactment proposals would limit the broker definition to persons who effect sales at the direction of their customers rather than persons who provide services effectuating transfers. See e.g., Lummis-Gillibrand Responsible Financial Innovation Act, S. 2281, 118th Cong. 802 (2023) (defining the term "broker" to mean "any person who (for consideration) stands ready in the ordinary course of business to effect sales of crypto assets at the direction of their customers"); Keep Innovation in America Act, H.R. 1414, 118th Cong. 2 (2023) (defining "broker" to include "any person who (for consideration) stands ready in the ordinary course of a trade or business to effect sales of digital assets at the direction of their customers"). The comment argued that these proposals indicate an intent to clarify the meaning of the broker definition under section 6045(c)(1)(D) so that the provision does not apply to DeFi participants. The Treasury Department and the IRS do not agree that the language within proposals to amend a statute offered after that statute is enacted are persuasive authority for how to interpret the meaning of the enacted statute. If anything, if the purpose of the proposed legislation is to change the language of the statute to prevent the application of the broker definition to DeFi participants, that would support the interpretation that the statute as enacted applies to such participants.

¹¹ Laura Weiss, *Wyden wants tweaks to infrastructure bill's cryptocurrency rules*, Roll Call (August 2, 2023), available at: <https://rollcall.com/2021/08/02/wyden-wants-tweaks-to-infrastructure-bills-cryptocurrency-rules/> (last visited October 17, 2024).

¹² Ella Beres, *Crypto Tax Enforcement Update: The New Broker Definition in the Information Reporting Requirement Provision of the Infrastructure Bill Aims to Exclude Node Operators, Miners, and Validators*, Davis Wright Tremaine LLP (August 3, 2021); available at: <https://www.dwt.com/insights/2021/08/crypto-tax-enforcement-update>.

¹³ Jason Brett, *New Language For Crypto Tax Reporting Excludes Decentralized Exchanges, Miners Still Vulnerable*, Forbes (August 2, 2021); available at: <https://www.forbes.com/sites/jasonbrett/2021/08/02/new-language-for-crypto-tax-reporting-excludes-decentralized-exchanges-miners-still-vulnerable/?sh=41b5027b5f56>.

4. Comparison of the Broker Definition With Standards Applied by Other Governmental Bodies

Several comments argued that the definition of broker as applied to digital assets should conform to standards developed by governmental bodies outside the purview of title 26. The Treasury Department and the IRS do not agree that rules or regulations outside the purview of title 26 should determine the scope of these final regulations.

Several comments argued that the definition of broker as applied to digital assets should be confined to persons acting as agents so that it would be consistent with the standard recommended by the Financial Action Task Force (FATF), an inter-governmental body that includes the United States and 39 other member nations and aims to prevent global money laundering and terrorist financing. In 2018, FATF modified its recommendations to member nations to address virtual assets and virtual asset service providers (VASPs).¹⁴ In 2021, FATF issued updated guidance intended to help national authorities and private sector entities to develop and understand anti-money laundering/counter-terrorism financing rules as applied to virtual asset activities and VASPs. This guidance specifically addresses DeFi arrangements.¹⁵ The Treasury Department and the IRS do not agree that the standard set forth in the 2021 FATF Guidance is limited to persons acting as agents. The 2021 FATF Guidance specifically states that creators, owners and operators, and some other persons who maintain control or sufficient influence in the DeFi arrangements, even if those arrangements seem decentralized, may fall under the FATF definition of a VASP when they provide or actively facilitate VASP services. Moreover, FATF's Targeted Update on Implementation of the FATF Standards on VAs and VASPs issued in June 2024 reports that nearly half of surveyed jurisdictions either require certain DeFi arrangements to be licensed or registered as VASPs. Over 40 percent of remaining surveyed jurisdictions

reported taking steps to identify and address risks in the DeFi ecosystem.¹⁶

Several comments suggested that the broker definition under section 6045(c)(1)(D) should be limited to custodial digital asset brokers so that it would be consistent with the broker reporting rules of other jurisdictions. As support, one comment cited the definition of "Reporting Crypto-Asset Service Provider" (RCASP) under the Crypto-Asset Reporting Framework (CARF),¹⁷ a framework for the automatic exchange of information between countries on crypto-assets developed by the Organisation for Economic Co-operation and Development (OECD), to which the United States is a party. Specifically, this comment argued that the proposed definition of broker would be inconsistent with the definition of RCASP, which provides that an RCASP includes someone that acts as a counterparty or intermediary in exchange transactions or that otherwise makes available a trading platform.¹⁸ Another comment argued that the definition of crypto asset services under the European Union's Markets in Crypto-Assets Regulation (MICA)¹⁹ also includes only centralized exchanges and custodial brokers.

The Treasury Department and the IRS do not agree that the CARF definition of RCASP is inapplicable to DeFi participants. Indeed, a frequently asked question (FAQ) relating to this issue was recently published by the OECD Committee on Fiscal Affairs' Working Party 10, which is the OECD group that developed the CARF. The question addressed in the FAQ is whether the definition of RCASP excludes non-custodial services that effectuate exchange transactions.²⁰ The term

RCASP is defined as "any individual or Entity that, as a business, provides a service effectuating Exchange Transactions for or on behalf of customers, including [. . .] by making available a trading platform."²¹ The FAQ answer explains that, for purposes of that definition, a trading platform may be made available by an individual or Entity with or without offering custodial services. Accordingly, the CARF definition of RCASP does not exclude DeFi participants.

Finally, the Treasury Department and the IRS do not agree that the MICA definition of crypto-asset services is limited only to centralized exchanges and custodial brokers. Title 1, Article 3 of MICA defines crypto-asset services to include the operation of a trading platform for crypto-assets and the custody and administration of crypto-assets on behalf of clients. Recital 22 of MICA makes it clear that crypto-asset services that are in part "performed in a decentralised manner" fall within its scope and excludes crypto-asset services only when they are "provided in a fully decentralised manner without any intermediary." To the extent that assertedly decentralized DeFi crypto-asset service providers in fact have a degree of centralized control, MICA treats those service providers as within its scope. Moreover, financial laws or regulations of a non-U.S. government or union of governments do not determine the scope of U.S. tax rules.

5. Miscellaneous Comments

One comment suggested that the broker definition under section 6045(c)(1)(D) is limited to custodial brokers because any application to non-custodial brokers would be an unprecedented expansion of the section 6045 reporting obligations. As support for this position, this comment stated that the application of the transfer statement requirements under section 6045A(a) to certain transfers of digital assets to brokers reflects Congress's focus on custodial brokers because those rules apply only to transfers to custodial brokers. Additionally, this comment argued that the new reporting obligation under section 6045A(d), which requires reporting on certain transfers of digital assets from accounts maintained by a broker, also reflects Congress's focus on custodial brokers. The Treasury Department and the IRS do not agree that the broker definition under section 6045(c)(1)(D) is limited to only custodial

¹⁴ FATF (2018), *Report to the G20 Leaders' Summit*, available at <https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/Report-G20-Leaders-Summit-Nov-2018.pdf>.

¹⁵ FATF (2021), *Updated Guidance for a Risk-Based Approach, Virtual Assets and Virtual Asset Service Providers*, ¶ 67–69, pp. 27–28, FATF, Paris. (2021 FATF Guidance), available at: <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/guidance-rba-virtual-assets-2021.html>.

¹⁶ See FATF (2024), *Targeted Update on Implementation of the FATF Standards on Virtual Assets and Virtual Asset Service Providers*, ¶ 53, p. 28. FATF, Paris, France, available at <https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/2024-Targeted-Update-VA-VASP.pdf.coredownload.inline.pdf>.

¹⁷ *International Standards for Automatic Exchange of Information in Tax Matters: Crypto-Asset Reporting Framework and 2023 update to the Common Reporting Standard*, OECD Publishing, Paris, June 8, 2023, available at: https://www.oecd.org/en/publications/international-standards-for-automatic-exchange-of-information-in-tax-matters_896d79d1-en.html (Crypto-Asset Reporting Framework).

¹⁸ See Rules, Section IV.B., Crypto-Asset Reporting Framework.

¹⁹ *Markets in Crypto-Assets Regulation (MICA) Regulation (EU) 2023/1114 of the European Parliament and the Council of 31 May 2023 on markets in crypto-assets*, Official Journal of the European Union, Volume 66, June 9, 2023, available at: <https://eur-lex.europa.eu/eli/reg/2023/1114/oj> (MICA).

²⁰ OECD, *Crypto-Asset Reporting Framework: Frequently Asked Questions*, September 2024, available at <https://www.oecd.org/content/dam/>

[oeecd/en/topics/policy-issues/tax-transparency-and-international-co-operation/faqs-crypto-asset-reporting-framework.pdf](https://www.oecd.org/en/topics/policy-issues/tax-transparency-and-international-co-operation/faqs-crypto-asset-reporting-framework.pdf).

²¹ See Rules, Section IV.B., Crypto-Asset Reporting Framework.

digital asset brokers. Section 6045A(a) cross references section 6045(c)(1) for the definition of broker, and there is no custodial broker limitation in the definition of broker in section 6045(c)(1). As discussed in the securities industry background in Part I.A. of this *Summary of Comments and Explanation of Revisions*, a securities broker may or may not hold customer assets in custody. The pre-TD 10000 regulations applied to securities brokers whether or not they provide custodial services. Additionally, dealers that are brokers under section 6045(c)(1)(A) can transact with customers without providing custodial services to those customers. Members of barter exchanges that are brokers under section 6045(c)(1)(B) can similarly exchange property or services with other members without the barter exchange holding custody of the traded property or services. See § 1.6045–1(e)(2)(i). Finally, the multiple broker rules under long-standing regulations illustrate fact patterns that demonstrate that not all persons treated as brokers under section 6045 are custodial brokers. See e.g., § 1.6045–1(c)(3)(iv) (cash on delivery) and (c)(4)(iii) and (iv) (*Examples 3 and 4*).

One comment suggested that the final regulations should treat as the broker only the DeFi participant that performs the actions without which the transaction could not be carried out. As the DeFi technology stack model shows, however, this proposed “but for” standard would most likely result in all the DeFi participants being treated as performing essential actions without which the transaction could not be carried out. The DeFi technology stack model shows that, in addition to the customer, there are multiple DeFi participants involved in causing a digital asset transaction to be carried out. Each of these DeFi participants provide services that are necessary to effectuate a transaction. The section 6045 regulations treat multiple parties in the securities industry that are involved in effecting a securities transaction as brokers and include a multiple broker rule to avoid duplicative reporting. As is discussed in Part III.A.1. of this *Summary of Comments and Explanation of Revisions*, however, these final regulations treat only one of these DeFi participants as the broker based on a determination of which DeFi participant is in the best position to provide the necessary reporting on the digital asset transactions of customers.

Several comments argued that retaining the broker definition in § 1.6045–1(a)(1) of the pre-TD 10000

regulations for digital asset broker reporting oversteps the statutory authority given to the Secretary because that definition fails to include a requirement that the broker’s activities be undertaken “regularly” and “for consideration” as required under section 6045(c)(1)(D). Another comment recommended that this “for consideration” requirement be added to the “trade or business” requirement in the broker definition under the regulations. The Treasury Department and the IRS do not agree that the broker definition fails to include these requirements. A broker is defined in § 1.6045–1(a)(1) as “any person . . . that, in the ordinary course of a trade or business during the calendar year, stands ready to effect sales to be made by others.” Under *Groetzinger v. Commissioner*, 480 U.S. 23 (1987), persons “engaged in a trade or business . . . must be involved in the activity with continuity and regularity . . . for income or profit.” Accordingly, the requirement that the person effect sales in the “ordinary course of a trade or business” is sufficient to ensure that the person treated as a broker under section 6045(c)(1)(D) “regularly” effects those sales “for consideration.”

One comment requested further guidance on what the “for consideration” requirement means in the context of the DeFi industry. Another comment argued that the “for consideration” requirement in the statute requires that the person providing the effectuating services earn consideration from each specific transaction effectuated to be included in the broker definition. The Treasury Department and the IRS do not agree that the text of the statute mandates such a narrow interpretation of this requirement or that it is necessary for these final regulations to address its meaning in the context of the DeFi industry. The same “for consideration” requirement has existed in the broker definition under section 6045(c)(1)(C) for over forty years, yet there is no exception for brokers providing services on an overall flat-fee basis or as a percentage of total invested assets. Moreover, such an exception would likely incentivize DeFi participants or other brokers to modify their fee models to avoid reporting, a result that would thwart the goals of information reporting.

III. Definitions of a Digital Asset Middleman and an Effectuating Service

Section 1.6045–1(a)(21)(i) defines a digital asset middleman as any person who, with respect to a sale of digital assets, provides a facilitative service.

Section 1.6045–1(a)(21)(iii)(B)(1) through (4) defines a facilitative service by referencing five specific services in which the broker acts either as an agent or a counterparty in a digital asset sale. As discussed in the *Background*, TD 10000 reserved on the portion of the facilitative services definition included in proposed § 1.6045–1(a)(21)(iii)(A) that would have defined a facilitative service as any service that directly or indirectly effectuates a sale of digital assets, such as providing a party in the sale with access to an automatically executing contract or protocol, providing access to digital asset trading platforms, providing an automated market maker system, providing order matching services, providing market making functions, providing services to discover the most competitive buy and sell prices, or providing escrow or escrow-like services to ensure both parties to an exchange act in accordance with their obligations.

Several comments argued that the proposed definition of facilitative services was too broad because it referred to services that both directly and indirectly effectuate sales of digital assets. Another comment argued that a standard that captures services that indirectly effectuate transactions would have no discernible limits. Several comments stated that this broad definition would apply the broker definition to internet browsers, smartphone manufacturers, internet service providers, and many other persons not even considered part of the DeFi industry because these participants arguably “indirectly” effectuate transactions. One comment said that the definition’s inclusion of services that “indirectly” effectuate transactions would treat as brokers persons who are not in the chain of proceeds settlement, such as fund administrators, which provide ancillary administrative services relating to a sale. Many of these comments recommended narrowing the definition of facilitative service to only include services that directly effectuate a sale.

The Treasury Department and the IRS agree that the proposed facilitative services definition’s reference to services that indirectly effectuate sales of digital assets is too broad. The Treasury Department and the IRS did not intend to include in the definition of broker persons not within the DeFi industry, such as internet service providers, internet browsers, or computer or smartphone manufacturers. Accordingly, to address this concern, as discussed in Parts III.A. through III.C. of this *Summary of Comments and Explanation of Revisions*, the final

regulations narrow the scope of DeFi participants that meet the definition of a digital asset middleman. Additionally, to make it clear that the reach of the digital asset middleman definition in this regard is not any broader than the broker definition under section 6045(c)(1)(D), the final regulations change the term facilitative services used in the proposed definition of digital asset middleman to the term effectuating services.

One comment stated that the definition of facilitative services would capture all participants described in the DeFi technology stack model resulting in duplicative reporting. Another comment stated that the facilitative services definition results in disparate treatment for DeFi participants in a digital asset transaction than is applied under current law to securities industry participants providing analogous services in a securities transaction. For example, this comment argued that the NYSE and Nasdaq are not brokers for section 6045 purposes, but analogous businesses in the DeFi industry would be brokers under the proposed facilitative services definition. Although, as discussed in Part II.B.1.b. of this *Summary of Comments and Explanation of Revisions*, the definition of broker under section 6045(c)(1)(D) is broad enough to include multiple DeFi participants involved in a DeFi transaction, the Treasury Department and the IRS have determined that such a broad definition could result in duplicative reporting. Accordingly, the Treasury Department and the IRS have determined that in these final regulations the only DeFi participants that should be treated as brokers are trading front-end service providers. This determination was made for several reasons, which are discussed in more detail in the remainder of this Part III. of this *Summary of Comments and Explanation of Revisions*. First, such providers are the DeFi participants that have the closest relationship to customers and therefore are in the best position to obtain customer identification information. Second, numerous commenters expressed concerns regarding, in the view of the comments, the difficulty in identifying operators of DeFi trading applications and the potential difficulty such operators would have in changing the potentially immutable code of those DeFi trading applications. Those concerns are not as salient to trading front-end service providers because those providers typically are legal entities or individuals and the software used to provide trading front-end

services is not immutable. Accordingly, the persons responsible for carrying out broker diligence and reporting will be easy for taxpayers and the IRS to identify, and those providers have the capability to modify their operations to comply with these regulations. Appropriately, these DeFi participants are also the participants that provide services that are most analogous to the functions performed by brokers in the securities industry.

A. Interface Layer Activities

1. In General

In addition to other listed services, the proposed regulations would have included in the definition of facilitative services certain services that are described in the DeFi technology stack model as interface layer services and which are referred to in this preamble as trading front-end services. Specifically, proposed § 1.6045–1(a)(21)(iii)(A) would have included in the definition of facilitative services any service that provides a party in the sale with access to an automatically executing contract or protocol or digital asset trading platform. To illustrate the meaning of providing a party with such access, proposed § 1.6045–1(b)(17) (*Example 17*) describes a website that matches buyers and sellers of digital assets and thereafter directs such buyers and sellers to use automatically executing contracts to settle their matched transactions and concludes that the website is an example of providing these access services.

One comment suggested that instead of referring to the services that provide “access to an automatically executing contract or protocol or digital asset trading platform,” the final regulations should refer to these services as “front-end services” because the front-end term captures not only the visual elements provided by a website that offers these services but also the software that powers the interactive features of the website or mobile app, such as forms, buttons that initiate actions, and dynamic page updates without full page refreshes. The Treasury Department and the IRS agree with this recommendation and have adopted the front-end services terminology referred to herein as trading front-end services.²²

One comment stated that DeFi systems, including those created by software developers, operators of DeFi

protocols, and trading front-end service providers, are purely software infrastructure used for communication and coordination. This comment argued that these services are akin to those of a phone service provider, and therefore none of these DeFi participants participate in the buying or selling of digital assets. Another comment asserted that the definition of facilitative services should not apply to trading front-end services used by customers to interact with DeFi trading applications because these services are merely informational services, much like those provided by Google, Yahoo! Finance, or Wikipedia to internet users seeking information. This comment argued that, in all these cases, the service provider is merely generating and displaying information in response to user inputs, and, as such, should not be treated as carrying out what the user does with the provided information. Another comment suggested that trading front-end services should not be treated as facilitative services because these services are merely tools that are used by customers to access the DeFi ecosystem. Another comment similarly argued that trading front-end service providers merely provide tools through which customers can participate on their own in a DeFi transaction. This comment likened coded trade order instructions to a torque wrench that a person purchases to repair their own car as opposed to engaging a licensed mechanic who already owns a torque wrench to repair the person's car. One comment argued that the final regulations should treat DeFi trading applications as brokers, not trading front-end service providers. In contrast to these comments, a few comments acknowledged that trading front-end service providers should be the DeFi participant treated as brokers that are required to report under section 6045. One comment requested that the final regulations clarify that trading front-end service providers are brokers. This comment also noted that the software used by trading front-end service providers to perform these services can be modified and customized to comply with regulatory requirements and are already being modified by some market participants to comply with anti-money laundering (AML) and Know Your Customer (KYC) obligations under the Bank Secrecy Act (BSA) (31 U.S.C. 5311 *et seq.*).

