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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 52

[NRC–2025–0018]

RIN 3150–AL26

Revising the Duration of Design Certifications

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of September 15, 2025, for the direct final rule published in the *Federal Register* on July 2, 2025. This direct final rule amended the NRC's regulations to revise the duration of design certifications (DCs). This action replaced the 15-year duration for DCs with a 40-year duration period, both for existing DCs currently in effect and generically for future DCs. This direct final rule did not change the date of issuance for existing DCs (*i.e.*, the start date by which an existing DC may be referenced remains unchanged). This direct final rule also incorporated a minor editorial correction.

DATES: The effective date of September 15, 2025, for the direct final rule published July 2, 2025 (90 FR 28869), is confirmed.

ADDRESSES: Please refer to Docket ID NRC–2025–0018 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–2025–0018. 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 ADAMS Public Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to PDR.Resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time it is mentioned in the **SUPPLEMENTARY INFORMATION** 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: Daniel Doyle, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–3748, email: Daniel.Doyle@nrc.gov; or Jordan Glisan, Office of Nuclear Reactor Regulation, telephone: 301–415–3478, email: Jordan.Glisan@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On July 2, 2025 (90 FR 28869), the NRC published a direct final rule amending its regulations in part 52 of title 10 of the *Code of Federal Regulations* to revise the duration of design certifications.

In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on September 15, 2025. The NRC received and docketed four comment submissions on the companion proposed rule (90 FR 28911; July 2, 2025). Electronic copies of the comments can be obtained from the federal rulemaking website <https://www.regulations.gov> under Docket ID NRC–2025–0018 and are also available in ADAMS under Accession Nos.

ML25209A465, ML25211A180, ML25211A187, and ML25217A008. As explained in the July 2, 2025, direct final rule, the NRC would withdraw the direct final rule only if it received a significant adverse comment. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, challenges its underlying premise or approach, or shows why it would be ineffective or unacceptable without a change. A comment is adverse and significant if:

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

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

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

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

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

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

For the reasons discussed in more detail in Section II, "Public Comment Analysis," of this document, none of the comments contained in the submissions are considered significant adverse comments.

II. Public Comment Analysis

The NRC evaluated the comments against the criteria described in the direct final rule and determined that none of the comments submitted on the proposed rule are significant adverse comments. The public comments received on this action did not warrant any additions or changes to the final rule. The NRC is not making substantive changes to the rule; it is apparent that the rule is effective and acceptable as proposed, without the need for a substantive change or addition. The comments did not raise a relevant issue that was not previously addressed or considered by the NRC, and the comments did not cause the NRC to

either (1) reevaluate or reconsider its position, or (2) conduct additional analyses.

The comment submissions from ClearPath (ADAMS Accession No. ML25209A465) and The Breakthrough Institute (ADAMS Accession No. ML25211A180) did not oppose the rule. The comment submissions from Andrew Kalukin (ADAMS Accession No. ML25211A187) and the anonymous commenter (ADAMS Accession No. ML25217A008) opposed the rule, but they did not meet the criteria for significant adverse comments; however, the NRC is taking this opportunity to respond to these comments to clarify information about the direct final rule.

The following paragraphs summarize each individual comment from Andrew Kalukin and the anonymous commenter followed by the NRC response.

Comment 1: The commenter opposes extending the design certification period from 15 to 40 years, expressing concern that too many nuclear plants are obsolete in their safety technology, such as engineering to withstand ground motion. The commenter also expresses concern about the number of safety violations and near misses at nuclear plants.

NRC Response: The NRC disagrees with this comment. The comment does not provide sufficient information to identify obsolete safety technology. Nuclear power plants are designed and built to withstand earthquakes and other natural hazards, and the NRC continues to examine new seismic information as it becomes available. Safety violations at nuclear power plants are dispositioned through the NRC's inspection and enforcement programs in a manner intended to reflect the seriousness of the violation and the circumstances involved. The NRC made no changes to the rule as a result of this comment.

Comment 2: The commenter asserts that there is an insufficient basis for extending the duration of standard design certifications, arguing that this change would undermine the regulatory structure of Title 10 of the *Code of Federal Regulations*. The commenter states that extending the certification period by more than a factor of two would exceed the NRC's current experience with design certifications, and the agency has not adequately evaluated or discussed the potential implications of this extension. The commenter states that this change would delay compliance with safety requirements, such as those related to aircraft impact assessments, which were previously determined by the NRC to provide a substantial increase in public health and safety protections.