The Treasury Department and the IRS agree that the suite of services offered by a trading front-end service provider, including the generation of customized coded trade order instructions, are

²² This preamble also uses the trading front-end services term in describing the comments received even when those comments refer to these services using different terms, such as user interface services or application programming interface.

provided through software that is used for communication and coordination of functions on the distributed ledger network. The Treasury Department and the IRS do not agree, however, that persons providing trading front-end services that enable their customers to interact with DeFi trading applications are akin to those of a phone service provider or are merely providing informational services like that of a search engine or that such services are analogous to buying off-the-shelf tools to repair one's own car because trading front-end services enable customers to engage in DeFi transactions. As discussed in Part I.B.1. of this *Summary of Comments and Explanation of Revisions*, trading front-end service providers offer a suite of services that enable their customers to view an array of choices relating to their proposed trades, to input their proposed trades, and then to initiate the additional steps necessary to trade their digital assets by interacting with other DeFi participants operating within the distributed ledger network. The suite of trading front-end services also includes, in some cases, interacting with customers in advance of a trade order to obtain their permission for a DeFi trading protocol to move digital assets out of the customers' wallets and converting these customer permissions into software code that can later interact with the DeFi trading protocol when a transaction is executed by the DeFi trading protocol. Once the customer authorizes the transaction, the coded trade order instructions prepared by the trading front-end services determine the subsequent steps in the transaction as it is processed, including calling the applicable DeFi protocol's automatically executing contracts for automatic execution and settlement if the transaction is included in a block and added to the blockchain by a validator. Consequently, not only do the suite of services offered by the trading front-end service provider supply the customer with information, but these services are also essential and integral to enabling the customer's order to be communicated, understood, and executed by the other DeFi participants operating within the distributed ledger network. Accordingly, the suite of services provided by a trading front-end service provider are not analogous to a torque wrench used to repair one's own car because, once customers authorize or sign the transaction in their wallets, the functions conducted thereafter within the distributed ledger network are all initiated by the services provided by the trading front-end service provider

(including the coded trade order instructions) whereas buyers of torque wrenches need to use their own skill to repair their cars. In the former case, the services provided to the customer effectuate the transaction via the coded trade order instructions whereas in the latter case, the buyer of the torque wrench, not the torque wrench itself, repairs the car.

Additionally, it should be noted that trading front-end services are analogous to the services provided by securities brokers in the securities industry. When a securities broker receives an investor's order to sell securities, it will generally have some mechanism to verify the order details. The securities broker will then route the order to a securities exchange or other trading center for execution or fill or match the order internally. If a transaction is ultimately executed, the transaction information typically will be sent to a clearing organization that will record and settle the transaction by moving the traded securities and funds between the appropriate accounts. That is, once the customer has provided the trade order details to the securities broker and authorized the transaction, the remaining steps in a transaction that is executed by a securities exchange or other trading center take place pursuant to the securities broker's communications with other market participants. The securities broker functions as the recipient of the customer's order and the intermediary that typically communicates the customer's trade order to other market participants for eventual execution of that order.

Like the services provided by securities brokers in the securities industry, a trading front-end service provider receives a customer's trade order, verifies the order details, and obtains confirmation from the customer. Although the trading front-end service provider may not obtain the customer's final authorization for the transactions or transmit the coded trade order instructions to the distributed ledger network, the services provided by the trading front-end service provider enable the customer's trade order to be communicated to the other DeFi participants, including the specific DeFi trading protocol called by the coded instructions and the other DeFi participants operating on the settlement layer, to execute the transaction. Indeed, the coded trade order instructions provided by the trading front-end service provider are analogous to the coded trade order instructions that a securities broker sends to a securities exchange or other trading center in a

traditional securities transaction and are essential to carrying out the overall transaction. Accordingly, because these trading front-end services provide essential services that enable their customers to carry out DeFi transactions, the Treasury Department and the IRS have determined that it is also appropriate to treat these services as effectuating services.

Further, the Treasury Department and the IRS understand that trading front-end services are typically offered by a legal entity or individual, which means there is a person within the meaning of section 7701(a)(1) that would be obligated to comply with broker reporting. Additionally, because persons providing trading front-end services generally host websites, these persons provide services that interact directly with customers undertaking DeFi transactions. Indeed, there generally is an agreement between trading front-end service providers and their customers, under which, as part of customary onboarding procedures, customers are treated as having agreed to general terms and conditions. These agreements may be part of the compliance program used by trading front-end service providers to assess the customer's suitability with respect to economic sanctions programs administered and enforced by Treasury Department's Office of Foreign Assets Control (OFAC).²³ As such, a person providing trading front-end services is the DeFi participant that is closest to the customer. In contrast, as discussed in Part III.B. of this *Summary of Comments and Explanation of Revisions*, some comments argued that DeFi trading applications are not operated by persons within the meaning of section 7701(a) and do not interact directly with the customer undertaking DeFi transactions. Additionally, unlike the potentially immutable code used by DeFi trading applications, the suite of services provided by trading front-end service providers typically utilize software that is mutable. Accordingly, the Treasury Department and the IRS have determined that it is appropriate to treat trading front-end service providers as brokers under section 6045(c)(1)(D) for the following reasons. First, trading front-end service providers are the DeFi participants that have the closest relationship to the customers and therefore are in the best position to obtain customer identification information. Second, trading front-end

²³ See OFAC, *Frequently Asked Questions: Questions on Virtual Currency*; 560, available at: <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/560> (discussing OFAC compliance obligations for transactions using digital currency).

service providers are legal entities or individuals that can be identified by taxpayers and the IRS. Third, trading front-end service providers typically do not utilize immutable code in providing these services and therefore can make changes to their operations to comply with these regulations. Therefore, with respect to any digital asset sales²⁴ effected by these brokers that are subject to reporting, these brokers must file Forms 1099-DA, *Digital Asset Proceeds From Broker Transactions*, to report the information required by that form as appropriate and must retain the information for seven years as required to be retained by § 1.6045-1(d)(11)(i), such as the transaction ID of the reported transaction and the digital asset address from which the digital asset was transferred in connection with the sale. In addition, the required information must also be made available for inspection upon request by the IRS. For a discussion of the reasons why the Secretary exercised discretion in not treating other DeFi participants, such as persons that operate DeFi trading applications and persons that perform functions on the settlement layer, as brokers under section 6045(c)(1)(D), see Parts III.B. and III.C. of this *Summary of Comments and Explanation of Revisions*.

Several comments argued that the facilitative services definition should not apply to trading front-end service providers (including certain unhosted wallet providers as discussed in Part III.A.2. of this *Summary of Comments and Explanation of Revisions*) because the customer must authorize the transaction in the customer's wallet after the wallet receives the coded trade order instructions from the trading front-end service provider and because it is the customer's wallet, not the trading front-end service provider, that sends the coded trade order instructions to the distributed ledger. One comment asserted that trading front-end service providers do not monitor whether a customer deploys the coded trade order instructions received from the trading front-end service provider, just as an encyclopedia does not monitor whether a reader uses information obtained from its pages. Another comment argued that, to be consistent with standards applied by other offices of the Treasury Department, these final regulations must adopt the standard used by the

Financial Crimes Enforcement Network (FinCEN)

in its guidance relating to virtual currencies. See Fin-2019-G001, *Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies*, May 9, 2019 (2019 FinCEN Guidance). Specifically, in the view of this comment, FinCEN's 2019 Guidance looked to whether a user had "total independent control over the value [of digital assets]" in determining whether digital asset businesses providing services to that user are money services businesses subject to AML obligations under the BSA and FinCEN's implementing regulations. See 31 CFR chapter X.

The Treasury Department and the IRS considered these comments but do not agree that trading front-end service providers should be excluded from the broker definition for the following reasons. First, although it may be the wallet, and not the trading front-end service provider, that sends the coded trade order instructions to the distributed ledger network, it is the coded trade order instructions generated by the suite of services offered by the trading front-end service provider that ultimately call for the interaction with the DeFi trading protocol's automatically executing contracts and, once the transaction is selected for validation and included in a block, cause the validator to settle the transaction. These trading front-end services provide an essential communication function notwithstanding that the coded trade order instructions may not be broadcast to the distributed ledger network by the trading front-end service provider.

In addition, although the preamble to TD 10000 looked to the application of the BSA's AML obligations as support for the conclusion that operators of custodial digital asset trading platforms, digital asset hosted wallet providers, and digital asset kiosks have information about their customers, the Treasury Department and the IRS are not required to follow the BSA or the 2019 FinCEN Guidance in determining whether trading front-end service providers should be brokers under section 6045(c)(1)(D). The AML obligations in FinCEN's regulations issued under the BSA apply generally to financial institutions, whereas information reporting under section 6045 applies to persons included in the definition of broker under section 6045(c)(1). Because section 6045 did not condition the definition of broker on such person being a financial institution under the BSA, the extent to which

AML obligations apply to trading front-end service providers does not limit the Secretary's ability to treat such persons as brokers under section 6045(c)(1)(D). Cf. section 6050I(c)(1)(B) (explicit reference to BSA).

These final regulations are issued under title 26, and this preamble therefore does not address the proper interpretation of FinCEN's total independent control standard in the 2019 FinCEN Guidance. In any event, the Treasury Department and the IRS do not agree that a total independent control standard is the appropriate standard for determining whether a DeFi participant, such as a trading front-end service provider, provides a service that effectuates a transfer of digital assets as required by section 6045(c)(1)(D), or that a user of trading front-end services has sole control over its assets when it uses a trading front-end service. Trading front-end service providers offer a suite of services that include the translation of the customer's trade order input into coded trade order instructions that ultimately call for the interaction of the customer's digital assets with the DeFi trading application and, once the transaction is selected for validation and included in a block, cause the validator to settle the transaction. For example, these coded trade order instructions specify the number and type of digital assets to be removed from the customer's wallet and the type of digital assets to be deposited into the customer's wallet in exchange. Additionally, the trading front-end services also may include obtaining the customer's permission for the DeFi protocol to remove digital assets out of the customer's wallet and translating that permission into a separate set of instructions that will be broadcast to the distributed ledger for use by the DeFi protocol in future transactions authorized by the customer. Moreover, in some cases, a trading front-end service provider might take control of the customer's digital assets by routing the customer's digital assets to an address controlled by the trading front-end service provider. Accordingly, despite not holding the digital asset customer's private keys, once the customer authorizes or signs the transaction, the services provided by the trading front-end service provider exercise a degree of control over the customer's digital assets involved in transactions.

Numerous comments argued that trading front-end service providers should not be treated as brokers because they are unable to backup withhold from the digital assets disposed by the customer in the transaction or the

²⁴ Like centralized brokers, however, these trading front-end service providers treated as brokers are not required to report on the transactions identified in Notice 2024-57, 2024-29 I.R.B. 67 (July 15, 2024), for which brokers are not required to make a return under section 6045(a) until further guidance is issued.

digital assets received in the transaction because trading front-end service providers do not have custody of the private keys used for accessing a customer's digital assets. Another comment recommended that, if trading front-end service providers are treated as brokers, they should be exempt from any obligation to backup withhold in DeFi transactions. The final regulations do not adopt these comments. Backup withholding is an essential enforcement tool to ensure that complete and accurate information returns can be filed by brokers with respect to payments made to their customers. Accurate taxpayer identification numbers (TINs) provided by the customers of brokers and other information provided by brokers are critical to matching such information with income reported on a customer's Federal income tax return. Customers that fail to provide their TINs to a broker as requested may be liable for penalties under section 6723 of the Code. A complete exception from backup withholding for DeFi sales of digital assets would increase the likelihood that customers will not provide correct TINs to their brokers. Trading front-end service providers exercise a degree of control over their customer's digital assets once the transaction has been authorized or signed in the customer's unhosted wallet to withhold their fees from the customer's digital assets and can similarly satisfy their obligation to backup withhold from either the digital assets disposed by the customer in the transaction or the digital assets received in the transaction should the customer fail to provide its name, address, and TIN. The Treasury Department and the IRS are aware, however, that not all arrangements between trading front-end service providers and their customers currently provide for backup withholding. The Treasury Department and the IRS intend to publish a notice of proposed rulemaking under § 31.3406(h)-2(b) with proposed regulations that would provide trading front-end service providers with greater flexibility to satisfy their backup withholding obligations with respect to these transactions.

One comment argued that the delivery of application-programming interfaces is merely the provision of hardware or software that enables customers to access digital assets, and the legislative history is clear that such activities ought not cause a person to be a broker. The Treasury Department and the IRS agree that persons that provide application-programming interface services, which is another name for trading front-end

services, write the software code that translates the details of the customer's trade order into coded trade order instructions. The Treasury Department and the IRS do not agree that the definition of broker should turn on the technological nature of the services provided. Instead, the definition should turn on what those services do. Because trading front-end service providers provide services that their customers need in order to engage in DeFi transactions and that are designed specifically for that purpose, that is, by offering a menu of transactions for a customer to choose from and translating the details of the customer's trade order into coded trade order instructions that are used to communicate with other DeFi participants in order to engage in DeFi transactions, it is appropriate to treat these services as effectuating transfers of digital assets under section 6045(c)(1)(D).

Several comments argued that because some digital asset users can themselves write the software code that is included in the coded trade order instructions, trading front-end service providers that provide this software coding service should not be treated as brokers. The final regulations do not adopt this comment because trading front-end service providers offer a suite of services to customers that enable them to engage in DeFi transactions. Moreover, that some sophisticated digital assets users are able to interact with DeFi trading protocols without the services provided by trading front-end service providers should not affect the obligation of trading front-end service providers to report on the transactions of customers that do utilize their services. Additionally, as discussed in Part III.B. of this *Summary of Comments and Explanation of Revisions*, the IRS intends to evaluate the information reported by trading front-end service providers and the extent to which changes in the industry enable retail digital asset users to use DeFi trading applications without using trading front-end services.

In sum, for all these reasons, the Treasury Department and the IRS have concluded that trading front-end services that enable customers to interact with DeFi trading applications should be treated as effectuating services for purposes of the digital asset middleman rule. Accordingly, final § 1.6045-1(a)(21) defines a digital asset middleman as any person who is responsible for providing an effectuating service with respect to a sale of digital assets. Final § 1.6045-1(a)(21)(i) defines an effectuating service as any trading front-end service where the person

providing that service ordinarily would know or be in a position to know the nature of the transaction (as defined in final § 1.6045-1(a)(21)(iii)(B) and discussed in Part III.A.3. of this *Summary of Comments and Explanation of Revisions*) or any other service set forth in § 1.6045-1(a)(21)(iii)(B)(1) through (5) (previously referred to as a facilitative service in TD 10000). The final regulations use the term "trading front-end service" rather than "front-end service" to make it clear that only the front-end services that enable customers to interact with DeFi trading applications are included in the effectuating services definition. Specifically, final § 1.6045-1(a)(21)(iii)(A)(1) limits the definition of a trading front-end service to a service that, with respect to a sale of digital assets, receives a person's order to sell and processes that order for execution by providing user interface services, including graphic and voice user interface services, that are designed to: (i) enable such person to input order details with respect to transactions to be carried out or settled on a distributed ledger or similar technology; and (ii) transmit those order details so that the transaction can be carried out or settled on a distributed ledger or similar technology, including by transmitting the order details to the person's wallet in such form that, if authorized or signed by the person, causes the order details to be transmitted to a distributed ledger network for interaction with a digital asset trading protocol. The Treasury Department and the IRS are aware that technology evolves rapidly. Accordingly, this definition is intended to apply broadly to any front-end service that enables customers to input their order details for interaction with a digital asset trading protocol regardless of the order of the steps necessary to carry out that transaction on the distributed ledger network. It is also intended that this definition will apply to any front-end service that enables customers to interact with aggregation protocols as well as digital asset trading protocols.

Additionally, final § 1.6045-1(a)(21)(iii)(A)(2) provides additional rules for determining whether services are trading front-end services. First, services are defined as trading front-end services without regard to whether the digital assets received upon execution of the transaction at a digital asset address in the wallet controlled by the person using the trading front-end services to dispose of digital assets (first person) or at a digital asset address in a wallet controlled by a second person,

including the provider of the front-end services itself. Thus, for example, if a first person uses services that otherwise meet the definition of trading front-end services to exchange digital asset A for digital asset B and the order details include an instruction to deliver digital asset B to a digital asset address in a wallet controlled or owned by a second person, for example, as a payment, the services provided by the front-end service provider will be treated as trading front-end services.

Final § 1.6045–1(a)(21)(iii)(A)(2) also provides that the transmission of order details to a distributed ledger network for interaction with a digital asset trading protocol includes the direct or indirect transmission to a distributed ledger network of order details that call upon or otherwise invoke the functions of automatically executing contracts that comprise a digital asset trading protocol. Accordingly, the addition of intermediate steps before the digital asset customer's transaction can be broadcast to a distributed ledger network or before the transaction can otherwise cause the interaction with a digital asset trading protocol, whether for business purposes or in an attempt to avoid meeting the trading front-end services definition, will not prevent the services provided by the trading front-end service provider from being treated as trading front-end services. Thus, for example, the transmittal of a customer's order details for interaction with a DeFi aggregator application before interaction with a specific DeFi trading protocol that offers the most favorable transaction terms is an indirect transmission to a distributed ledger network for interaction with a digital asset trading protocol described in final § 1.6045–1(a)(21)(iii)(A)(1)(ii). This rule would not, however, treat basic speech-to-text interface services that merely translate customer's voice commanded trade orders to written text orders as trading front-end services because basic text-to-speech interface services do not invoke the functions of the DeFi protocol as required by final § 1.6045–1(a)(21)(iii)(A)(1)(ii). Instead, the translated speech-to-text trade order would be sent to a trading front-end service provider that would, in turn, convert that written trade order into coded trade order instructions.

In addition, final § 1.6045–1(a)(21)(iii)(C) provides exceptions for certain wallet services and validation services, which exceptions are discussed in Parts III.A.2. and III.C. of this *Summary of Comments and Explanation of Revisions*. Additionally, final § 1.6045–1(a)(21)(iii)(D) defines a digital asset trading protocol as a

distributed ledger application consisting of computer software, including automatically executing contracts, that exchange one digital asset for another digital asset pursuant to instructions from a user.

One comment requested guidance regarding whether persons that offer front-end services for users to provide liquidity to liquidity pools or users to stake their assets through staking pools that issue receipts or tokens in exchange for the users' digital assets would be treated as brokers under the broker definition. Although the definition of trading front-end services under these final regulations could apply to front-end services that enable users to contribute their digital assets to liquidity pools and to staking pools in exchange for receipts or tokens, brokers are not required to make returns on these transactions under section 6045 until a determination has been made that these transactions are subject to such reporting. See Sections 3.03 and 3.04 of Notice 2024–57, 2024–29 I.R.B. 67 (July 15, 2024). The Treasury Department and the IRS anticipate that any termination to the no-reporting relief in Notice 2024–57 for such transactions will take into account that the termination may cause persons not currently required to report to start doing so and therefore such persons would need some time to build or buy systems to comply with reporting. Finally, in response to the comment requesting clarification as to whether providing staking as a service could cause the provider to be treated as a broker, to the extent that such services do not give rise to the sale of a digital asset, the provision of those services would not cause the provider to be treated as a broker.

2. Unhosted Wallet Services

Proposed § 1.6045–1(a)(21)(iii)(A) included two sentences in the proposed definition of facilitative services that addressed the extent to which unhosted wallet services were included in the definition. The first sentence would have specifically excluded from the definition of facilitative services the selling of hardware or the licensing of software for which the sole function is to permit persons to control private keys which are used for accessing digital assets on a distributed ledger if such functions are conducted by a person solely engaged in the business of selling such hardware or licensing such software. The second sentence illustrated the limits of this proposed exclusion by stating that software that provides users with direct access to trading platforms from the wallet

platform is not an example of software with the sole function of providing users with the ability to control private keys to send and receive digital assets. Proposed § 1.6045–1(b)(23) (*Example 23*) illustrated the wallet exclusion rule by describing a wallet that neither provides “access” nor “connection services” to a digital asset trading platform, and proposed § 1.6045–1(b)(22) (*Example 22*) illustrated the limits of the wallet exclusion rule by describing a wallet that provides “access” to a digital asset trading platform.

One comment argued that the wallet exclusion rule's application only to wallets the “sole function” of which is to permit persons to control private keys was too narrow because the purpose of wallet software is to allow users to interact with other blockchain addresses (including smart contracts). The Treasury Department and the IRS do not agree that this exclusion is too narrow. The rationale behind the wallet exclusion was to exclude ancillary parties who cannot obtain information about sales of digital assets. Senator Warner's statements made during the colloquy make it clear that he intended this wallet exclusion to be limited to providers of those wallets for which the only function is to permit persons to control private keys which are used for accessing digital assets on a distributed ledger. 167 Cong. Rec. S6095–6 (daily ed. August 9, 2021). Senator Warner's expressed intent to provide only a limited exclusion for wallet providers is made even more clear when he said later in the colloquy, “[o]f course, if these [wallet providers] . . . provide additional services for consideration that would qualify as brokerage, the rules would apply to them as any other broker.” 167 Cong. Rec. S6096 (daily ed. August 9, 2021).

Many comments argued for a complete exclusion from the facilitative services definition for wallet services because, the comments stated, wallet providers and wallet developers typically do not have the information necessary to know the nature of transactions processed nor are they generally able to obtain that information. One comment stated that once the private key is exported, the wallet provider may not even be aware that a transaction happened if the transaction originates with a third-party trading front-end service provider, even though the digital assets disposed of in the transaction are removed from the user's wallet and the digital assets received in the transaction are received in the user's wallet. Another comment stated that unhosted wallet providers

may be able to see the digital assets leaving a wallet, but they cannot know the underlying details of the transaction. One comment stated that unhosted wallet providers do not typically know the functionality of a given protocol that a wallet user interacts with using the user's wallet.

As discussed in Part I.B. of this *Summary of Comments and Explanation of Revisions*, providers of unhosted wallets often provide customers with an assortment of services. Because the rationale behind the wallet exclusion is to exclude ancillary parties who cannot obtain information about sales of digital assets, it is important to examine each of these services to determine if they enable the person providing the wallet services to obtain information about customers' sales of digital assets contained in the wallet. Services provided by the wallet for key storage and transaction authorization are performed in every transaction undertaken with digital assets in the customer's wallet. These services, however, do not provide any information to the person providing the wallet services regarding the underlying nature of the transaction. Services enabling customers to transfer native and non-native digital assets on the distributed ledger similarly do not provide any information to the person providing the wallet services regarding the underlying nature of the transaction. Additionally, the connection that enables a customer to go to a third-party trading front-end service provider for trading front-end services also does not provide the person providing the wallet services with information with respect to the transaction because the coded trade order instructions in that case are created by the third-party trading front-end service provider. Thus, despite the transaction being sent to the customer's wallet for authorization or signature before it is then transmitted by the wallet to the distributed ledger for interaction with the DeFi trading application, the person providing the wallet services does not have visibility into the coded trade order instructions if the instructions are created by a third-party trading front-end service provider. Accordingly, the Treasury Department and the IRS have determined that it is appropriate to treat all these basic wallet services as excluded from the definition of effectuating services under the final regulation.

In contrast, when the person providing the wallet services also provides trading front-end services for a transaction, this wallet provider creates the coded trade order instructions that includes the specifics of the customer's

trade order. In that circumstance, the person providing these enhanced wallet services has the information about the underlying sale. Additionally, these persons also interact directly with their customers and, as such, can obtain the customer's identity. Accordingly, it is appropriate in these cases to treat these enhanced wallet trading front-end services as effectuating services under the final regulation and a person providing these enhanced wallet services as a digital asset middleman.

Several comments requested guidance regarding the extent to which a developer of wallet software that provides a service that is considered to be a "service effectuating" transfers should be treated as a provider of that service. The extent to which a software developer would be treated as the provider of the software's services is a question of fact that depends on how the software sale or licensing transaction is structured and the activities provided by the software developer thereafter. For example, if a developer licenses or sells the developed software to a third party, who thereafter uses the software without any continuing involvement by the software developer to provide wallet services to customers, the software developer would not be the provider of the wallet services. In contrast, if the software developer licenses the wallet services directly to customers, the developer would be the provider of the wallet services. The Treasury Department and the IRS disagree with the comment in so far as it can be read to suggest that the final regulations should incorporate additional guidance regarding each potential factual scenario.

One comment stated that persons providing unhosted wallet services do not know the identities of their customers taking part in the transaction. Another comment stated that these persons may have difficulty determining who is the beneficial owner of the digital assets held within the wallet, such as when more than one customer knows the private key or when one person opens an account on behalf of another person. The Treasury Department and the IRS do not agree that persons providing wallet services are not able to obtain the identities of their customers. On the contrary, a person providing wallet services is the DeFi participant in the best position to obtain that information because there generally is an agreement between the person providing wallet services and the customer under which, as part of customary onboarding procedures, such customers are treated as having agreed to general terms and conditions. Those

terms and conditions can address the need to obtain customer identification information. Although, as suggested by the comments, it may be difficult for the person providing wallet services to be certain that the person controlling the private keys in the wallet is the beneficial owner of the digital assets held within the wallet, this concern is no different from any other business that transacts with customers electronically.

Many comments stated that, taken together, the wallet exclusion in the proposed regulations would result in treating all providers of wallet software as brokers. Several comments argued that this wallet exclusion was too narrow because all wallet software provides users with "access" to digital asset trading platforms, thus, no wallet provider will qualify for the exclusion. Several comments stated that the wallet exception's reference to software that provides wallet users with "direct access to trading platforms from the wallet platform" made it difficult to understand how the overall wallet exclusion was intended to apply because "trading platform" and "wallet platform" were not defined in the proposed regulations. One comment argued that the wallet connection services referred to in proposed § 1.6045-1(b)(23) (*Example 23*) should not be considered a facilitative service because this software merely permits a wallet user to authorize transactions involving digital assets in the user's wallet with respect to a transaction initiated outside of the wallet. Some comments argued that this broad application of the facilitative services definition to persons providing wallet services was inconsistent with the stated intent of the proposed regulations and the legislative history of the amendment to section 6045.

Several comments argued that the wallet services described in the wallet exclusion rule should not be limited to persons "solely" engaged in the business of selling such hardware or licensing such software. These comments argued that even if a person is engaged in other activities that constitute acting as a broker with respect to one transaction, those activities should not affect whether the person is a broker with respect to the wallet services described in the wallet exclusion provided with respect to a second transaction. That is, when a person who is a wallet provider engages in broker activities with respect to the first transaction, this does not affect whether that wallet provider can obtain the information necessary to report the second transaction. Several comments

argued that a precise interpretation of the wallet exclusion rule as written would result in treating wallet providers that conduct any other activities (even non-business hobbies) as providing facilitative services and as brokers for all activities. Another comment argued that although a well-advised wallet provider could put exempt activities into different legal entities to achieve a more rational result, it would be more appropriate to modify the rule to remove this restriction. Another comment suggested that this requirement would create a “cliff effect” for wallet providers, whereby a wallet provider that offers one service that falls within the broker definition will be treated as a broker for all transactions undertaken by customers using that provider’s wallet services.

The Treasury Department and the IRS agree that the exclusion for wallet services should not be limited to persons that are “solely” engaged in the business of selling such hardware or licensing such software. Additionally, the requirement should not cause wallet providers to be brokers for all transactions undertaken by customers using that provider’s wallet services if the provider offers one service that falls within the broker definition. For that reason, final § 1.6045–1(a)(21)(iii)(C)(2) provides that if a person licenses software or sells hardware that provides unhosted wallet services that include both trading front-end services with respect to some sales of digital assets and other services that are not trading front-end services (or other effectuating services under final § 1.6045–1(a)(21)(iii)(B)) with respect to other sales of digital assets, then that person will be treated as providing effectuating services only with respect to the sales of digital assets that are carried out using the trading front-end services provided by the unhosted wallet. Accordingly, persons providing unhosted wallet services must make information returns with respect to customer sales that are undertaken using the wallet’s trading front-end services, but those persons are not required to make information returns with respect to customer sales that are undertaken using a third-party front-end service provider’s trading front-end services. A wallet provider that does not provide trading front-end services but provides other effectuating services described in final § 1.6045–1(a)(21)(iii)(B), however, would nonetheless be required to report on customer sales effected using those other services. Thus, for example, if a person providing unhosted wallet services also operates a digital asset

kiosk, that person would be required to report on sales of digital assets undertaken by customers using that kiosk even if the digital assets sold were stored in an unhosted wallet provided by that person. Additionally, § 1.6045–1(b)(2)(x) (*Example 2*) has been modified to conform to this final rule.

3. Position To Know

Under proposed § 1.6045–1(a)(21)(i), a person performing facilitative services with respect to a sale would meet the definition of a digital asset middleman only if the nature of the services arrangement is such that the person ordinarily would know or be in a position to know the identity of the party that makes the sale and the nature of the transaction potentially giving rise to gross proceeds from the sale.

a. Position To Know the Identity of the Customer

Proposed § 1.6045–1(a)(21)(ii)(A) would have treated a person as ordinarily knowing or in a position to know the identity of the party that makes the sale if that person maintains sufficient control or influence over the provided facilitative services so as to have the ability to set or change the terms under which its services are provided to request that the party making the sale provide that party’s name, address, and TIN, in advance of the sale. The proposed rule also would have treated this sufficient control or influence standard as being met if the person providing the facilitative services has the ability to change the fees charged for those services.

Several comments recommended that the final regulations retain only the ordinarily would know standard as applied to knowing the identity of the customer. Other comments stated that the position to know standard has no reasonable limitation because virtually any provider could theoretically request customer information or modify the terms of its arrangement or fee structure. Several comments criticized the new standard because it does not use an objective test but rather an “ability” standard which is not based on the DeFi participant’s business model but instead is based on hypothetical circumstances. One comment asserted that persons that provide wallet services and application-programming interface services do not meet the position to know standard with respect to a customer’s identity because, the comment stated, these providers have no information on the customer. In contrast, several comments stated that providers of user interface services have sufficient control or influence to add the services necessary to comply with the

position to know standard and the proposed broker reporting requirements. Indeed, one comment stated that these interfaces can be modified and customized to comply with regulatory requirements and are already being modified by some market participants to permit AML/KYC compliance.

As discussed in Part III.A.1. of this *Summary of Comments and Explanation of Revisions*, persons that provide trading front-end services work directly with customers to translate their trade order details into coded trade order instructions for later use. These services are provided pursuant to general terms and conditions that the customers agree to as part of customary onboarding procedures. Accordingly, trading front-end services can update these general terms and conditions as necessary to learn the identity of their customers. Given that trading front-end service providers have access to their customers and, therefore, can query them about their identity, the Treasury Department and the IRS have determined that it is not necessary in the final regulations to include the position to know standard as applied to the identity of the party that makes the sale. It should be noted that there is currently no knowledge standard for any other brokers regarding the identity of the customer because these rules only treat persons that have access to customers as brokers.

b. Position To Know the Nature of the Transaction

Proposed § 1.6045–1(a)(21)(ii)(B) would have treated a person as ordinarily knowing or in a position to know the nature of the transaction potentially giving rise to gross proceeds from a sale if that person maintains sufficient control or influence over the facilitative services provided to have the ability to determine whether and the extent to which the transfer of digital assets involved in a transaction gives rise to gross proceeds, including by reference to the consideration that the person receives or pursuant to the operations of, or modifications to, an automatically executing contract or protocol to which the person provides access. The proposed rule also would have treated this sufficient control or influence standard as being met if the person providing the facilitative services has the ability to change the fees charged for those services.

One comment asserted that persons that provide application-programming interface services do not meet the position to know standard with respect to the nature of the transaction because these providers have no information on

whether the underlying transaction actually took place. Another comment agreed with the proposed position to know standard's reference to sufficient control or influence because it is consistent with the FATF standard, which provides that creators, owners, and operators or some other persons who "maintain control or sufficient influence" in the DeFi arrangements may fall under the FATF definition of a VASP where they are providing or actively facilitating VASP services. 2021 FATF Guidance at ¶ 67, p. 27. Several comments stated that trading front-end service providers do not have visibility into the nature of the transaction because they do not monitor whether a customer deploys, through the customer's wallet, the coded trade order instructions that they provided. One comment questioned whether a person meets this standard if the person needs to implement technological changes to be in a position to know the nature of the transaction. Several comments requested that the final regulations eliminate the position to know standard and instead only apply the ordinarily would know standard because the position to know standard would force trading front-end service providers to modify their services to comply with the final regulations. One comment explained that although some trading front-end service providers might receive contingent trade-based fees, others receive non-contingent payments for their services. For example, this comment stated that some trading front-end services provided by blockchain explorers provide services that require considerable sophistication for customers to use and, as a result, receive their compensation from sources other than these customers, such as advertising revenue, donations, or sales of blockchain data. Trading front-end service providers might alternatively receive non-contingent periodic payments under a services agreement with a DeFi governance organization, such as a foundation or decentralized autonomous organization (DAO). This comment stated that, in the case of a services agreement with a DeFi governance organization, a trading front-end service provider might collect data on protocol use (such as, the number of transactions and average transaction size) in setting its periodic fees. The comment argued that the reviewed data on the protocol is anonymized by the blockchain technology and not specific enough to the transactions undertaken pursuant to the front-end's services to provide definitive information about whether these transactions were

authorized or signed by the customer and then settled on the distributed ledger. Finally, regarding the proposed rule's reference to a person's ability to change its fees in determining whether a person has sufficient control or influence over its services, one comment requested that final regulations provide more guidance regarding what is meant by fees charged.

The Treasury Department and the IRS do not agree that trading front-end service providers do not have the ability to know if a transaction for which they provided coded trade order instructions was ultimately executed and settled on the distributed ledger. As stated by the referenced comment, trading front-end service providers may receive contingent, trade-based fees as consideration for their services. To ensure that these fees are paid, trading front-end service providers include in the coded trade order instructions a direction for the requisite fee (whether withheld from the traded-away digital assets or the traded-for digital assets) to be sent to a wallet address owned by the trading front-end service provider. Because this fee will not be paid unless the customer authorizes the transaction in the customer's wallet and the transaction is settled on the distributed ledger, the receipt of these fees provides the trading front-end service provider with the information necessary to know that the transaction took place. Trading front-end service providers that receive non-contingent fees for their services also have the ability to determine whether a transaction created through their trading front-end services was carried out. For example, these providers could include in the coded trade order instructions a direction to notify the trading front-end service provider when the transaction is settled on the distributed ledger similar to the way the sender of an email can receive a read receipt. Indeed, these providers inherently have more information about the transaction than other persons searching the blockchain, so they are in a better position to obtain relevant information from the blockchain. Although these final regulations may require trading front-end service providers receiving non-contingent consideration to make changes in the coded instructions solely for the purpose of complying with these broker reporting rules, this is not different from any other broker that makes changes in their operations to comply with these broker reporting rules. Accordingly, regardless of the structure of the trading front-end service provider's compensation, trading front-end service

providers maintain control or sufficient influence over the suite of services that they offer (including the coded trade order instructions) to have the ability to determine whether and the extent to which the transfer of digital assets involved in a transaction gives rise to gross proceeds.

Although trading front-end service providers should always be treated as maintaining control or sufficient influence over the suite of services that they offer (including the coded trade order instructions) to meet the position to know standard, the final regulations nevertheless have retained a modified version of the proposed position to know standard to ensure that other front-end service providers that might inadvertently be treated as providing trading front-end services under final § 1.6045-1(a)(21)(iii)(A) will not be treated as providing an effectuating service under this definition. Accordingly, pursuant to final § 1.6045-1(a)(21)(ii), a person providing a trading front-end service ordinarily would know or be in a position to know the nature of the transaction potentially giving rise to gross proceeds from a sale of digital assets if that person maintains control or sufficient influence over the trading front-end services to have the ability to determine whether and the extent to which the transfer of digital assets involved in a transaction gives rise to gross proceeds. The sufficient control or influence language used in the proposed regulations is modified to control or sufficient influence to draw from the language used in the 2021 FATF guidance. See 2021 FATF Guidance at ¶ 67, p. 27.