The commenter also asserts that the issue finality provisions applicable to DCs limit the NRC's ability to require updates and improvements to certified designs during the approval period, whereas shorter renewal periods offer more frequent opportunities for changes to be made during subsequent renewal periods. The commenter asserts that the direct final rule could reduce regulatory flexibility and create inefficiencies.

NRC Response: The NRC disagrees with this comment. The NRC considered all relevant implications of the amendments made by this direct final rule. The **Federal Register** notice for the direct final rule discusses how the amendments cause no reduction in safety or security. Section IV, "Discussion," explains that the NRC has processes to address potential safety or security issues outside of the renewal process, including, among other ways, by making generic changes to DC rules or plant-specific changes by Commission order.

With respect to the commenter's concern regarding aircraft impact assessments, each DC rule affected by this direct final rule does comply with the NRC's aircraft impact assessment regulations. This includes the AP1000 design, which was amended to address the NRC's aircraft impact assessment rule in 2011 (76 FR 82079; December 30, 2011).

Regarding the commenter's concern about the issue finality provisions, the NRC can effectively update DC rules even though they do not need to be renewed as often. This is explained in the **Federal Register** notice for the direct final rule and in this document. The NRC has also successfully updated DC rules before, even with issue finality provisions in place, including changes to address the NRC's aircraft impact assessment regulations. The issue finality provisions will not prevent the NRC from taking action to address safety or security concerns. In fact, the criteria for requiring design changes during a DC renewal review (found in 10 CFR 52.59(b)(1)–(b)(3)) are encompassed by the issue finality criteria for amending a DC during the term of the DC (found in 10 CFR 52.63(a)(1)). Also, as reflected in 10 CFR 52.63(a)(1), any person may petition to amend a DC, and the Commission may amend a DC on its own motion. To the extent the commenter objects to the NRC's issue finality provisions, these provisions were designed to appropriately balance important factors, including regulatory stability, flexibility, and efficiency, and are outside the scope of this rulemaking.

The NRC made no changes to the rule as a result of this comment.

Comment 3: The commenter criticizes the NRC's use of the direct final rulemaking process, stating that it was inappropriate and lacked sufficient transparency.

NRC Response: The NRC disagrees with this comment. The NRC uses the direct final rule process for regulatory amendments that are unlikely to be controversial. The direct final rule process allows an agency to issue a rule without having to go through the review process twice (*i.e.*, at the proposed and final rule stages) if there are no significant adverse comments, while at the same time offering the public the opportunity to comment on the proposed changes. The NRC made no changes to the rule as a result of this comment.

Comment 4: Addressing the NRC's rationale concerning regulatory burden, the commenter argues that the agency has not proven that the current certification duration imposes an unnecessary regulatory burden. The commenter maintains that the renewal process provides benefits that would be lost or diminished because it allows for regular updates to designs in response to new safety requirements.

NRC Response: The NRC disagrees with this comment. The **Federal Register** notice for the direct final rule discusses how the amendments reduce unnecessary regulatory burdens with no reduction in safety or security. Section IV, "Discussion," explains that (1) the 15-year certification period did not allow for sufficient time for operating experience to accumulate to provide new insights in a renewal application, and thus, resulted in inefficient use of resources both on the part of the NRC and the applicant; and (2) that the NRC retains other means of ensuring that codified DCs and the plants referencing them continue to meet safety and security requirements (90 FR 28869, 28870–871; July 2, 2025). In addition, Section VII, "Regulatory Analysis," describes how the rule is estimated to result in averted costs of approximately \$56.7 million in 2024 dollars to the NRC, licensees, and applicants over the analysis period (90 FR 28869, 28871; July 2, 2025). The NRC made no changes to the rule as a result of this comment.

In summary, the NRC did not receive any significant adverse comments and therefore, this direct final rule will become effective as scheduled.

Dated: August 21, 2025.