Final § 1.6045-1(a)(21)(ii) also adds three examples of when a person would meet this control or sufficient influence standard. These examples are not intended to be the exclusive examples that would meet this standard. First, the section provides that a person providing trading front-end services will be considered to maintain control or sufficient influence over such services if that person has the ability to amend, update, or otherwise substantively affect the terms under which the services are provided or the manner in which the order is processed. Second, similar to the proposed regulations' reference to a person's ability to change their fees in determining whether a person has sufficient control or influence over its services, final § 1.6045-1(a)(21)(ii) provides that a person that has the ability to collect the fees charged for the trading front-end services from the transaction flow (that is, from the digital assets disposed or the digital assets received in the trade order) would be

treated as a person that maintains control or sufficient influence over the trading front-end services provided. This result would apply whether or not the person providing trading front-end services actually collects fees in this manner for its services. Third, final § 1.6045–1(a)(21)(ii) provides that a person providing trading front-end services will be considered to maintain control or sufficient influence over such services if that person has the ability, in connection with processing the order, to add to the order a sequence of instructions to query the distributed ledger to determine if the processed order is, in fact, executed or to use another method of confirmation based on information known to that person as a result of providing the trading front-end services. In contrast, a front-end service provider that provides services that enable a website to be accessed on a computer or mobile device but does not translate the customer's trade order into coded trade order instructions that can be sent to the customer's wallet for authorization would not be considered maintaining sufficient control or influence over the services provided to know the nature of the transaction. Finally, to ensure that trading front-end service providers do not take steps to artificially avoid meeting the position to know standard, final § 1.6045–1(a)(21)(ii) provides that, except as provided by the Secretary, a contractual or other restriction not required by law that limits the ability of the person providing trading front-end services to amend, update, or otherwise substantively affect the terms under which the services are provided or the manner in which the order is processed will be disregarded for purposes of determining if a person meets the position to know standard. Thus, trading front-end service providers cannot contract with their customers or with operators of digital asset trading protocols to limit their coding ability to avoid falling within the effectuating services definition.

4. Other Policy Considerations

Several comments raised policy considerations in opposing the application of the digital asset middleman rules to DeFi participants. Some of these comments focused specifically on front-end service providers while others focused on DeFi trading applications or more generally on any DeFi participant that ultimately could be made subject to these rules. Several comments noted that because DeFi participants do not have custody of the digital asset user's private keys, they are not currently subject to any

comprehensive regulatory oversight, such as rules requiring the implementation of cyber-security programs, business continuity or disaster recovery programs, or comprehensive insurance policies. One comment suggested that not being required to turn over personally identifiable information (PII), including their names, addresses, and TINs, is a key reason why digital asset users engage with DeFi tools and that adding this requirement would deter these users from interacting with DeFi trading applications. One comment argued that developers of DeFi systems should not be treated as brokers because they face much steeper difficulties in setting up information collection and reporting regimes because they have historically focused on technology development rather than financial services.

The Treasury Department and the IRS do not agree that DeFi participants should be excluded from the information reporting rules under section 6045 because of a lack of financial services experience or because of a purported lack of comprehensive regulatory oversight. Persons with technology expertise that operate trades or businesses relating to financial services should comply with the same rules as any other person operating financial services businesses. Regarding the regulatory oversight comments, these final regulations concern Federal tax laws under the Internal Revenue Code only. The purported absence of regulatory oversight under any other legal regime that is outside the scope of these regulations does not govern the implementation of a provision under title 26. Therefore, the Treasury Department and the IRS are not bound to use those regimes as models in determining whether DeFi participants should be required to comply with an entirely separate set of information reporting rules under section 6045.

Several comments argued that the application of the final regulations to DeFi participants would jeopardize the security of millions of Americans' personal data because DeFi participants are too small and undercapitalized to be able to store PII safely. The Treasury Department and the IRS did not adopt this comment for the final regulations because traditional brokers, including smaller brokers, have operated for many years and have implemented their own security policies and protocols.

One comment stated that many DeFi participants are run by anonymous providers, which further increases the risk to customer PII. Another comment warned that if front-end service providers are treated as brokers under

the final regulations, well-meaning front-end service providers and their customers are likely to fall victim to security breaches. This comment predicted the proliferation of "spoof" front-end service providers set up by nefarious actors to harvest the personal data of digital asset users. The Treasury Department and the IRS do not agree that these supposed risks justify not applying the information reporting rules under section 6045 to the DeFi industry. Information reporting is essential to the integrity of the tax system. The argument offered by these comments could be applied to every industry required to file information returns. The fact that nefarious actors could "spoof" such persons or otherwise compromise customer PII systems is not a reason to entirely abandon a reporting regime that is essential to ensuring that the income (and resulting income tax) from these transactions are reported by taxpayers. Like other businesses that are obligated to collect PII and file information returns with the IRS, trading front-end service providers can build their own technologically innovative data collection and storage systems or they can contract with reliable third-party vendors with expertise in securing confidential data to do the same on their behalf.

One comment touted the policy benefits brought by the DeFi industry, including reduced dependence on traditional intermediaries, increased financial inclusion, stimulation of capital formation, and democratization of financial services for traditionally oppressed Americans. Another comment stated that the proposed rules reflect an anti-technology bias that would discourage the adoption of these innovative privacy-preserving peer-to-peer payment technologies and jeopardize America's competitiveness with foreign nations. Another comment suggested the application of the proposed reporting rules to DeFi was financial discrimination. One comment suggested that the recent collapse of digital asset custodial exchanges, such as FTX, supports not applying the reporting regulations to DeFi participants, such as unhosted wallets.

The Treasury Department and the IRS do not agree that these final regulations reflect a bias against the DeFi industry or that these regulations will discourage the adoption of this technology by law-abiding customers. The information reporting rules under section 6045 have been applied in some form to brokers in the securities industry for over 40 years. As Senator Portman's statements made in the colloquy make clear, the digital asset reporting provisions were "designed to

bring more clarity and legitimacy to the cryptocurrency industry by more closely aligning the reporting requirements with those of more traditional financial services, and . . . in doing so will help provide more certainty for people looking to invest in digital assets.” 167 Cong. Rec. S6096 (daily ed. August 9, 2021). Beginning for sale transactions on or after January 1, 2025, the regulations promulgated in TD 10000 will also apply to brokers acting as agents or counterparties in their customer’s digital asset transactions. The application of these final regulations to the DeFi industry merely treats this industry like these other industries and thereby provides a benefit to the overall industry and to people investing in digital assets. Moreover, in addition to closing or significantly reducing the income tax gap from unreported income, one goal behind information reporting by brokers is to remind taxpayers who engage in DeFi transactions that these transactions are taxable and need to be reported on their Federal income tax returns. Therefore, these rules will also reduce the number of inadvertent errors or intentional misstatements shown on these taxpayers’ Federal income tax returns. Accordingly, these final regulations will result in trading front-end service providers being able to provide to their customers the same useful information regarding gross proceeds as custodial brokers will provide because of the application of TD 10000. Finally, these final regulations concern Federal tax laws under the Internal Revenue Code only. The potential policy benefits brought by the DeFi industry raised by these comments are outside the purview of title 26.

Several comments argued that the final regulations should not apply to DeFi participants because these participants cannot report on the customer’s cost basis. One comment argued that the onus of reporting tax information in DeFi transactions should fall upon the customers of DeFi services, not DeFi participants providing those services. Other comments argued that the information reporting rules should not apply to DeFi transactions because these transactions are not so-called “off-ramp transactions” that convert the owner’s overall digital asset investment into a non-digital asset investment. The Treasury Department and the IRS do not adopt these comments. An exchange of one type of digital asset for another type of digital asset may be a taxable transaction despite it not being an off-ramp transaction. *See* Notice 2014–21, modified by Notice 2023–34, 2023–19

I.R.B. 837 (May 8, 2023). In addition, notwithstanding that DeFi participants generally do not provide custodial services for their customers and thus would not be required to report on the customer’s cost basis in a sale transaction, this does not lessen the importance of information reporting for gross proceeds. Clear information reporting rules that require reporting of gross proceeds for taxpayers who engage in digital asset transactions will help the IRS identify taxpayers who have engaged in these transactions, and thereby help to reduce the overall tax gap.

Several comments recommended that the final regulations take a more innovative approach to broker reporting. For example, one comment recommended that the final regulations create a third-party reporting person regime, partially modeled after existing regimes to streamline information reporting and withholding in the cross-border payment and employment contexts, with which DeFi trading applications and trading front-end service providers could contract to store customer PII and to file required information returns. One comment stated that it is possible to innovate and build AML compliant DeFi platforms. Another comment recommended the use of new types of digital asset tokens, called tax attestation tokens, that could support DeFi brokers in reporting the information required under section 6045. The final regulations do not prescribe the tools that brokers must use in complying with the reporting requirements under section 6045. The Treasury Department and the IRS welcome input from the DeFi industry regarding regulatory reform or market developments that could facilitate innovative approaches to reporting information required under section 6045.

B. DeFi Application Activities

Proposed § 1.6045–1(a)(21)(iii)(A) would have included in the definition of facilitative services any service that provides a party in the sale with an automated market maker system, order matching services, or market making functions.

Many comments argued that the definition of facilitative services should not apply to persons operating DeFi trading applications, for a variety of different reasons. One comment stated that DeFi trading applications operate using immutable automatically executing software that cannot be changed to accommodate broker reporting. Another comment similarly stated that DeFi trading applications

that are operated by DAOs cannot be altered because although these DAOs may allow votes by their governance token holders on smart contracts involving predetermined fee tiers and other predetermined matters, they do not allow votes on the overhaul of the entire application to build in the systems required for information reporting and backup withholding. In contrast, another comment stated that ownership of governance tokens is often concentrated among a small group of investors—perhaps even a majority held by a single investor—that can exercise complete control over the development of the protocol. Several comments stated that existing DeFi trading applications, which do not provide for information reporting, cannot start reporting or be shut down to avoid operating without complying with section 6045 requirements because the existing smart contracts cannot be modified. One comment stated that some of DeFi trading applications generally do not have operators that are persons within the meaning of section 7701(a)(1) as support for the assertion that they could not be expecting to file and furnish information returns. One comment argued that DAO governance token holders and other operators of DeFi trading applications should not be brokers because they do not have access to DeFi customers and do not have the ability to maintain practical control over customers’ transactions conducted using the DAO or DeFi trading applications. Another comment requested more guidance with clear, objective percentage standards regarding whether governance token holders have control over a DAO, such as those provided in other areas of the tax law. *See e.g.*, sections 957(a) (controlled foreign corporation); 267(f) (controlled group); 304(c) (control). One comment argued that DeFi trading applications would not be in a position to know the customer’s identity if the transaction made use of “zero-knowledge proof” technology. Another comment asserted that there is no privity of contract between DeFi trading applications and digital asset users; therefore, it would be inappropriate to treat those operating these applications as brokers. One comment stated that although persons are involved in writing the underlying software code and deploying that software code within DeFi trading applications, these persons are not involved in running those applications once the code has been deployed. One comment requested that the final regulations permit operators of DeFi protocols (other than those that are fully

decentralized) to employ third-party service providers to assist in tracking the information about transactions that take place on the platform to comply with tax reporting. This comment stated that at least one DeFi protocol operator has already supported a tax services provider with tax-ready data and reports for its customers to use in filing their Federal income tax returns.

The Treasury Department and the IRS do not agree with all of the assertions made by these comments. However, as discussed in Parts III. and III.A. of this Summary of Comments and Explanation of Revisions, the only DeFi participants that are treated as brokers in these final regulations are trading front-end service providers. As explained in Parts III. and III.A. of this *Summary of Comments and Explanation of Revisions*, trading front-end service providers typically are legal entities or individuals that can more easily be identified by taxpayers and the IRS; the software code they write is not immutable; they are best suited to obtain information from customers; and the services they provide are most analogous to the services provided by conventional securities brokers. Accordingly, the Treasury Department and the IRS have determined that operators of DeFi trading applications should not be treated as providing services that meet the definition of effectuating services under the final regulations, unless these DeFi trading application operators also provide other services that are determined to be included in the definition of effectuating services.

DeFi trading applications provide a function that contributes to carrying out DeFi sale transactions much like the functions provided by established stock exchanges (such as the NYSE or the Nasdaq) contribute to carrying out securities transactions in the securities industry. These services are not analogous to functions performed by securities brokers in the securities industry. It should be noted that DeFi trading applications are unlike stock exchanges in that DeFi trading applications permit any digital asset user to transact directly with the application whereas stock exchanges prohibit retail investors from trading directly on these exchanges and only permit persons that are regulated members of the exchange (that is, broker-dealers) to trade on these exchanges. Although § 1.6045–1(b)(2)(ii) excludes stock exchanges from being treated as brokers, that exclusion is conditioned on those stock exchanges providing “facilities in which others effect sales.” This condition—along with the underlying regulatory

requirements regarding membership in the exchanges—ensures that other brokers that are closer to the customer can provide the necessary reporting under section 6045. In contrast, operators of DeFi trading applications, including DAOs and their governance token holders, do not restrict access to the trading platform to regulated parties. The IRS intends to evaluate the information reported by trading front-end service providers and the extent to which changes in the industry enable digital asset users to use DeFi trading applications without using the services provided by trading front-end service providers. If the IRS learns that a significant amount of DeFi trading does not give rise to information reporting, the Treasury Department and the IRS may reconsider the scope of the definition of broker with respect to DeFi transactions.

In specific response to the comments, the Treasury Department and the IRS have concluded that it is not necessary to determine at this time whether and to what extent DeFi trading applications are truly decentralized, the extent to which operators of DeFi trading applications (including governance token holders) can make changes to the underlying smart contracts and protocols to comply with broker reporting or hire third party service providers to do so, or whether operators of DeFi applications may not ever qualify as persons, within the meaning of section 7701(a) because these final regulations have determined that trading front-end service providers should be the only DeFi participants that are treated as the brokers under section 6045(c)(1)(D) and required to file information returns under section 6045 with respect to DeFi sale transactions. For the same reason, it is not necessary for the Treasury Department and the IRS to determine the extent to which a DeFi trading protocol would be in a position to know their customers’ identities if the transaction makes use of technology that does not reveal the customer’s identity, such as zero-knowledge proofs or similar technology.

One comment argued that the counterparty to a transaction carried out using a DeFi trading application may be a liquidity pool and not the person providing that liquidity (liquidity provider). Another comment asserted that if liquidity providers are treated as engaging directly in the activities of the DeFi trading application, they could be brokers under the proposed regulations even though they would not have any way to determine the identity of the customer. The Treasury Department and the IRS considered these comments and

have concluded that it is also not necessary to determine at this time whether and to what extent liquidity providers are the counterparties in these transactions or can otherwise access information about the customer because these final regulations have determined that trading front-end service providers should be the only DeFi participants that are required to file information returns under section 6045 with respect to DeFi sale transactions.

Several comments argued that non-fungible token (NFT) marketplaces are the same as DeFi trading protocols and other DeFi trading applications. These comments stated that developers of NFT marketplaces are incapable of knowing the transactions that are carried out by customers that use their marketplaces and cannot update their software to require customers to comply with the broker reporting requirements. Because these final regulations have determined that trading front-end service providers should be the only type of DeFi participant that is required to file information returns under section 6045 with respect to DeFi sale transactions under these final regulations, the Treasury Department and the IRS have concluded that it is not necessary to determine at this time whether and to what extent NFT marketplaces operate like DeFi trading protocols. It should be noted, however, that persons that provide customers with trading front-end services to purchase or sell NFTs in exchange for other digital assets do provide effectuating services and are digital asset middlemen and brokers under these final regulations.

One comment raised a concern regarding the extent to which a DAO would be treated as a person that regularly offers to redeem digital assets that it created or issued if it redeems “receipt tokens” issued to help users track how much of a governance token has been placed into a smart contract for voting purposes, which receipt tokens have no value and serve only to allow the user to retrieve its governance tokens. The Treasury Department and the IRS did not intend for the redemption of receipt tokens used merely to keep track of voting history to be treated as sales subject to reporting under these regulations and will consider future guidance to clarify this intention.

C. Settlement Layer Activities

Proposed § 1.6045–1(a)(21)(iii)(A) would have provided that a facilitative service does not include validating distributed ledger transactions (whether through proof-of-work, proof-of-stake, or any other similar consensus

mechanism) without providing other functions or services if provided by a person solely engaged in the business of providing such validating services.

Many of the comments agreed that validation services should be excluded from the broker definition. Applying the DeFi technology stack model discussed in Part I.B. of this *Summary of Comments and Explanation of Revisions* to the effectuating services definition, the Treasury Department and the IRS continue to maintain that it is appropriate to exclude validation services from the definition of effectuating services. The functions performed by DeFi participants at the settlement layer, such as block building and validation services, which are responsible for settling financial transactions on the distributed ledger, contribute to the execution of digital asset transactions much in the same way as clearing organizations, such as The Depository Trust and Clearing Corporation (DTCC) and its subsidiaries, contribute to the execution of securities transactions on a securities exchange. Like clearing organizations in the securities industry, participants at the settlement layer do not interact with the ultimate customer and, as such, do not generally have access to the information that would enable them to associate the customer's identity with transactions settled by those participants. Indeed, in the securities industry, this lack of proximity to the customer—along with the fact that other participants are closer to the customer—supports not treating clearing organizations as brokers. See § 1.6045–1(b)(2)(vii). Consistent with this understanding that participants at the settlement layer do not interact with the ultimate customer, several Senators expressed a concern with treating persons that perform validation services as brokers in the deliberations leading up to the passage of the Infrastructure Act. For example, Senator Portman said during the colloquy, “[w]e want to be sure that miners and stakers and others who play a key role in validating transactions now or in the future . . . will not be subject to the [broker reporting] rules for those activities.”). 167 Cong. Rec. S6096 (daily ed. August 9, 2021).

Several comments focused on the “without providing other functions or services” limitation to the carve-out for validation services. One comment argued that when a validator performs other functions or services, it does not enhance a validator's ability to know the identities of the parties whose transactions it validated. Another comment referenced the DeFi technology stack model to argue that the

regulations should more clearly exempt all settlement layer service providers from the definition of broker. Numerous other comments provided descriptions of additional functions that they said either were a component of validation services or otherwise should be treated similarly to validation services. Specifically, these comments urged the Treasury Department and the IRS to exclude ordering services, block arranging services, block-proposing services, communication node operation services and other similar network services that operate on the settlement layer. One comment suggested that persons that record transactions on secondary networks that are built on top of (or beside) a primary distributed ledger (layer 2 blockchains) using sequencer software should be treated like validators for this purpose. Similarly, another comment pointed out that to facilitate more transactions, some distributed ledgers enable transactions to be aggregated on a layer 2 blockchain before being recorded as a single transaction on the primary distributed ledger. In these cases, this comment asserted that persons that validate transactions on this secondary network should be excluded. Another comment suggested excluding validators that participate in so-called liquid staking protocols. One comment argued that unhosted wallet providers, DeFi protocols, and price discovery services should be excluded as analogous to validators.

As discussed in Part III.A.1. of this *Summary of Comments and Explanation of Revisions*, the Treasury Department and the IRS have determined that the only DeFi participant that should be treated in these final regulations as providing effectuating services for purposes of the reporting rules under section 6045 in a sale is the DeFi participant that provides trading front-end services. Accordingly, an exclusion for validation services—which are not trading front-end services—is technically no longer necessary. Nevertheless, given the strong concern expressed by members of Congress and others in the industry that these ancillary services be excluded, the final regulations retain this exclusion for validation services and expand it to also include those services necessary to complete the validation. It is intended that block building as well as the operation of communication nodes would be included in the other services necessary to complete the validation, and thus excluded from the definition of effectuating services. Without expressing any view regarding the

extent to which the other services raised by the comments are analogous to these validation services, the Treasury Department and the IRS have determined that it is not appropriate to expand the exclusion from the definition of effectuating services for validation services any further. First, as noted, the exclusion is not necessary now that trading front-end services are the only DeFi services that are treated as effectuating services. As long as these other services do not fit within the definition of trading front-end services, they will not be treated as effectuating services under the final regulations. Second, the list of services that are not trading front-end services is potentially infinite and can change over time. It is not practical or appropriate to draft a list of all the services within the DeFi industry that do not fit within the definition of trading front-end services.

Several comments argued that the proposed carve-out for validation services is too narrow because it would be limited to persons “solely” engaged in the business of providing distributed ledger validation services. These comments argued that the exclusion should remain available even for persons who are engaged in more than one trade or business or providing more than one type of service. Another comment pointed out that, as drafted, the carve-out seemingly would not apply to persons conducting validation services only as a hobby or without a profit motive. One comment recommended that the exclusion instead be based on the functions or services conducted with respect to the transaction. Another comment requested additional examples to clarify the circumstances in which validation services would be considered facilitative services.

The Treasury Department and the IRS agree that the carve-out for validation services should not be limited to persons that are “solely” engaged in the business of performing such services. Rather, the intent of the carve-out was to exclude validators from reporting on sales for which they provide validation services unless those validators also performed other services with respect to those same sales that would be treated as effectuating services. Accordingly, final § 1.6045–1(a)(21)(iii)(C)(1) provides that providing distributed ledger transaction validation services (whether through proof-of-work, proof-of-stake, or any other similar consensus mechanism), including those services necessary to complete the validation, are not an effectuating service under final § 1.6045–1(a)(21)(i). Additionally, an example is added at final § 1.6045–

1(b)(24) to illustrate that the exclusion applies only to the validation services provided. It does not apply when validators also perform trading front-end services because those validators must report sales carried out as a result of those trading front-end services. Thus, if a validator, as part of its ordinary course of a trade or business, provides trading front-end services with respect to a sale for a customer and thereafter also validates that sale (likely without even knowing that validated block included the customer's sale), the validator would be required to report on the sale as a result of providing the trading front-end services notwithstanding that the validator also validated the sale.

IV. Multiple Broker Rule

The proposed regulations did not extend the multiple broker rule under § 1.6045–1(c)(3)(iii) of the pre-TD 10000 regulations to digital asset brokers, but instead asked for comments regarding the best way to apply a multiple broker rule. Comments overwhelmingly requested that the final regulations implement a multiple broker rule applicable to digital asset brokers to avoid burdensome and confusing duplicative reporting. In response, TD 10000 added a multiple broker rule under § 1.6045–1(c)(3)(iii)(B) that applies if more than one digital asset broker effects the same sale. Under that rule, the broker crediting the gross proceeds to the customer's wallet address or account (the crediting broker) must report the transaction to the IRS. The other broker can generally avoid reporting if it obtains proper documentation from the crediting broker that the crediting broker is a U.S. digital asset broker. The preamble to TD 10000 also indicated that the Treasury Department and the IRS are continuing to study the question of how a multiple broker rule would apply to the non-custodial (DeFi) digital asset industry.

Many comments pointed out that a customer engaging in any DeFi transaction may use the services of many DeFi participants, including interface providers, wallet software providers, and DeFi protocols. To the extent the final regulations deem all of these DeFi participants to be brokers, their overlapping reporting obligations would create duplicate reporting and unnecessary compliance costs. Because these final regulations treat only trading front-end service providers as a broker and because only one front-end service provider translates the customer's trade order details into coded trade order instructions, there should generally be only one DeFi participant that is a

broker under section 6045(c)(1)(D) in a DeFi transaction. The Treasury Department and the IRS are not aware of multiple broker fact patterns in which more than two types of brokers could be involved in a DeFi sale. If such a case did exist, however, the existing multiple broker rule in § 1.6045–1(c)(3)(iii)(B) would apply to ensure that only one of the two brokers report on the transaction. Further, the Treasury Department and the IRS intend to issue a notice of proposed rulemaking that will propose examples illustrating how the existing multiple broker rule would apply to transactions like this that are effected by both a front-end service provider and a custodial broker to obtain comments from the public regarding the application of the existing multiple broker rule in § 1.6045–1(c)(3)(iii)(B) to such transactions.

V. Comments Based on Constitutional Concerns

A. Major Questions Doctrine

Several comments alleged that the proposed regulations, if finalized, would raise major questions doctrine concerns under *West Virginia v. EPA*, 597 U.S. 697 (2022).²⁵ One comment alleged that the IRS “literally has no power to act . . . unless and until Congress confers power upon it,” *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986), and that Congress's use of the term “broker” did not authorize the IRS to impose onerous requirements on every person tangentially involved in cryptocurrency or other digital assets. The comment claimed that the proposed regulations, if finalized, would eliminate DeFi transactions and fundamentally transform non-custodial wallet services and that Congress withheld that authority from the Treasury Department and the IRS even though Congress amended section 6045 to allow for broker reporting on digital asset transactions. Another comment claimed that the Treasury Department and the IRS should be especially careful not to encroach on Congress's policymaking power in light of the ongoing congressional debate about how digital assets should be treated and regulated and the economic importance of the digital asset industry. The comment alleged that amended section 6045 does not provide any clear congressional authorization that could give the IRS the right to dictate

important policy decisions about digital assets.

The Treasury Department and the IRS do not agree that these final regulations are prohibited by the major questions doctrine. The major questions doctrine is only implicated when an agency claims an extraordinary grant of regulatory authority based on “modest words,” “vague terms,” or “subtle devices,” and the “history and the breadth” of the agency's asserted power provide a reason to hesitate before concluding that Congress meant to confer such authority. *West Virginia v. EPA*, 597 U.S. at 721 and 723.

Section 80603 of the Infrastructure Act made several changes to the broker reporting provisions under section 6045 to clarify the rules regarding how certain digital asset transactions should be reported by brokers. These clarifications are not mere “modest words,” “vague terms,” or “subtle devices.” Section 6045(c)(1)(D) provides that a broker includes “any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person.” As discussed in Part II. of this *Summary of Comments and Explanation of Revisions*, this statutory language extends to treating DeFi industry participants as brokers.

Furthermore, these final regulations do not claim or exercise an extraordinary grant of regulatory authority. As discussed in Part III.A.1. of this *Summary of Comments and Explanation of Revisions*, the only DeFi participant treated as providing effectuating services for purposes of these final regulations is the DeFi participant that provides trading front-end services. These front-end services are analogous to the services provided by securities brokers in the securities industry, which are already subject to section 6045 broker reporting.

B. Comments Based on the First, Fourth, and Fifth Amendments

Multiple comments alleged that the proposed regulations, if finalized, would violate the First, Fourth, and Fifth Amendments to the U.S. Constitution on a variety of asserted bases, some of which apply to DeFi participants. As discussed in the preamble to TD 10000, the final regulations do not violate the First Amendment because they do not compel political or ideological speech by DeFi participants and merely require information reporting for Federal tax compliance purposes, a sufficiently important governmental interest. *See* 89 FR 56520. The final regulations also do not violate the Fourth Amendment as

²⁵ The major question doctrine is a canon of construction that bars agencies from resolving questions of “vast economic and political significance” without clear statutory authorization.

applied to DeFi participants because, as explained in the preamble to TD 10000, the Fourth Amendment's protections extend only to items or places in which a person has a constitutionally protected reasonable expectation of privacy. See 89 FR 56520, 56521.

As mentioned in the preamble to TD 10000, some comments stated that the definition of broker, effect, and digital asset middleman are unconstitutionally vague. See 89 FR 56521. The Due Process Clause of the Fifth Amendment provides that "no person shall . . . be deprived of life, liberty, or property, without due process of law." This provision has been interpreted to require that statutes, regulations, and agency pronouncements define conduct subject to penalty "with sufficient definiteness that ordinary people can understand what conduct is prohibited." See *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). The relevant test is that a "regulation is impermissibly vague under the Due Process Clause of the Fifth Amendment if it 'fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.'" *United States v. Szabo*, 760 F.3d 997, 1003 (9th Cir. 2014) (quoting *Holder v. Humanitarian Law Project*, 561 U.S. 1, 18 (2010)).

The final regulations are not unconstitutionally vague. As discussed in Part II. of this *Summary of Comments and Explanation of Revisions*, the statutory definition of broker is broad enough to include multiple DeFi participants involved in a DeFi transaction. Despite this broad statutory definition of broker, the final regulations are more narrowly tailored so that they apply only to those DeFi participants that provide services analogous to those performed by brokers in the securities industry. Section 1.6045-1(a)(1) defines a broker as "any person . . . that, in the ordinary course of a trade or business during the calendar year, stands ready to effect sales to be made by others." Section 1.6045-1(a)(10)(i)(D) added to the definition of effect to act as a digital asset middleman for a party in a sale of digital assets. Digital asset middleman was defined in § 1.6045-1(a)(21)(i) as any person who, with respect to a sale of digital assets provides a facilitative service. Proposed § 1.6045-1(a)(21)(iii)(A) would have defined a facilitative service as any service that directly or indirectly effectuates a sale of digital assets. Rather than maintain this broad definition of a facilitative service, final § 1.6045-1(a)(21)(iii)(A)

defines an effectuating service as a trading front-end service and other narrowly identified effectuating services. Final § 1.6045-1(a)(21)(iii)(A)(1) defines these trading front-end services with sufficient specificity to avoid due process concerns.

VI. Applicability Dates and Penalty Relief

One comment, pointing to the safe harbor rules generally applicable under section 6721(c)(3) of the Code to *de minimis* transactions, requested penalty relief for persons who unknowingly and unintentionally engage in activities that result in such persons being brokers under the final regulations if such persons remain below a *de minimis* threshold for the number and/or value of transactions should have this relief effected during a start-up or transitional period. Alternatively, or potentially in addition to this request for a temporary *de minimis* threshold, this comment requested a permanently applicable "grace period" for any industry participant that has unintentionally violated the information reporting requirements under section 6045 after qualifying as a broker during which grace period such person can either come into compliance or adjust its activities so as to avoid qualifying as a broker, without immediately facing penalties. The IRS does not agree that it is appropriate to provide penalty relief for start-up brokers whose services effectuate transactions during a grace period or that fall below a *de minimis* threshold beyond that relief already in place under section 6721(c)(3) for *de minimis* reporting errors or under section 6724 of the Code for errors that are due to reasonable cause because this type of relief is not generally provided for other information reporting provisions. See e.g., section 6041 (applicable to all persons engaged in a trade or business making payments in the course of such trade or business). Persons providing trading front-end services to customers as a trade or business are expected to investigate all the legal requirements of conducting that trade or business. Relief for those that do not properly investigate beyond the existing *de minimis* rules or the reasonable cause penalty relief under section 6724 is, therefore, not appropriate.

The Treasury Department and the IRS received and considered many comments about the applicability dates contained in the proposed regulations. Multiple comments requested additional time beyond the proposed applicability date for gross proceeds

reporting by DeFi participants on transactions occurring on or after January 1, 2025, so that newly-reclassified brokers could build compliance programs properly. The comments generally asked for more time, ranging from one to five years after publication of the final rules, to prepare for reporting transactions, with the most common suggestion being an applicability date between 18 and 24 months after publication of the final regulations. Several comments suggested that broker reporting begin at the same time as CARF reporting, either for all brokers or for non-U.S. brokers. Multiple comments requested that the final regulations become applicable in stages, with many suggesting that custodial industry participants should be required to report during the first stage and that DeFi participants should begin reporting a year or more later. Comments generally pointed to the time needed to build information reporting systems and to adequately document customers to support their recommendation of later applicability dates. They also cited concerns about fulfilling backup withholding requirements and adapting to filing a new information return, the Form 1099-DA, *Digital Asset Proceeds From Broker Transactions*, and about the IRS's ability to receive and process a large number of new forms.

The Treasury Department and the IRS previously determined that a phased-in or staged approach to broker reporting is appropriate. Accordingly, TD 10000 requires gross proceeds reporting generally for sales occurring on or after January 1, 2025, for custodial industry participants (and certain brokers acting as counterparties in a transaction). Additionally, TD 10000 requires basis reporting for sales occurring on or after January 1, 2026, but only with respect to digital assets the customer acquired from, and held with, the same broker on or after January 1, 2026. The preamble to TD 10000 stated that the Treasury Department and the IRS intend to expeditiously issue separate final regulations describing information reporting rules for DeFi industry participants and these rules would be finalized with an appropriate, separate applicability date.

Although the applicability date proposed by the proposed regulations applied to gross proceeds reporting for sales of digital assets effected on or after January 1, 2025, the Treasury Department and the IRS agree that a delay is warranted for trading front-end service providers treated as brokers (DeFi brokers) under these final regulations. First, many of these DeFi

brokers may not have systems in place to collect and store customer identity information or contracts with third-party service providers to do the same. Second, many of these DeFi brokers also may not have systems in place to collect, store, and report customer transaction information or contracts with third-party service providers to do the same. Third, many of these DeFi brokers also do not have backup withholding systems that would enable these brokers to backup withhold and pay the backup withholding tax in cash. Based on these considerations, final § 1.6045-1(a)(21) applies to sales of digital assets occurring on or after January 1, 2027.

The IRS intends to work closely with stakeholders to ensure the smooth implementation of the reporting rules, including the mitigation of penalties in the early stages of implementation for all but particularly egregious cases involving intentional disregard of these rules. Accordingly, to promote industry readiness to comply with the backup withholding requirements that will apply to newly required reporting required by these final regulations, Notice 2025-3 is being issued contemporaneously with these final regulations to provide transitional relief from broker reporting penalties and backup withholding under section 3406 on these sales. This Notice, which will be published in the Internal Revenue Bulletin, provides that the effective date for backup withholding is postponed to January 1, 2028, for potential backup withholding obligations imposed under section 3406 for payments required to be reported by DeFi brokers on Forms 1099-DA, *Digital Asset Proceeds From Broker Transactions*, for sale transactions. Additionally, the Notice provides that the IRS will not assert penalties for a DeFi broker's failure to deduct, withhold, and pay any backup withholding tax with respect to calendar year 2028 that is caused by a decrease in the value of received digital assets between the time of the transaction giving rise to the backup withholding liability and the time the broker liquidates 24 percent of the received digital assets, provided the broker undertakes to effect that liquidation immediately after the transaction giving rise to the backup withholding liability. For sale transactions effected in 2028 for customers that have opened accounts with the broker prior to January 1, 2028, the Notice further provides that backup withholding will not apply with respect to any payee that furnishes a TIN to the broker, whether or not on a Form W-9 in the manner required in

§§ 31.3406(d)-1 through 31.3406(d)-5, provided the broker submits that payee's TIN to the IRS's TIN matching program and receives a response that the TIN furnished by the payee is correct. See § 601.601(d)(2).

In addition to this specific DeFi industry relief, the backup withholding relief provided in Notice 2024-56, 2024-29 I.R.B. 64 (July 15, 2024), also applies to the DeFi industry. For example, Notice 2024-56 applies to digital asset sales effected by a DeFi broker under these final regulations where the reportable proceeds is a specified NFT. Additionally, the backup withholding relief provided in Notice 2024-56 for PDAP sales effected by a PDAP will also be applicable to PDAP sales effected by a DeFi broker that is also PDAP. This relief for PDAP sales, however, does not apply to the extent the sale is also another type of sale described in § 1.6045-1(a)(9)(ii)(A) through (C), such as a sale of digital asset A for digital asset B, because § 1.6045-1(a)(9)(ii)(D) provides that a sale that is a PDAP sale and another type of digital asset sale is not treated as a PDAP sale.

Special Analyses

I. Regulatory Planning and Review

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

II. Paperwork Reduction Act

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

In general, the collection of information in the regulations is required under section 6045 and the collection of information in these regulations is set forth in § 1.6045-1. The IRS intends that the collection of information pursuant to section 6045 and these regulations will be conducted by way of Form 1099-DA. In accordance

with the PRA, the reporting burden associated with the collection of information in these final regulations will be reflected in PRA submissions associated with Form 1099-DA (OMB control number pending). On April 22, 2024, the IRS published in the **Federal Register** (89 FR 29433) a Notice and request for comments on the collection of information requirements related to the broker regulations with a 60-day comment period. On October 7, 2024, the IRS published in the **Federal Register** (89 FR 81151) a second Notice and request for comments on the collection of information requirements related to the broker regulations with a 30-day comment period. To the extent there is a change in burden as a result of these final regulations, the change in burden will be reflected in an update to the burden estimate for Form 1099-DA prior to the collection of information required under these regulations.