For the Nuclear Regulatory Commission.
Araceli Billoch Colon,
*Chief, Regulatory Analysis and Rulemaking
Support Branch, Division of Rulemaking,
Environmental, and Financial Support Office
of Nuclear Material Safety and Safeguards.*
[FR Doc. 2025–16286 Filed 8–25–25; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 542

Syrian Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is removing from the Code of Federal Regulations the Syrian Sanctions Regulations as a result of the termination of the national emergency on which the regulations were based and further changes to the policy of the United States towards Syria.

DATES: This rule is effective August 26, 2025.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Regulatory Affairs, 202–622–4855; or <https://ofac.treasury.gov/contact-ofac>.

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On May 11, 2004, the President, invoking the authority of, *inter alia*, the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA) and the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003 (Pub. L. 108–175, 117 Stat. 2482 (22 U.S.C. 2151 note)), issued Executive Order (E.O.) 13338 of May 11, 2004, “Blocking Property of Certain Persons and Prohibiting the Export of Certain Goods to Syria” (69 FR 26751, May 13, 2004). In E.O. 13338, the President determined that the actions of the Government of Syria in supporting terrorism, continuing its occupation of Lebanon, pursuing weapons of mass destruction and missile programs, and undermining United States and international efforts with respect to the stabilization and reconstruction of Iraq constituted an unusual and extraordinary threat to the national

security, foreign policy, and economy of the United States and declared a national emergency to deal with that threat.

On April 5, 2005, OFAC issued the Syrian Sanctions Regulations, 31 CFR part 542 (70 FR 17201, April 5, 2005) (the “Regulations”), to implement E.O. 13338, pursuant to authorities delegated to the Secretary of the Treasury in E.O. 13338. The Regulations were initially issued in abbreviated form for the purpose of providing immediate guidance to the public.

On May 2, 2014, OFAC reissued the Regulations in their entirety (79 FR 25414, May 2, 2014), and, among other effects, implemented E.O. 13399 of April 25, 2006, “Blocking Property of Additional Persons in Connection With the National Emergency With Respect to Syria” (71 FR 25059, April 28, 2006), E.O. 13460 of February 13, 2008, “Blocking Property of Additional Persons in Connection With the National Emergency With Respect to Syria” (73 FR 8991, February 15, 2008), E.O. 13572 of April 29, 2011, “Blocking Property of Certain Persons With Respect to Human Rights Abuses in Syria” (76 FR 24787, May 3, 2011), E.O. 13573 of May 18, 2011, “Blocking Property of Senior Officials of the Government of Syria” (76 FR 29143, May 20, 2011), E.O. 13582 of August 17, 2011, “Blocking Property of the Government of Syria and Prohibiting Certain Transactions With Respect to Syria” (76 FR 52209, August 22, 2011), and E.O. 13606 of April 22, 2012, “Blocking the Property and Suspending Entry Into the United States of Certain Persons With Respect to Grave Human Rights Abuses by the Governments of Iran and Syria via Information Technology” (77 FR 24571, April 24, 2012).

On June 6, 2024, OFAC further amended the Regulations (89 FR 48310, June 6, 2024) to, among other effects, implement relevant provisions of E.O. 13608 of May 1, 2012, “Prohibiting Certain Transactions With and Suspending Entry Into the United States of Foreign Sanctions Evaders With Respect to Iran and Syria” (77 FR 26409, May 3, 2012), the Syria Human Rights Accountability Act of 2012 (22 U.S.C. 8791 *et seq.*), the Countering America's Adversaries Through Sanctions Act (22 U.S.C. 9401 *et seq.*), and the Caesar Syria Civilian Protection Act of 2019 (Pub. L. 116–92, Div. F, Title LXXIV, 133 Stat. 2290 (22 U.S.C. 8791 note)).

On June 30, 2025, the President issued E.O. 14312, “Providing for the Revocation of Syria Sanctions” (90 FR 29395, July 3, 2025) to, among other objectives, remove sanctions on Syria

without providing relief to the so-called Islamic State of Iraq and Syria or other terrorist organizations, human rights abusers, those linked to chemical weapons or proliferation-related activities, or other persons that threaten the peace, security, or stability of the United States, Syria, and its neighbors. In E.O. 14312, the President found that the circumstances that gave rise to the actions taken in the Executive orders imposing sanctions on Syria pursuant to the national emergency declared in E.O. 13338, related to the policies and actions of the former regime of Bashar al-Assad, had been transformed by developments over the six months preceding June 30, 2025, including the positive actions taken by the new Syrian government under President Ahmed al-Sharaa. In section 3 of E.O. 14312, the President terminated, effective July 1, 2025, the national emergency declared in E.O. 13338 and revoked that order and E.O.s 13399, 13460, 13572, 13573, and 13582. Additionally, in section 4(b) of E.O. 14312, the President amended E.O. 13606 by removing reference in the preamble to E.O. 13338 and replacing it with reference to E.O. 13894, as relied upon for additional steps and further amended in subsequent Executive orders. Moreover, while E.O. 13608 remains in effect with respect to its Iran and Iran-related antiterrorism and non-proliferation authorities, with the termination of the national emergency declared in E.O. 13338, it no longer has effect with respect to the Syria-specific authorities in furtherance of the national emergency declared in that Executive order.

As a result, OFAC is removing the Regulations from the Code of Federal Regulations. Pursuant to section 202(a) of the National Emergencies Act (50 U.S.C. 1622(a)) and section 3(b) of E.O. 14312, termination of the national emergency declared in E.O. 13338 shall not affect any action taken or pending proceeding not finally concluded or determined as of July 1, 2025, any action or proceeding based on any act committed prior to July 1, 2025, or any rights or duties that matured or penalties that were incurred prior to July 1, 2025.

Section 4(a) of E.O. 14312 further amends E.O. 13894 of October 14, 2019, “Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Syria” (84 FR 55851, October 17, 2019) as amended by E.O. 14142 of January 15, 2025, “Taking Additional Steps With Respect to the Situation in Syria” (90 FR 6709, January 17, 2025), to ensure meaningful accountability for perpetrators of war crimes and human rights violations and

abuses, and the proliferation of narcotics trafficking networks in and in relation to Syria during the former regime of Bashar al-Assad and by those associated with it. Accordingly, certain persons previously sanctioned under E.O.s that were revoked by E.O. 14312 have been redesignated under E.O. 13894, as further amended. OFAC intends, in a separate rulemaking, to amend 31 CFR part 569 to rename it the Promoting Accountability for Assad and Regional Stabilization Sanctions Regulations and to incorporate E.O. 13894, as further amended, and other relevant authorities.

Public Participation

Because the Regulations involve a foreign affairs function, the provisions of E.O. 12866 of September 30, 1993, “Regulatory Planning and Review” (58 FR 51735, October 4, 1993), as amended, and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, as well as the provisions of E.O. 14192 of January 31, 2025, “Unleashing Prosperity Through Deregulation” (90 FR 9065, February 6, 2025) and E.O. 14219 of February 19, 2025, “Ensuring Lawful Governance and Implementing the President’s ‘Department of Government Efficiency’ Deregulatory Initiative” (90 FR 10583, February 25, 2025) are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not impose information collection requirements that would require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 31 CFR Part 542

Administrative practice and procedure, Banks, Banking, Blocking of assets, Brokers, Credit, Foreign trade, Investments, Penalties, Reporting and recordkeeping requirements, Sanctions, Securities, Services, Syria.

PART 542—[REMOVED]

■ For the reasons set forth in the preamble, and pursuant to 50 U.S.C. 1601 *et seq.* and E.O. 14312, (90 FR

29395, July 3, 2025), OFAC amends 31 CFR chapter V by removing part 542.

Bradley T. Smith,

*Director, Office of Foreign Assets Control,
Department of the Treasury.*

[FR Doc. 2025–16324 Filed 8–25–25; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2025–0075]

RIN 1625–AA00

Safety Zone; Chesapeake Bay, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone for certain waters of the Chesapeake Bay near Baltimore, MD within 500 yards of the M/V W SAPPHIRE in position 39°01.40’ N, 76°22.1’ W. The Coast Guard is establishing this safety zone to protect personnel, vessels, and the marine environment from potential hazards during multi-agency firefighting and salvage operations. Additionally, the safety zone is needed to ensure a safe working environment for the first responders and dive teams from passing traffic. This rule will prohibit persons or vessels from entering this zone unless specifically authorized by the Captain of the Port (COTP) Sector Maryland-National Capital Region (NCR) or a designated representative.