The proposed regulations contained burden estimates regarding the collection of information with respect to the dispositions of digital assets. For the proposed regulations, the Treasury Department and the IRS estimated that approximately 600 to 9,500 brokers would be impacted by the proposed regulations, which would have applied to all digital asset brokers. The proposed regulations contained an estimate of 13 to 16 million customers that would have transactions subject to the proposed regulations. The proposed regulations also contained an estimate of the average time to complete the Form 1099-DA for each customer as between 7.5 minutes and 10.5 minutes, with a mid-point of 9 minutes (or 0.15 hours). Taking the midpoints of the ranges for the number of brokers expected to be impacted by the proposed regulations, the number of taxpayers expected to receive one or more Form 1099-DA, and the time to complete the Form 1099-DA (5,050 brokers, 14.5 million recipients, and 9 minutes respectively), the proposed regulations estimated the average broker would incur 425 hours of time burden and \$27,000 of monetized burden for the ongoing costs per year. The proposed regulations contained estimates of 2,146,250 total annual burden hours and \$136,350,000 in total monetized annual burden.

The proposed regulations estimated start-up costs to be between three to eight times annual costs. Given that the Treasury Department and the IRS expected the per-broker annual estimated burden hours to be 425 hours and \$27,000 of estimated monetized burden, the proposed regulations estimated per broker start-up aggregate burden hours to range from 1,275 to

3,400 hours and \$81,000 and estimated aggregate monetized burden of \$216,000. Using the midpoints, start-up total estimated aggregate burden hours was 11,804,375 and total estimated monetized burden was \$749,925,000.

Numerous comments were received on the estimates contained in the proposed regulations. In general, the comments claimed the proposed regulations underestimated the burden hours and monetized burden. The comments that were related to the burden associated with the specific information required to be reported on Form 1099-DA were addressed in the preamble to TD 10000. See 89 FR 56539–56541. In addition, multiple comments said that the estimated number of brokers impacted by the proposed regulations was too low. The comments that did not distinguish between centralized brokers or DeFi brokers under the proposed regulations were addressed in the preamble to TD 10000. *Id.*

Some of the comments specifically addressed DeFi participants. One comment said the estimated number of overall brokers identified in the proposed regulations was too low because it underestimated the impact on decentralized autonomous organizations, governance token holders, operators of web applications, and other similarly situated potential DeFi participants. As discussed in Part III. of this *Summary of Comments and Explanation of Revisions*, the Treasury Department and the IRS have determined that it is appropriate to treat DeFi participants that provide trading front-end services as brokers under section 6045. The Treasury Department and the IRS have also determined that it is not appropriate to treat decentralized autonomous organizations, governance token holders, or operators of web applications as brokers subject to the reporting requirements unless they also provide trading front-end services, and only with respect to the sales of digital assets that are carried out using the trading front-end services. Accordingly, this burden analysis does not attempt to include any of the DeFi participants that these final regulations do not treat as brokers.

Numerous comments expressed an overall concern with the reporting burden associated with the proposed

regulations but did not specifically address the estimated number of brokers, number of recipients, or time needed to complete the reports. Many of these comments expressed a concern that the reporting requirements in the proposed regulations would reduce the benefits of customers engaging in DeFi transactions. Several comments described the benefits of DeFi, with one comment specifically mentioning that these benefits include best execution, lower fees, faster transaction times, enhanced personal information protection greater privacy, and the avoidance of conflicts of interest. These comments generally claimed that the reporting required by the proposed regulations would place significant costs on DeFi participants thereby reducing the benefits of engaging in DeFi transactions.

Other comments stated that DeFi participants do not currently have systems in place to comply with tax recordkeeping requirements. One comment claimed that the proposed regulations would result in DeFi participants spending more resources requesting, collecting, managing, and securing information than they spend conducting their current businesses. Another comment claimed that it would be economically prohibitive for DeFi participants to build and maintain broker reporting infrastructure systems because the services these DeFi participants provide are typically offered at little cost compared to similar services offered by traditional securities brokers. In addition, this comment claimed that the proposed regulations, if finalized, would require DeFi participants to build infrastructure systems to collect private information on users despite never holding any customer assets.

The Treasury Department and the IRS understand that these final regulations will impose costs on DeFi participants. As discussed in Part III. of this *Summary of Comments and Explanation of Revisions*, however, the final regulations narrow the scope of DeFi participants that the proposed regulations treated as brokers required to report under section 6045 to those DeFi participants providing trading front-end services. The final regulations treat only trading front-end service providers as brokers (DeFi brokers) under section 6045 for several reasons,

including that these DeFi participants have the closest relationship to customers and therefore are in the best position to request, collect, and manage the information, including the personal identification information, required to be reported. Additionally, DeFi participants that provide trading front-end services provide functions that are most analogous to the functions provided by securities brokers. As discussed in Part II.B.A. of this *Summary of Comments and Explanation of Revisions*, the Treasury Department and the IRS have concluded that the definition of broker should not depend on the specific technology used to effect transfers of digital assets. While certain technologies may allow DeFi brokers to be more cost-effective in their business operations, their choice to use these technologies should not influence their inclusion in the definition of broker and their requirement to comply with the reporting obligations.

Books or records relating to a collection of information must be retained so 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 section 6103 of the Code.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6) requires agencies to “prepare and make available for public comment an initial regulatory flexibility analysis,” which will “describe the impact of the proposed rule on small entities.” 5 U.S.C. 603(a). Unless an agency determines that a proposal will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present a final regulatory flexibility analysis (FRFA) of the final regulations. The Treasury Department and the IRS have not conclusively determined whether these final regulations will have a significant economic impact on a substantial number of small entities. This uncertainty is based in part on a lack of sufficient information about the industry and therefore, any determination requires further study. Because there is a possibility of a significant impact on a substantial number of small entities, a FRFA is provided in these final regulations.

While the Treasury Department and the IRS were unable to find information to estimate the number of trading front-end service providers, there is some information that can be used to estimate the number of DeFi trading protocols. For example, one data aggregator states that it tracks more than 5,042 different protocols across 328 blockchains and trading volume for 613 DeFi trading protocols (which it calls DEX).²⁶ Another data aggregator states that it tracks 852 DeFi trading protocols (which it calls decentralized exchanges).²⁷ This data aggregator shows which website is used to access each DeFi trading protocol that it tracks and multiple DeFi trading protocols are accessed by the same website. Because information is not available on the number of trading front-end service providers, a conservative estimate of the number of trading front-end service providers can be made using the number of DeFi trading protocols. While this estimate does not reflect that one trading front-end service may provide access to multiple DeFi trading protocols, it also does not reflect unhosted wallet providers that provide trading front-end services which may also provide access to multiple DeFi trading protocols. Accordingly, based on the limited information available, the Treasury Department and the IRS have concluded that approximately 650 to 875 DeFi brokers, with a mid-point of approximately 765 DeFi brokers, will be impacted by these final regulations.

The expected number of impacted issuers of information returns under these final regulations is between 650 and 875 estimated DeFi brokers (mid-point of 765). Small Business Administration regulations provide small business size standards by NAICS Industry. See 13 CFR 121.201. The NAICS includes virtual currency exchange services in the NAICS code for Commodity Contracts Intermediation (52316). According to the Small Business Administration regulations, the maximum annual receipts for a concern and its affiliates to be considered small in this NAICS code is \$41.5 million. Based on external reporting on decentralized exchange activity, approximately 10 of the 875 DeFi brokers identified as impacted issuers in the upper bound estimate exceed the \$41.5 million threshold. This implies there could be up to 865 impacted small business issuers under

the Small Business Administration's small business size standards.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking was submitted to the Chief Counsel of the Office of Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

A. Need for and Objectives of the Rule

Information reporting is essential to the integrity of the Federal tax system. The IRS estimated in its 2019 tax gap analysis that net misreporting as a percent of income for income with little to no third party information reporting is 55 percent. In comparison, misreporting for income with some information reporting, such as capital gains, is 17 percent, and for income with substantial information reporting, such as dividend and interest income, is just five percent.

Prior to TD 10000, many transactions involving digital assets were outside the scope of information reporting rules. Digital assets are treated as property for Federal income tax purposes. The regulations under section 6045 require brokers to file information returns for customers that sell certain types of property providing gross proceeds and, in some cases, adjusted basis. TD 10000 specifies that digital assets are a type of property for which information reporting is required by brokers. However, TD 10000 reserved on the rules for DeFi participants and thus did not include DeFi participants in the definition of broker required to file information returns for digital asset transactions.

Information reporting by DeFi brokers under section 6045 will lead to higher levels of taxpayer compliance because the income earned by taxpayers engaging digital assets transactions without a custodial broker will be made more transparent to both the IRS and taxpayers. Clear information reporting rules that require DeFi brokers to report gross proceeds for taxpayers who engage in digital asset transactions will help the IRS identify taxpayers who have engaged in these transactions, and thereby help to reduce the overall tax gap. These final regulations are also expected to facilitate the preparation of tax returns (and reduce the number of inadvertent errors or intentional misstatements shown on those returns) by and for taxpayers who engage in digital asset transactions.

B. Affected Small Entities

As discussed above, we anticipate a maximum of approximately 865 of the 875 (or 98.8 percent) impacted issuers

in the upper bound estimate could be small businesses.

1. Impact of the Rules

As previously stated in the Paperwork Reduction Act section of this preamble, the reporting of digital asset sales by DeFi brokers pursuant to § 1.6045-1 is on Form 1099-DA.

To estimate the impact of these final regulations on small DeFi brokers, the Treasury Department and the IRS first estimated the number of customers that will have transactions subject to these final regulations. To determine the number of customers that will have transactions subject to these final regulations, the Treasury Department and the IRS reviewed reports from several digital asset industry participants. While these reports indicate that there were over 196 million visits to the websites providing access to the DeFi trading protocols in the most recent month and \$1.9 trillion in 24-hour trading volume for the most recent 24-hour period, these amounts do not reflect the number of customers that will be impacted by these regulations because a single customer may visit a website providing access to the DeFi trading protocols more than once in a month and may or may not engage in a trade each time they visit the website and the customer may also engage in different size transactions.²⁸ Additionally neither the visits nor the trading volume were separately reported for U.S. and non-U.S. customers. In an attempt to narrow down this information to determine the number of customers that each DeFi protocol services, the Treasury Department and the IRS reviewed a recent analysis that found the North American cryptocurrency market is the largest cryptocurrency market, with an estimated \$1.2 trillion in value received on-chain between July 2022 and June 2023, which represents 24.4% of global transaction activity.²⁹ These on-chain transactions are likely correlated with DeFi transactions because many centralized brokers effect their customer transactions utilizing omnibus ledgers. Another analysis reported that the number of unique worldwide DeFi users reached a peak of 7.5 million in late

²⁸ CoinGecko, Top Decentralized Exchanges Ranked by 24H Trading Volume, amounts referenced from the last date visited, <https://www.coingecko.com/en/exchanges/decentralized> (last visited November 27, 2024).

²⁹ Chainalysis Team, *North America Leads World in Crypto Usage Despite Ongoing Regulatory Questions, While Stablecoin Activity Shifts Away from U.S. Services*, Chainalysis (October 23, 2023), available at <https://www.chainalysis.com/blog/north-america-cryptocurrency-adoption/> (last visited November 29, 2024).

²⁶ DeFi Llama, <https://defillama.com>, (last visited November 27, 2024).

²⁷ CoinGecko, Top Decentralized Exchanges Ranked by 24H Trading Volume, <https://www.coingecko.com/en/exchanges/decentralized>, (last visited November 27, 2024).

2021, whereas in April 2024, the total number of DeFi users was only 5 million.³⁰ Based on this information, the Treasury Department and the IRS have determined that best-available estimate of the minimum number of customers impacted by these regulations is 20% of the peak users in 2024, which is an estimate of 1 million customers, and the maximum number of customers impacted by these regulations is 35% of the peak users in 2021, which is an estimated 2.625 million customers, with a mid-point of approximately 1,812,500 customers.³¹

Next, the Treasury Department and the IRS estimated the average time for a DeFi broker to complete the Form 1099-DA. These final regulations do not change the information required to be reported on the Form 1099-DA as provided in TD 10000. Therefore, the Treasury Department and the IRS have concluded that it is appropriate to use the average time to complete the Form 1099-DA estimate from TD 10000, which is between 7.5 minutes and 10.5 minutes, with a mid-point of 9 minutes (or 0.15 hours), for each customer. This estimate is based survey data collected from similar information return filers which include small businesses.

Finally, the Treasury Department and the IRS estimated the average start-up costs per broker. The proposed regulations estimated that initial start-up costs would be between three and eight times annual costs. Several comments said that these costs were underestimated because many of the persons treated as brokers under the proposed regulations are newer companies with limited funding and resources. One comment said the multiple applied was too low and a five to ten times annual costs would be a more reasonable estimate given the complexity of the reporting regime and would more closely align with prior start-up costs for similar reporting regimes. Consistent with TD 10000 and a continuing acknowledgment that it is difficult to estimate start-up costs, the Treasury Department and the IRS accept the comment to use a five to ten times annual cost multiplier to determine the estimate of these costs for DeFi brokers.

In summary, the Treasury Department and the IRS estimate that approximately

865 of the 875 (or 98.8 percent) impacted issuers in the upper bound estimate could be small businesses. The Treasury Department and the IRS estimate that 1,812,500 customers will be impacted by these final regulations. As previously noted, the number of DeFi brokers is based on the number of DeFi trading protocols, rather than the number of trading front-end service providers because the number of trading front-end service providers is not readily available. It is not possible to know how many DeFi users engage in transactions with each DeFi trading protocol. Given the lack of information available, the Treasury Department and the IRS have assumed that each customer uses one DeFi trading protocol, which results in an estimate of approximately 2,400 customers per broker. A reasonable estimate for the average time to complete these forms for each customer is 9 minutes (0.15 hours). Therefore, the Treasury Department and the IRS estimate the average time burden per broker will be approximately 360 hours. Additionally, start-up costs are estimated to be between five and ten times annual costs. Given the expected per-DeFi broker annual burden of 360 hours, the Treasury Department and the IRS estimate per-DeFi broker start-up burden between 1,800 to 3,600 in start-up costs to build processes to comply with the information reporting requirements.

Although small DeFi brokers may engage third party tax reporting services to complete, file, and furnish information returns to avoid the start-up costs associated with building an internal information reporting system for sales of digital assets, it remains difficult to predict whether the economies of scale efficiencies of using these services will offset the somewhat more burdensome ongoing costs associated with using third party contractors.

2. Alternatives Considered for Small Businesses

The Treasury Department and the IRS considered alternatives to these final regulations that would have created an exception to reporting, or a delayed applicability date, for small DeFi brokers but decided against such alternatives for several reasons. As discussed above, we anticipate that approximately 865 of the 875 (or 98.8 percent) impacted issuers in the upper bound estimate could be small businesses. One purpose of these regulations is to eliminate the overall tax gap. Any exception or delay to the information reporting rules for small DeFi brokers, which may comprise the

vast majority of impacted issuers, would reduce the effectiveness of these final regulations. In addition, such an exception or delay could have the unintended effect of incentivizing taxpayers to move their business to excepted small DeFi brokers, thus thwarting IRS efforts to identify taxpayers engaged in digital asset transactions. Additionally, because the information reported on statements furnished to customers will remind taxpayers who engage in DeFi transactions that the transactions are potentially taxable, thereby reducing the number of inadvertent errors or noncompliance on their Federal income tax returns, information reported by small DeFi brokers will be able to offer their customers the same amount of useful information as their larger DeFi competitors. Finally, to the extent investors in digital assets are themselves small businesses, these final regulations will also provide these businesses with the same reminders that the DeFi transactions are taxable.

3. Duplicate, Overlapping, or Relevant Federal Rules

These final regulations do not overlap or conflict with any relevant Federal rules.

IV. Unfunded Mandates Reform Act

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

V. Executive Order 13132: Federalism

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

³⁰ Ruby Layram, *Eye-Opening DeFi Statistics & Facts (Updated for 2024)*, Bankless Times (August 1, 2024), available at <https://www.banklesstimes.com/defi-statistics/> (last visited November 29, 2024).

³¹ While country-specific information is difficult to obtain, information on the North American cryptocurrency market would include U.S. users. Treasury and IRS use this information even though it is an over-estimate of U.S. users.

VI. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as a major rule as defined by 5 U.S.C. 804(2).

Statement of Availability of IRS Documents

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

Drafting Information

The principal authors of these regulations are Roseann Cutrone and Jessica Chase, Office of the Associate Chief Counsel (Procedure and Administration). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by revising the entry for § 1.6045–1 to read in part as follows:

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

* * * * *

Section 1.6045–1 also issued under 26 U.S.C. 6045(a).

* * * * *

■ **Par. 2.** Section 1.6045–0 is amended by:

■ 1. Revising the entries for § 1.6045–1(a)(21), (a)(21)(i) through (iii), and (a)(21)(iii)(A);

■ 2. Adding entries for § 1.6045–1(a)(21)(A)(iii)(1) and (2);

■ 3. Revising the entry for § 1.6045–1(a)(21)(iii)(B); and

■ 4. Adding entries for § 1.6045–1(a)(21)(iii)(C), (a)(21)(iii)(C)(1) and (2), and (a)(21)(iii)(D).

The revisions and additions read as follows:

§ 1.6045–0 Table of contents.

* * * * *

§ 1.6045–1 Returns of information of brokers and barter exchanges.

(a) * * *

(21) Digital asset middleman.

- (i) Effectuating service.
- (ii) Position to know.
- (iii) Trading front-end service and other effectuating services.
- (A) Trading front-end service.
- (1) In general.
- (2) Location of digital assets received in an exchange and indirect transmission of orders.
- (B) Other effectuating services.
- (C) Excluded activities.
- (1) Validation services.
- (2) Licensing of software or selling of hardware.
- (D) Digital asset trading protocol.

* * * * *

■ **Par. 3.** Section 1.6045–1 is amended by:

■ a. Revising and republishing paragraph (a)(21);

■ b. Revising paragraphs (b)(2)(ix) and (x);

■ c. Adding paragraphs (b)(2)(xi) and (b)(24) and (25); and

■ d. Adding a sentence to the end of paragraph (q).

The revisions and additions read as follows:

§ 1.6045–1 Returns of information of brokers and barter exchanges.

(a) * * *

(21) *Digital asset middleman.* The term *digital asset middleman* means any person who is responsible for providing an effectuating service as defined in paragraph (a)(21)(i) of this section with respect to a sale of digital assets.

(i) *Effectuating service.* The term *effectuating service* means any service, with respect to a sale of digital assets, that is:

(A) A trading front-end service described in paragraph (a)(21)(iii)(A) of this section wherein the nature of the service arrangement is such that the person providing that service ordinarily would know or be in a position to know within the meaning of paragraph (a)(21)(ii) of this section the nature of the transaction potentially giving rise to gross proceeds from the sale of digital assets; or

(B) Any other service described in paragraph (a)(21)(iii)(B) of this section.