DATES: This rule is effective without actual notice from August 26, 2025 through September 15, 2025. For the purposes of enforcement, actual notice will be used from August 20, 2025 until August 26, 2025.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2025–0075 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 Mr. Charles Bullock, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard: telephone 410–365–8125, email Charles.D.Bullock@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port, Sector Maryland-National Capital Region
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

At approximately 6:30 p.m. on August 18, 2025, the M/V W SAPPHIRE experienced an explosion in cargo hold #2. The vessel is anchored in position 39°01.40’ N, 76°22.1’ W. The zone is intended to protect personnel, vessels, and the marine environment from potential hazards during multi-agency firefighting and salvage operations. The zone is intended to protect personnel, vessels, and the marine environment in these navigable waters. No vessel or person is permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

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.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to respond to the potential safety hazards associated with emergency salvage operations. It is impracticable to publish an NPRM because we must establish this safety zone as soon as possible.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is necessary to ensure the safety of vessels and persons on these navigable waters during the emergency vessel salvage operation.

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 Sector Maryland-NCR has determined that potential hazards associated with vessel survey and salvage operations that started on August 18, 2025 will be a safety concern for anyone within a 200-yard radius of

the vessel. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone.

IV. Discussion of the Rule

This rule establishes a 500-yard radius, temporary safety zone around M/V W SAPPHIRE on August 20, 2025 through September 15, 2025. Enforcement may end earlier upon the safe departure or repair of the vessel. The safety zone will cover all navigable waters within 500 yards of the multi-agency firefighting and salvage operations. This rule will prohibit persons or vessels from entering this zone unless specifically authorized by the COTP or a designated representative.

The COTP or a designated representative may forbid and control the movement of all vessels in the zone. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the zone, citation for failure to comply, or both.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analysis based on a number of these statutes and Executive orders.

A. Regulatory Planning and Review

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

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.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary moving safety zone lasting only long enough to support salvage operations for a vessel explosion. It will prohibit entry within certain navigable waters of the Patapsco River. It is categorically excluded from further review under paragraph L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

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. 01.4.

■ 2. Add § 165.T05–0075 to read as follows:

§ 165.T05–0075 Safety Zone; Chesapeake Bay, Baltimore, MD.

(a) *Location.* The following area is a safety zone: All navigable waters encompassing a 500-yard radius around the M/V W SAPPHIRE while the vessel is in the Chesapeake Bay, Baltimore, MD.

(b) *Definitions.* As used in this section—

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

Designated representative means any Coast Guard commissioned, warrant, or petty officer, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Maryland-National Capital Region (COTP) in the enforcement of the security zone.

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone number 410-576-2693 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement periods.* This section will be enforced from August 20, 2025 until September 15, 2025, or earlier upon the safe departure or repair of the vessel.

Dated: August 20, 2025.

Patrick C. Burkett,

Captain, U.S. Coast Guard, Captain of the Port Sector Maryland-National Capital Region.

[FR Doc. 2025-16354 Filed 8-25-25; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 62

[EPA-HQ-OAR-2003-0119; FRL-12232-03-OAR]

RIN 2060-AW43

Commercial and Industrial Solid Waste Incineration Units: Temporary-Use Incinerators and Air Curtain Incinerators Used in Disaster Recovery

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule; request for comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is taking interim final action to provide for the temporary use of incineration units subject to commercial and industrial solid waste incinerator (CISWI) regulations during disaster recovery. Currently, only other solid waste incinerators (OSWI) are authorized to combust debris from a disaster or emergency on a temporary basis without

having to comply with applicable Clean Air Act (CAA) section 129 requirements. We are also authorizing such temporary use for incinerators (including air curtain incinerators (ACI)) subject to CISWI regulations by adding temporary-use provisions that essentially mirror those in the OSWI regulations to existing Federal CISWI rule subparts. The EPA is requesting comments on all aspects of this interim final rule and will consider all comments received after the conclusion of the comment period.

DATES: This interim final rule is effective on August 26, 2025. Comments on this rule must be received on or by October 10, 2025.

Public Hearing. If anyone contacts us requesting a public hearing on or before August 31, 2025, the EPA will hold a virtual public hearing on September 10, 2025. See the **SUPPLEMENTARY INFORMATION** section for information on requesting and registering for a public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OAR-2003-0119, by any of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov (our preferred method). Follow the online instructions for submitting comments.
- **Email:** a-and-r-docket@epa.gov. Include Docket ID No. EPA-HQ-OAR-2003-0119 in the subject line of the message.

- **Mail:** U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA-HQ-OAR-2003-0119, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

- **Hand/Courier Delivery:** EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.-4:30 p.m., Monday-Friday (except Federal holidays).

Instructions: All submissions received must include the Docket ID No. for this rule. Comments received may be posted without change to www.regulations.gov, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions about the rule regarding the temporary use of incinerators subject to CISWI regulations during disaster recovery, contact Dr. Felica Davis, Sector Policies and Programs Division (E143-03), Office of Air Quality

Planning and Standards, U.S. Environmental Protection Agency, 109 T.W. Alexander Drive, P.O. Box 12055, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541-4857 and email address: davis.felica@epa.gov.

SUPPLEMENTARY INFORMATION:

Docket. The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2003-0119. All documents in the docket are listed at www.regulations.gov. Although listed, 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. With the exception of such material, publicly available docket materials are available electronically in www.regulations.gov.

Instructions. Direct your comments to Docket ID No. EPA-HQ-OAR-2003-0119. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be CBI, Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, PBI, or otherwise protected through www.regulations.gov or email. This type of information should be submitted as discussed below.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI, PBI, or multimedia submissions, and general guidance on making effective comments, please visit www.epa.gov/dockets/commenting-epa-dockets.

The www.regulations.gov website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA

without going through www.regulations.gov, 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. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and should be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at www.epa.gov/dockets.

Submitting CBI. Do not submit information containing CBI to the EPA through www.regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in the *Instructions* section above. If you include other information whose disclosure is restricted by statute in your comment, clearly mark your submission as including that information. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI and note the docket ID. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Information whose disclosure is otherwise restricted by statute will be processed by the EPA Docket Center in accordance with the applicable statute.

Our preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol (FTP), or other online file sharing services (e.g., Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted

directly to the Office of Air Quality Planning and Standards (OAQPS) CBI Office at the email address oaqps_cbi@epa.gov, and as described above, should include clear CBI markings and note the docket ID. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email oaqps_cbi@epa.gov to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: OAQPS Document Control Officer (C404-02), OAQPS, U.S. Environmental Protection Agency, 109 T.W. Alexander Drive, P.O. Box 12055, Research Triangle Park, North Carolina, 27711, Attention Docket ID No. EPA-HQ-OAR-2003-0119. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope. Note that written comments containing CBI and submitted by mail may be delayed and no hand deliveries will be accepted.

Participation in virtual public hearing. To request a virtual public hearing, contact the public hearing team at (888) 627-7764 or by email at AQPDpublichearing@epa.gov. If requested, the public hearing will be held via virtual platform on September 10, 2025. The EPA will announce additional details on the virtual public hearing at <https://www.epa.gov/stationary-sources-air-pollution/commercial-and-industrial-solid-waste-incineration-units-ciswi-new>. The EPA may close a session 15 minutes after the last pre-registered speaker has testified if there are no additional speakers.

If a public hearing is requested, the EPA will begin pre-registering speakers for each hearing no later than 1 business day following publication of this document in the **Federal Register**. The EPA will accept registrations on an individual basis. To register to speak at the virtual hearing, please contact the public hearing team at (888) 627-7764 or email at AQPDpublichearing@epa.gov. The last day to pre-register to speak at the public hearing will be September 7, 2025. Prior to the hearing, the EPA will post a general agenda that will list pre-registers speakers at: <https://www.epa.gov/stationary-sources-air-pollution/commercial-and-industrial-solid-waste-incineration-units-ciswi-new>.

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have 4 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to AQPDpublichearing@epa.gov. The EPA also recommends submitting the text of your oral testimony as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at <https://www.epa.gov/stationary-sources-air-pollution/commercial-and-industrial-solid-waste-incineration-units-ciswi-new>. While the EPA expects the hearing to be conducted as set forth earlier, please monitor our website or contact the public hearing team at (888) 627-7764 or by email at AQPDpublichearing@epa.gov to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates. If you require the services of a translator or special accommodation such as audio description, please pre-register for the hearing with the public hearing team and describe your needs by September 2, 2025. The EPA may not be able to arrange accommodations without advanced notice.