(ii) *Position to know.* A person providing trading front-end services ordinarily would know or be in a position to know the nature of the transaction potentially giving rise to gross proceeds from a sale of digital assets if that person maintains control or sufficient influence over the trading front-end services to have the ability to determine whether and the extent to which the transfer of digital assets involved in a transaction gives rise to gross proceeds. A person providing trading front-end services will be considered to maintain control or sufficient influence over such services

as referred to in this paragraph (a)(21)(ii) if that person has the ability to amend, update, or otherwise substantively affect the terms under which the services are provided or the manner in which the order described in paragraph (a)(21)(iii)(A) of this section is processed. Additionally, a person providing trading front-end services will be considered to maintain control or sufficient influence over such services as referred to in this paragraph (a)(21)(ii) if that person has the ability to collect the fees charged for those services from the transaction flow (including from the digital assets disposed of or the digital assets received by the customer in the sale), whether or not the person actually collects fees in this manner. A person providing trading front-end services also will be considered to maintain control or sufficient influence over such services as referred to in this paragraph (a)(21)(ii) if that person has the ability, in connection with processing the order described in paragraph (a)(21)(iii)(A) of this section, to add to the order a sequence of instructions to query the cryptographically secured distributed ledger to determine if the processed order is, in fact, executed or to use another method of confirmation based on information known to that person as a result of providing the trading front-end services. Except as provided by the Secretary, a contractual or other restriction not required by law that limits the ability of the person providing trading front-end services to amend, update, or otherwise substantively affect the terms under which the services are provided (including the manner in which any fees are collected) or the manner in which the order is processed will be disregarded for purposes of this paragraph (a)(21)(ii).

(iii) *Trading front-end service and other effectuating services—(A) Trading front-end service—(1) In general.* A *trading front-end service* means a service that, with respect to a sale of digital assets, receives a person's order to sell and processes that order for execution by providing user interface services, including graphic and voice user interface services, that are designed to:

(i) Enable such person to input order details with respect to a transaction to be carried out or settled on a cryptographically secured distributed ledger (or any similar technology); and

(ii) Transmit those order details so that the transaction can be carried out or settled on a cryptographically secured distributed ledger (or any similar technology), including by transmitting the order details to the person's wallet in such form that, if

authorized by the person, causes the order details to be transmitted to a distributed ledger network for interaction with a digital asset trading protocol as defined in paragraph (a)(21)(iii)(D) of this section.

(2) *Location of digital assets received in an exchange and indirect transmissions of orders.* A service is a trading front-end service regardless of whether the digital assets received in the exchange are received in the wallet of the person providing the order details or in the wallet of another person pursuant to the first person's order details. The direct or indirect transmission to a distributed ledger network of order details that call upon or otherwise invoke the functions of automatically executing contracts that comprise a digital asset trading protocol is a transmission of order details to a distributed ledger network for interaction with a digital asset trading protocol.

(B) *Other effectuating services.* An effectuating service also means any of the services described in paragraphs (a)(21)(iii)(B)(1) through (5) of this section.

(1) The acceptance or processing of digital assets as payment for property of a type which when sold would constitute a sale under paragraph (a)(9)(i) of this section by a broker that is in the business of effecting sales of such property.

(2) Any service performed by a real estate reporting person as defined in § 1.6045-4(e) with respect to a real estate transaction in which digital assets are paid by the real estate buyer in full or partial consideration for the real estate, provided the real estate reporting person has actual knowledge or ordinarily would know that digital assets were used by the real estate buyer to make payment to the real estate seller. For purposes of this paragraph (a)(21)(iii)(B)(2), a real estate reporting person is considered to have actual knowledge that digital assets were used by the real estate buyer to make payment if the terms of the real estate contract provide for payment using digital assets.

(3) The acceptance or processing of digital assets as payment for any service provided by a broker described in paragraph (a)(1) of this section determined without regard to any sales under paragraph (a)(9)(ii)(C) of this section that are effected by such broker.

(4) Any payment service performed by a processor of digital asset payments described in paragraph (a)(22) of this section, provided the processor of digital asset payments has actual knowledge or ordinarily would know

the nature of the transaction and the gross proceeds therefrom.

(5) The acceptance of digital assets in return for cash, stored-value cards, or different digital assets, to the extent provided by a physical electronic terminal or kiosk.

(C) *Excluded activities—(1) Validation services.* Notwithstanding the definition of trading front-end services or other effectuating services in paragraphs (a)(21)(iii)(A) and (B) of this section, distributed ledger transaction validation services (whether through proof-of-work, proof-of-stake, or any other similar consensus mechanism), including those services necessary to complete the validation, are not effectuating services described in paragraph (a)(21)(i) of this section.

(2) *Licensing of software or selling of hardware.* If a person licenses software or sells hardware that provides unhosted wallet services that include both trading front-end services with respect to some sales of digital assets and other services that are not trading front-end services or other effectuating services under paragraph (a)(21)(iii)(B) of this section with respect to other sales of digital assets, that person is providing effectuating services only with respect to the sales of digital assets that are carried out using the trading front-end services provided by the unhosted wallet software licensed or hardware sold.

(D) *Digital asset trading protocol.* A digital asset trading protocol means a distributed ledger application consisting of computer software, including automatically executing contracts, that exchange one digital asset for another digital asset pursuant to instructions from a user.

* * * * *

(b) * * *

(2) * * *

(ix) A person engaged in validating distributed ledger transactions, through proof-of-work, proof-of-stake, or any other similar consensus mechanism, including a person that provides services necessary to complete the validation, without providing other functions or services that are effectuating services under paragraph (a)(21)(i) of this section.

(x) A person engaged in selling hardware or licensing of software, the sole function of which is to permit a person to control private keys which are used for accessing digital assets on a distributed ledger, without providing other functions or services that are effectuating services under paragraph (a)(21)(i) of this section.

(xi) An operator of a digital asset trading protocol defined in paragraph

(a)(21)(iii)(D) of this section that provides a distributed ledger application consisting of computer software, including automatically executing contracts, that exchange one digital asset for another digital asset pursuant to instructions from a user, without providing other functions or services that are effectuating services under paragraph (a)(21)(i) of this section.

* * * * *

(24) *Example 24: Effect, effectuating services, digital asset middleman, position to know, and customer—(i) Facts.* As part of B's trade or business, B stands ready to provide customers with trading front-end services in return for a 1% transaction fee withheld either from digital assets transferred or digital assets received by its customers in the trade. B provides these trading front-end services to digital asset user C for the sale of 200 units of digital asset DE in exchange for 1,500 units of digital asset ST (sale 1) and withholds 2 units of DE as a transaction fee. B also provides digital asset validation services for a distributed ledger network. B validates a transaction involving the sale of 20 units of digital asset DE for 150 units of digital asset ST (sale 2). B does not provide any services described in paragraph (a)(21)(iii) of this section with respect to sale 2.

(ii) *Analysis with respect to sale 1.* With respect to sale 1, B has the ability to collect fees charged for its trading front-end services from the transaction flow. Accordingly, B is in a position to know the nature of sale 1 under paragraph (a)(21)(ii) of this section because B maintains control or sufficient influence over the trading front-end services to have the ability to determine whether and the extent to which the transfer of digital assets involved in a transaction gives rise to gross proceeds. Because B provides a trading front-end service with respect to sale 1 and is in a position to know the nature of sale 1 under paragraph (a)(21)(ii) of this section, B provides an effectuating service under paragraph (a)(21)(i)(A) of this section. Accordingly, B is a digital asset middleman under paragraph (a)(21) of this section with respect to sale 1. Additionally, B effects sale 1 for C under paragraph (a)(10)(i)(D) of this section, and C is B's customer under paragraph (a)(2)(i)(D) of this section.

(iii) *Analysis with respect to sale 2.* Under paragraph (a)(21)(iii)(C) of this section, B's validation services with respect to sale 2 are not effectuating services. Accordingly, notwithstanding that B acts as a digital asset middleman

with respect to sale 1, B does not act as a digital asset middleman with respect to sale 2 or effect sale 2.

(25) *Example 25: Effect, effectuating services, position to know, digital asset middleman and customer—(i) Facts.* Corporation S is engaged in the business of operating and maintaining a website that licenses S-brand unhosted wallets (S-Wallets). S-Wallets are accessible online, allow users to control private keys to digital asset addresses, and allow users to transfer (and receive) digital assets directly from (into) their S-Wallets. S also offers trading front-end services (S-Trade) to each S-Wallet user. S charges S-Wallet users that dispose of digital assets held in their S-Wallets using the S-Trade service a 1% transaction fee that is withheld by S either from the digital assets transferred or the digital assets received by the user in the trade. S-Wallet users can use the S-Wallet’s private key control function and can transfer digital assets to and from their S-Wallets without using the S-Trade function. S-Wallet user K uses the S-Trade function within K’s S-Wallet to trade 200 units of digital asset DE for 1,500 units of digital asset ST (sale 1). S withholds 2 units of DE as a transaction fee with respect to this trade. K also uses the S-Wallet to transfer 5 units of DE directly to the

digital asset address of another person’s wallet in return for services provided by that other person (sale 2). S does not provide any other services described in paragraph (a)(21)(iii) of this section with respect to sale 2.

(ii) *Analysis with respect to sale 1.* With respect to sale 1, S has the ability to collect fees charged for its trading front-end services from the transaction flow. Accordingly, S is in a position to know the nature of sale 1 under paragraph (a)(21)(ii) of this section because S maintains control or sufficient influence over the trading front-end services to have the ability to determine whether and the extent to which the transfer of digital assets involved in a transaction gives rise to gross proceeds. Because S provides a trading front-end service with respect to sale 1 and is in a position to know the nature of sale 1 under paragraph (a)(21)(ii) of this section, S provides an effectuating service under paragraph (a)(21)(i)(A) of this section. Accordingly, S is a digital asset middleman under paragraph (a)(21) of this section with respect to sale 1. Finally, S effects sale 1 for K under paragraph (a)(10)(i)(D) of this section, and K is S’s customer under paragraph (a)(2)(i)(D) of this section.

(iii) *Analysis with respect to sale 2.* S’s services with respect to sale 2 are not effectuating services under paragraph (a)(21)(i) of this section because these services are not described in paragraph (a)(21)(iii)(B) of this section and are not trading front-end services under paragraph (a)(21)(iii)(A) of this section. Accordingly, notwithstanding that S acts as a digital asset middleman with respect to sale 1, S does not act as a digital asset middleman with respect to sale 2 or effect sale 2.

* * * * *

(q) * * * Paragraphs (a)(21), (b)(2)(ix) through (xi), and (b)(24) and (25) of this section apply to sales of digital assets on or after January 1, 2027. (For sales of digital assets before January 1, 2027, see 26 CFR 1.6045–1, as revised September 9, 2024.)

* * * * *

Douglas W. O'Donnell,
Deputy Commissioner.
Approved: December 5, 2024.
Aviva R. Aron-Dine,
Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2024–30496 Filed 12–27–24; 8:45 am]

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Part VI

The President

Executive Order 14132—Adjustments of Certain Rates of Pay

Presidential Documents

Title 3—**Executive Order 14132 of December 23, 2024****The President****Adjustments of Certain Rates of Pay**

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Statutory Pay Systems.* The rates of basic pay or salaries of the statutory pay systems (as defined in 5 U.S.C. 5302(1)), as adjusted under 5 U.S.C. 5303, are set forth on the schedules attached hereto and made a part hereof:

- (a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;
- (b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and
- (c) The schedules for the Veterans Health Administration of the Department of Veterans Affairs (38 U.S.C. 7306, 7401, 7404; section 301(a) of Public Law 102–40) at Schedule 3.

Sec. 2. *Senior Executive Service.* The ranges of rates of basic pay for senior executives in the Senior Executive Service, as established pursuant to 5 U.S.C. 5382, are set forth on Schedule 4 attached hereto and made a part hereof.

Sec. 3. *Certain Executive, Legislative, and Judicial Salaries.* The rates of basic pay or salaries for the following offices and positions are set forth on the schedules attached hereto and made a part hereof:

- (a) The Executive Schedule (5 U.S.C. 5311–5318) at Schedule 5;
- (b) The Vice President (3 U.S.C. 104) and the Congress (2 U.S.C. 4501) at Schedule 6; and
- (c) Justices and judges (28 U.S.C. 5, 44(d), 135, 252, and 461(a)) at Schedule 7.

Sec. 4. *Uniformed Services.* The rates of monthly basic pay (37 U.S.C. 203(a)) for members of the uniformed services, as adjusted under 37 U.S.C. 1009, and the rate of monthly cadet or midshipman pay (37 U.S.C. 203(c)) are set forth on Schedule 8 attached hereto and made a part hereof.

Sec. 5. *Locality-Based Comparability Payments.*

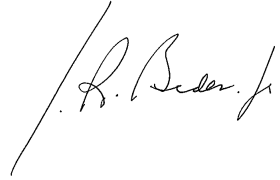
(a) Pursuant to section 5304 of title 5, United States Code, and my authority to implement an alternative level of comparability payments under section 5304a of title 5, United States Code, locality-based comparability payments shall be paid in accordance with Schedule 9 attached hereto and made a part hereof.

(b) The Director of the Office of Personnel Management shall take such actions as may be necessary to implement these payments and to publish appropriate notice of such payments in the *Federal Register*.

Sec. 6. *Administrative Law Judges.* Pursuant to section 5372 of title 5, United States Code, the rates of basic pay for administrative law judges are set forth on Schedule 10 attached hereto and made a part hereof.

Sec. 7. *Effective Dates.* Schedule 8 is effective January 1, 2025. The other schedules contained herein are effective on the first day of the first applicable pay period beginning on or after January 1, 2025.

Sec. 8. *Prior Order Superseded.* Executive Order 14113 of December 21, 2023 (Adjustments of Certain Rates of Pay), is superseded as of the effective dates specified in section 7 of this order.

A handwritten signature in black ink, appearing to read "J. R. Biden Jr.", is positioned in the upper right quadrant of the page. The signature is written in a cursive, flowing style.

THE WHITE HOUSE,
December 23, 2024.

Schedule 1--General Schedule

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2025)

Grade	1	2	3	4	5	6	7	8	9	10
GS-1	\$22,360	\$23,110	\$23,853	\$24,594	\$25,336	\$25,770	\$26,506	\$27,247	\$27,277	\$27,970
GS-2	25,142	25,740	26,573	27,277	27,583	28,394	29,205	30,016	30,827	31,638
GS-3	27,434	28,348	29,262	30,176	31,090	32,004	32,918	33,832	34,746	35,660
GS-4	30,795	31,822	32,849	33,876	34,903	35,930	36,957	37,984	39,011	40,038
GS-5	34,454	35,602	36,750	37,898	39,046	40,194	41,342	42,490	43,638	44,786
GS-6	38,407	39,687	40,967	42,247	43,527	44,807	46,087	47,367	48,647	49,927
GS-7	42,679	44,102	45,525	46,948	48,371	49,794	51,217	52,640	54,063	55,486
GS-8	47,265	48,841	50,417	51,993	53,569	55,145	56,721	58,297	59,873	61,449
GS-9	52,205	53,945	55,685	57,425	59,165	60,905	62,645	64,385	66,125	67,865
GS-10	57,489	59,405	61,321	63,237	65,153	67,069	68,985	70,901	72,817	74,733
GS-11	63,163	65,268	67,373	69,478	71,583	73,688	75,793	77,898	80,003	82,108
GS-12	75,706	78,230	80,754	83,278	85,802	88,326	90,850	93,374	95,898	98,422
GS-13	90,025	93,026	96,027	99,028	102,029	105,030	108,031	111,032	114,033	117,034
GS-14	106,382	109,928	113,474	117,020	120,566	124,112	127,658	131,204	134,750	138,296
GS-15	125,133	129,304	133,475	137,646	141,817	145,988	150,159	154,330	158,501	162,672

Schedule 2--Foreign Service Schedule

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2025)

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	\$125,133	\$101,395	\$82,160	\$66,574	\$53,945	\$48,225	\$43,112	\$38,541	\$34,454
2	128,887	104,437	84,625	68,571	55,563	49,672	44,405	39,697	35,488
3	132,754	107,570	87,164	70,628	57,230	51,162	45,738	40,888	36,552
4	136,736	110,797	89,778	72,747	58,947	52,697	47,110	42,115	37,649
5	140,838	114,121	92,472	74,930	60,716	54,278	48,523	43,378	38,778
6	145,063	117,545	95,246	77,178	62,537	55,906	49,979	44,680	39,942
7	149,415	121,071	98,103	79,493	64,413	57,583	51,478	46,020	41,140
8	153,898	124,703	101,046	81,878	66,346	59,311	53,022	47,401	42,374
9	158,515	128,444	104,078	84,334	68,336	61,090	54,613	48,823	43,645
10	162,672	132,297	107,200	86,864	70,386	62,923	56,251	50,287	44,955
11	162,672	136,266	110,416	89,470	72,498	64,810	57,939	51,796	46,303
12	162,672	140,354	113,729	92,154	74,672	66,755	59,677	53,350	47,692
13	162,672	144,565	117,141	94,919	76,913	68,757	61,467	54,950	49,123
14	162,672	148,902	120,655	97,766	79,220	70,820	63,311	56,599	50,597

**Schedule 3--Veterans Health Administration Schedules
Department of Veterans Affairs**

(Effective on the first day of the first applicable pay period
beginning on or after January 1, 2025)

Schedule for the Office of the Under Secretary for Health
(38 U.S.C. 7306) and Directors of Medical Centers and Veterans Integrated Service Networks (38 U.S.C.
7401(4))*

	<u>Minimum</u>	<u>Maximum</u>
	\$150,160	\$225,700**
Physician, Podiatrist, and Dentist Base and Longevity Pay Schedule***	<u>Minimum</u>	<u>Maximum</u>
Physician Grade	\$123,077	\$180,519
Dentist Grade	123,077	180,519
Podiatrist Grade	123,077	180,519
Chiropractor and Optometrist Schedule	<u>Minimum</u>	<u>Maximum</u>
Chief Grade	\$125,133	\$162,672
Senior Grade	106,382	138,296
Intermediate Grade	90,025	117,034
Full Grade	75,706	98,422
Associate Grade	63,163	82,108
Expanded-Function Dental Auxiliary Schedule****	<u>Minimum</u>	<u>Maximum</u>
Director Grade	\$125,133	\$162,672
Assistant Director Grade	106,382	138,296
Chief Grade	90,025	117,034
Senior Grade	75,706	98,422
Intermediate Grade	63,163	82,108
Full Grade	52,205	67,865
Associate Grade	44,924	58,397
Junior Grade	38,407	49,927

* Pursuant to 38 U.S.C. 7404(a)(2)(A) and (e), this schedule does not apply to the Director of Nursing Service or any incumbents who are physicians, podiatrists, or dentists. Pursuant to 38 U.S.C. 7404(a)(2)(B), this schedule also does not apply to the basic pay of any incumbents who are registered nurses or physician assistants if that basic pay is determined by the Secretary under subchapter IV of chapter 74 of title 38, United States Code.