Children's Environmental Health. Since we cannot predict when or how many units will need to use the temporary-use exemption or what debris will need to be burned after a disaster, we were unable to do an analysis to determine impacts on children's health.

Preamble acronyms and abbreviations. Throughout this preamble the use of "we," "us," or "our" is intended to refer to the EPA. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

ACI Air Curtain Incinerator
CAA Clean Air Act
CBI Confidential Business Information
CFR Code of Federal Regulations
CISWI Commercial and Industrial Solid Waste Incinerator
EG Emissions Guidelines
EPA Environmental Protection Agency
FR Federal Register
ICR Information Collection Request
NSPS New Source Performance Standards

OMB Office of Management and Budget
 OSWI Other Solid Waste Incinerator
 PBI Proprietary Business Information
 PRA Paperwork Reduction Act
 RFA Regulatory Flexibility Act
 TPD Tons Per Day
 UMRA Unfunded Mandates Reform Act

Organization of this document. The information in this preamble is organized as follows:

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 - C. Judicial Review
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 - A. Temporary Use of CISWI During Disaster Recovery
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 - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
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 - I. Executive Order 14192: Unleashing Prosperity Through Deregulation
 - K. National Technology Transfer and Advancement Act (NTTAA)
 - J. Congressional Review Act

I. General Information

A. Does this action apply to me?

Categories and entities potentially affected by this rulemaking are those that operate incinerators (including ACI) subject to CISWI New Source Performance Standards (NSPS) (40 CFR part 60, subpart CCCC), Federal Plan (40 CFR part 62, subpart IIIa), or Emissions Guidelines (EG) (40 CFR part 60, subpart DDDD) (hereinafter collectively referred to as "CISWI"). If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. Where can I get a copy of this document and other related information?

The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2003–0119. Following signature by the EPA Administrator, the EPA also will post a copy of this document to <https://www.epa.gov/stationary-sources-air-pollution/commercial-and-industrial-solid-waste-incineration-units-ciswi-new>.

C. Judicial Review

Under CAA section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by October 27, 2025. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

II. Background

A. What is the Agency's statutory authority for this action?

CAA section 129, entitled "Solid Waste Combustion," requires the EPA to develop and adopt NSPS and EG for solid waste incineration units pursuant to CAA section 111.¹ Section 111(b) of the CAA requires the EPA to establish NSPS for new sources, and CAA section 111(d) requires the EPA to establish procedures for States to submit plans for implementing EG for existing sources. The EPA promulgates Federal implementation plans to regulate existing sources where there are no approved State plans.

CAA section 129(a)(1) identifies five categories of solid waste incineration units and requires emissions standards for each category. The five categories of solid waste incineration units are:

- (1) Units with a capacity of greater than 250 tons per day (TPD) combusting municipal waste;
- (2) Units with a capacity equal to or less than 250 TPD combusting municipal waste;
- (3) Units combusting hospital, medical, and infectious waste;
- (4) Units combusting commercial or industrial waste; and
- (5) Unspecified "other categories of solid waste incineration units." (commonly referred to as "OSWI").

While the CAA specifically describes four of the five listed categories by the types of wastes burned, it leaves unspecified the "other categories of

solid waste incineration units." As the EPA observed during the development of standards for OSWI, Congress could have unambiguously required OSWI to cover every other possible type of incineration unit burning any type of solid waste but did not to do so, thereby leaving the EPA discretion to delineate those "other" categories of solid waste incineration units. 70 FR 74870, 74875 (December 16, 2005). Based on that authority, the EPA defined OSWI to include very small municipal combustion units and institutional waste combustion incineration units. The EPA analyzed and excluded various types of incinerators from being subject to CAA section 129 standards; among those excluded are incinerators when used on a temporary basis to combust debris during disaster recovery. The EPA determined that some incinerators "should be handled differently due to unusual circumstances (e.g., unique geographic locations or climatic factors, temporary emergency use)" that would render compliance with CAA section 129 rules infeasible. *Id.* at 74875. With respect to incinerators for temporary emergency use, the EPA observed that "[i]n emergency situations, quick removal of debris is of utmost importance to maintain public health and safety. Depending on the type of emergency and the local situation, there may be no reasonable and safe alternatives to incineration." *Id.* At 74880.