** Pursuant to 38 U.S.C. 7404(a)(3)(B), for positions that are covered by a certified performance appraisal system, the maximum rate of basic pay may not exceed the rate of basic pay payable for level II of the Executive Schedule. For positions that are not covered by a certified performance appraisal system, the maximum rate of basic pay may not exceed the rate of basic pay payable for level III of the Executive Schedule.

*** Pursuant to 38 U.S.C. 7431, Veterans Health Administration physicians, podiatrists, and dentists paid under the Physician, Podiatrist, and Dentist Base and Longevity Pay schedule may also be paid market pay and performance pay.

**** Pursuant to section 301(a) of Public Law 102-40, these positions are paid according to the Nurse Schedule in 38 U.S.C. 4107(b), as in effect on August 14, 1990, with subsequent adjustments.

Schedule 4--Senior Executive Service(Effective on the first day of the first applicable pay period
beginning on or after January 1, 2025)

	<u>Minimum</u>	<u>Maximum</u>
Agencies with a Certified SES Performance Appraisal System	\$150,160	\$225,700
Agencies without a Certified SES Performance Appraisal System	\$150,160	\$207,500

Schedule 5--Executive Schedule(Effective on the first day of the first applicable pay period
beginning on or after January 1, 2025)

Level I	\$250,600
Level II	225,700
Level III	207,500
Level IV	195,200
Level V	183,100

Schedule 6--Vice President and Members Of Congress*(Effective on the first day of the first applicable pay period
beginning on or after January 1, 2025)

Vice President	\$289,400
Senators	174,000
Members of the House of Representatives	174,000
Delegates to the House of Representatives	174,000
Resident Commissioner from Puerto Rico	174,000
President pro tempore of the Senate	193,400
Majority leader and minority leader of the Senate	193,400
Majority leader and minority leader of the House of Representatives	193,400
Speaker of the House of Representatives	223,500

Schedule 7--Judicial Salaries(Effective on the first day of the first applicable pay period
beginning on or after January 1, 2025)

Chief Justice of the United States	\$317,500
Associate Justices of the Supreme Court	303,600
Circuit Judges	262,300
District Judges	247,400
Judges of the Court of International Trade	247,400

* This pay schedule assumes that Congress will continue to impose a freeze on the salaries of Members of Congress as it has since 2009, and so this schedule would be subject to further revisions if Congress proceeds differently.

**Schedule 8--Pay of The Uniformed Services
(Effective January 1, 2025)**

Part I--Monthly Basic Pay

Years of Service (Computed Under 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18
					Commissioned Officers						
O-10*	-	-	-	-	-	-	-	-	-	-	-
O-9*	-	-	-	-	-	-	-	-	-	-	-
O-8	\$13,380.00	\$13,818.90	\$14,109.30	\$14,190.30	\$14,553.60	\$15,159.30	\$15,300.60	\$15,876.30	\$16,042.20	\$16,538.10	\$17,256.00
O-7	11,117.70	11,634.00	11,873.10	12,063.60	12,407.10	12,747.30	13,140.00	13,531.50	13,925.10	15,159.30	16,202.10
O-6**	8,430.90	9,261.90	9,870.00	9,870.00	9,907.80	10,332.30	10,388.70	10,388.70	10,979.10	12,022.80	12,635.40
O-5	7,028.40	7,917.30	8,465.40	8,568.60	8,910.90	9,114.90	9,564.90	9,895.80	10,322.70	10,974.30	11,285.10
O-4	6,064.20	7,019.70	7,488.90	7,592.40	8,027.10	8,493.60	9,075.00	9,526.20	9,840.60	10,020.90	10,125.00
O-3***	5,331.60	6,044.10	6,522.60	7,112.40	7,453.80	7,827.90	8,069.10	8,466.60	8,674.50	8,674.50	8,674.50
O-2***	4,606.80	5,246.70	6,042.90	6,247.20	6,375.30	6,375.30	6,375.30	6,375.30	6,375.30	6,375.30	6,375.30
O-1***	3,998.40	4,161.90	5,031.30	5,031.30	5,031.30	5,031.30	5,031.30	5,031.30	5,031.30	5,031.30	5,031.30
					Commissioned Officers with Over 4 Years Active Duty Service as an Enlisted Member or Warrant Officer****						
O-3E	-	-	-	\$7,112.40	\$7,453.80	\$7,827.90	\$8,069.10	\$8,466.60	\$8,802.60	\$8,995.20	\$9,257.70
O-2E	-	-	-	6,247.20	6,375.30	6,578.10	6,920.70	7,185.90	7,383.00	7,383.00	7,383.00
O-1E	-	-	-	5,031.30	5,372.40	5,571.30	5,774.40	5,973.60	6,247.20	6,247.20	6,247.20
					Warrant Officers						
W-5	-	-	-	-	-	-	-	-	-	-	-
W-4	\$5,510.40	\$5,926.80	\$6,096.90	\$6,264.30	\$6,552.90	\$6,838.20	\$7,127.10	\$7,560.90	\$7,941.90	\$8,304.30	\$8,601.60
W-3	5,032.20	5,241.30	5,457.00	5,526.90	5,752.20	6,195.60	6,657.60	6,875.10	7,126.80	7,385.40	7,851.90
W-2	4,452.60	4,873.80	5,003.10	5,092.50	5,380.80	5,829.60	6,052.50	6,271.20	6,539.10	6,748.50	6,937.80
W-1	3,908.10	4,329.30	4,442.10	4,681.20	4,963.50	5,379.90	5,574.30	5,847.00	6,114.30	6,324.60	6,518.40

* Basic pay is limited to the rate of basic pay for level II of the Executive Schedule in effect during calendar year 2025, which is \$18,808.20 per month for officers at pay grades O-7 through O-10. This includes officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Chief of Space Operations, Commandant of the Coast Guard, Chief of the National Guard Bureau, or commander of a unified or specified combatant command (as defined in 10 U.S.C. 161(c)).

** Basic pay is limited to the rate of basic pay for level V of the Executive Schedule in effect during calendar year 2025, which is \$15,258.30 per month, for officers at pay grades O-6 and below.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

**** Reservists with at least 1,460 points as an enlisted member, a warrant officer, or a warrant officer and an enlisted member, which are creditable toward reserve retirement, also qualify for these rates.

Schedule 8--Pay of The Uniformed Services (Page 2)
(Effective January 1, 2025)
Part I--Monthly Basic Pay
Years of Service (Computed Under 37 U.S.C. 205)

Pay Grade	Over 20	Over 22	Over 24	Over 26	Over 28	Over 30	Over 32	Over 34	Over 36	Over 38	Over 40
Commissioned Officers											
O-10*	\$18,808.20*	\$18,808.20*	\$18,808.20*	\$18,808.20*	\$18,808.20*	\$18,808.20*	\$18,808.20*	\$18,808.20*	\$18,808.20*	\$18,808.20*	\$18,808.20*
O-9	18,808.20*	18,808.20*	18,808.20*	18,808.20*	18,808.20*	18,808.20*	18,808.20*	18,808.20*	18,808.20*	18,808.20*	18,808.20*
O-8	17,917.20	18,359.10	18,359.10	18,359.10	18,359.10	18,808.20*	18,808.20*	18,808.20*	18,808.20*	18,808.20*	18,808.20*
O-7	16,202.10	16,202.10	16,202.10	16,285.50	16,285.50	16,611.00	16,611.00	16,611.00	16,611.00	16,611.00	16,611.00
O-6**	13,247.70	13,596.30	13,949.10	14,632.80	14,632.80	14,925.00	14,925.00	14,925.00	14,925.00	14,925.00	14,925.00
O-5	11,592.30	11,940.90	11,940.90	11,940.90	11,940.90	11,940.90	11,940.90	11,940.90	11,940.90	11,940.90	11,940.90
O-4	10,125.00	10,125.00	10,125.00	10,125.00	10,125.00	10,125.00	10,125.00	10,125.00	10,125.00	10,125.00	10,125.00
O-3***	8,674.50	8,674.50	8,674.50	8,674.50	8,674.50	8,674.50	8,674.50	8,674.50	8,674.50	8,674.50	8,674.50
O-2***	6,375.30	6,375.30	6,375.30	6,375.30	6,375.30	6,375.30	6,375.30	6,375.30	6,375.30	6,375.30	6,375.30
O-1***	5,031.30	5,031.30	5,031.30	5,031.30	5,031.30	5,031.30	5,031.30	5,031.30	5,031.30	5,031.30	5,031.30
Commissioned Officers with Over 4 Years Active Duty Service As An Enlisted Member Or Warrant Officer****											
O-3E	\$9,257.70	\$9,257.70	\$9,257.70	\$9,257.70	\$9,257.70	\$9,257.70	\$9,257.70	\$9,257.70	\$9,257.70	\$9,257.70	\$9,257.70
O-2E	7,383.00	7,383.00	7,383.00	7,383.00	7,383.00	7,383.00	7,383.00	7,383.00	7,383.00	7,383.00	7,383.00
O-1E	6,247.20	6,247.20	6,247.20	6,247.20	6,247.20	6,247.20	6,247.20	6,247.20	6,247.20	6,247.20	6,247.20
Warrant Officers											
W-5	\$9,797.40	\$10,294.50	\$10,665.00	\$11,074.20	\$11,074.20	\$11,628.90	\$11,628.90	\$12,209.40	\$12,209.40	\$12,821.10	\$12,821.10
W-4	8,891.10	9,315.60	9,664.80	10,062.90	10,062.90	10,263.60	10,263.60	10,263.60	10,263.60	10,263.60	10,263.60
W-3	8,166.30	8,354.40	8,554.50	8,827.20	8,827.20	8,827.20	8,827.20	8,827.20	8,827.20	8,827.20	8,827.20
W-2	7,164.60	7,313.70	7,431.90	7,431.90	7,431.90	7,431.90	7,431.90	7,431.90	7,431.90	7,431.90	7,431.90
W-1	6,753.60	6,753.60	6,753.60	6,753.60	6,753.60	6,753.60	6,753.60	6,753.60	6,753.60	6,753.60	6,753.60

* Basic pay is limited to the rate of basic pay for level II of the Executive Schedule in effect during calendar year 2025, which is \$18,808.20 per month for officers at pay grades O-7 through O-10. This includes officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Chief of Space Operations, Commandant of the Coast Guard, Chief of the National Guard Bureau, or commander of a unified or specified combatant command (as defined in 10 U.S.C. 161(c)).

** Basic pay is limited to the rate of basic pay for level V of the Executive Schedule in effect during calendar year 2025, which is \$15,258.30 per month, for officers at pay grades O-6 and below.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

**** Reservists with at least 1,460 points as an enlisted member, a warrant officer, or a warrant officer and an enlisted member, which are creditable toward reserve retirement, also qualify for these rates.

Schedule 8--Pay of The Uniformed Services (Page 3)
(Effective January 1, 2025)

Part I--Monthly Basic Pay

Years Of Service (Computed Under 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18
Enlisted Members*											
E-9**	-	-	-	-	-	-	\$6,657.30	\$6,807.90	\$6,997.80	\$7,221.60	\$7,447.80
E-8	-	-	-	-	-	\$5,449.50	5,690.70	5,839.80	6,018.60	6,212.10	6,561.90
E-7	\$3,788.10	\$4,134.30	\$4,293.00	\$4,502.10	\$4,666.50	4,947.60	5,106.30	5,387.10	5,621.40	5,781.30	5,951.10
E-6	3,276.60	3,606.00	3,765.00	3,919.80	4,080.60	4,443.90	4,585.20	4,858.80	4,942.50	5,003.40	5,074.80
E-5	3,001.50	3,203.70	3,358.80	3,517.20	3,763.80	4,021.80	4,234.50	4,259.70	4,259.70	4,259.70	4,259.70
E-4	2,752.20	2,892.90	3,049.80	3,204.30	3,341.40	3,341.40	3,341.40	3,341.40	3,341.40	3,341.40	3,341.40
E-3	2,484.60	2,640.60	2,800.80	2,800.80	2,800.80	2,800.80	2,800.80	2,800.80	2,800.80	2,800.80	2,800.80
E-2	2,362.80	2,362.80	2,362.80	2,362.80	2,362.80	2,362.80	2,362.80	2,362.80	2,362.80	2,362.80	2,362.80
E-1***	2,108.10	2,108.10	2,108.10	2,108.10	2,108.10	2,108.10	2,108.10	2,108.10	2,108.10	2,108.10	2,108.10
E-1****	1,949.10	-	-	-	-	-	-	-	-	-	-

* This schedule is subject to possible future revision in light of an anticipated statutory enactment.

** For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, Chief Master Sergeant of the Space Force, Senior Enlisted Advisor to the Chairman of the Joint Chiefs of Staff, or Senior Enlisted Advisor to the Chief of the National Guard Bureau, basic pay for this grade is \$10,758.00 per month, regardless of cumulative years of service under 37 U.S.C. 205.

*** Applies to personnel who have served 4 months or more on active duty.

**** Applies to personnel who have served less than 4 months on active duty.

Schedule 8--Pay of The Uniformed Services (Page 5)

Part II--Rate of Monthly Cadet or Midshipman Pay

The rate of monthly cadet or midshipman pay authorized by 37 U.S.C. 203(c) is \$1,399.80.

Schedule 9--Locality-Based Comparability Payments

(Effective on the first day of the first applicable pay period
beginning on or after January 1, 2025)

Locality Pay Area*	Rate
Alaska.....	32.36%
Albany-Schenectady, NY-MA.....	20.77%
Albuquerque-Santa Fe-Las Vegas, NM.....	18.33%
Atlanta-Athens-Clarke County-Sandy Springs, GA-AL.....	23.79%
Austin-Round Rock-Georgetown, TX.....	20.35%
Birmingham-Hoover-Talladega, AL.....	18.24%
Boston-Worcester-Providence, MA-RI-NH-CT-ME-VT.....	32.58%
Buffalo-Cheektowaga-Olean, NY.....	22.41%
Burlington-South Burlington-Barre, VT.....	19.45%
Charlotte-Concord, NC-SC.....	19.67%
Chicago-Naperville, IL-IN-WI.....	30.86%
Cincinnati-Wilmington-Maysville, OH-KY-IN.....	21.93%
Cleveland-Akron-Canton, OH-PA.....	22.23%
Colorado Springs, CO.....	20.15%
Columbus-Marion-Zanesville, OH.....	22.15%
Corpus Christi-Kingsville-Alice, TX.....	17.63%
Dallas-Fort Worth, TX-OK.....	27.26%
Davenport-Moline, IA-IL.....	18.93%
Dayton-Springfield-Kettering, OH.....	21.42%
Denver-Aurora, CO.....	30.52%
Des Moines-Ames-West Des Moines, IA.....	18.01%
Detroit-Warren-Ann Arbor, MI.....	29.12%
Fresno-Madera-Hanford, CA.....	17.65%
Harrisburg-Lebanon, PA.....	19.43%
Hartford-East Hartford, CT-MA.....	32.08%
Hawaii.....	22.21%
Houston-The Woodlands, TX.....	35.00%
Huntsville-Decatur, AL-TN.....	21.91%
Indianapolis-Carmel-Muncie, IN.....	18.15%
Kansas City-Overland Park-Kansas City, MO-KS.....	18.97%
Laredo, TX.....	21.59%
Las Vegas-Henderson, NV-AZ.....	19.57%
Los Angeles-Long Beach, CA.....	36.47%
Miami-Port St. Lucie-Fort Lauderdale, FL.....	24.67%
Milwaukee-Racine-Waukesha, WI.....	22.42%
Minneapolis-St. Paul, MN-WI.....	27.62%
New York-Newark, NY-NJ-CT-PA.....	37.95%
Omaha-Council Bluffs-Fremont, NE-IA.....	18.23%
Palm Bay-Melbourne-Titusville, FL.....	17.93%
Philadelphia-Reading-Camden, PA-NJ-DE-MD.....	28.99%
Phoenix-Mesa, AZ.....	22.45%
Pittsburgh-New Castle-Weirton, PA-OH-WV.....	21.03%
Portland-Vancouver-Salem, OR-WA.....	26.13%
Raleigh-Durham-Cary, NC.....	22.24%
Reno-Fernley, NV.....	17.52%
Richmond, VA.....	22.28%
Rochester-Batavia-Seneca Falls, NY.....	17.88%
Sacramento-Roseville, CA-NV.....	29.76%
San Antonio-New Braunfels-Pearsall, TX.....	18.78%
San Diego-Chula Vista-Carlsbad, CA.....	33.72%
San Jose-San Francisco-Oakland, CA.....	46.34%
Seattle-Tacoma, WA.....	31.57%
Spokane-Spokane Valley-Coeur d'Alene, WA-ID.....	17.67%
St. Louis-St. Charles-Farmington, MO-IL.....	20.03%
Tucson-Nogales, AZ.....	19.28%
Virginia Beach-Norfolk, VA-NC.....	18.80%
Washington-Baltimore-Arlington, DC-MD-VA-WV-PA.....	33.94%
Rest of U.S.....	17.06%

* Locality Pay Areas are defined in 5 CFR 531.603.

SCHEDULE 10--ADMINISTRATIVE LAW JUDGES

(Effective on the first day of the first applicable pay period
beginning on or after January 1, 2025)

AL-3/A.....	\$130,400
AL-3/B.....	140,300
AL-3/C.....	150,400
AL-3/D.....	160,600
AL-3/E.....	170,800
AL-3/F.....	180,600
AL-2.....	190,500
AL-1*.....	195,200

* Pursuant to 5 U.S.C. 5372(b)(1)(C), the rate of basic pay for AL-1 may not exceed the rate for level IV of the Executive Schedule.

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