The EPA also observed that some control devices, such as a wet scrubber, may not operate as required under CAA section 129 during the disaster recovery period because "the water supply, handling and treatment capabilities required to operate a wet scrubber may be unavailable for long periods of time in the disaster areas, while the need for recovery is immediate," rendering it infeasible to comply with CAA section 129 rules during emergency temporary use when the standards in questions were based on the use of control technologies like wet scrubbers. *Id.* at 74880. In addition, "regulation would hinder the recovery effort, and this impact would outweigh the benefits from regulation of the units." *Id.* at 74879. Accordingly, the EPA exercised its discretion under CAA section 129(a)(1)(5) to define the scope of OSWI to exclude incinerators from being subject to CAA section 129 standards and associated requirements when they are used to combust debris during disaster recovery. To qualify for this exclusion, an incinerator "must be used to combust debris in an area declared a State of Emergency by a local or State

¹ CAA section 129(a)(1)(A), 42 U.S.C. 7429(a)(1)(A).

government, or the President, under the authority of the Stafford Act, has declared that an emergency or a major disaster exists in the area.” 40 CFR 60.2969 (OSWI NSPS); *see also* 40 CFR 60.3061 (OSWI EG). In addition, owners and operators must follow the notification requirements in the temporary-use provisions. *Id.*

Because these temporary-use provisions are codified in the Federal OSWI regulations, they are currently limited to incinerators subject to the Federal OSWI regulations. The EPA has realized that States need more incinerators for emergency/disaster debris cleanup, and some have requested the temporary use of CISWI for such purpose. Therefore, based on the same authority and for the same reasons explained in the 2005 OSWI rule² and here in section II.B. of this preamble, the EPA is including similar temporary-use provisions for disaster recovery in CISWI regulations, thereby extending such temporary use to incinerators at commercial and industrial facilities.

CAA section 129(a)(1)(C) requires that the EPA establish standards for “solid waste incineration units combusting commercial and industrial wastes.” However, this action provides for the temporary use of CISWI during disaster recovery to burn debris (which is defined in the Webster Dictionary as remains of materials broken or destroyed, in this case by a natural disaster or emergency); the temporary-use provisions do not apply to combustion of commercial and industrial wastes (*i.e.*, wastes generated by commercial and industrial facilities) for which standards are required under CAA section 129(a)(1)(C). The EPA, therefore, concludes that incinerators at commercial and industrial facilities need not comply with CAA section 129 emission standards and associated requirements for CISWI while they are used on a temporary basis to combust non-hazardous, disaster related debris, not waste from their normal operations.

Please note that while the EPA is amending the CISWI EG (40 CFR part 60, subpart DDDD), along with the CISWI NSPS and Federal plan, to include the temporary-use provisions, the CISWI EG does not directly apply to existing CISWI covered by that EG. However, States may revise their State plans implementing 40 CFR part 60, subpart DDDD to add the temporary-use provisions that are now in 40 CFR part 60, subpart DDDD, thereby allowing their existing CISWI to be used temporarily for emergency/disaster

debris cleanup without complying with their CAA section 129 standards during that period.

B. What is the regulatory history for this action?

In 2005, the EPA promulgated the OSWI NSPS (40 CFR part 60, subpart EEEE) and EG (40 CFR part 60, subpart FFFF). 70 FR 74870 (December 16, 2005). Those regulations established CAA section 129 standards and associated requirements for OSWI and also allow temporary use of incinerators to burn debris during disaster recovery without complying with such standards as would apply under ordinary circumstances. Because these OSWI regulations are currently the only CAA section 129 regulations with such temporary-use provisions, only incinerators subject to OSWI NSPS or State plans implementing OSWI EG may be used on a temporary basis to combust debris from a disaster or emergency without complying with CAA section 129 requirements during that period.

On January 24, 2025, President Trump issued Executive Order (E.O.) 14181, “Emergency Measures to Provide Water Resources in California and Improve Disaster Response in Certain Areas” to expedite cleanup of the catastrophic wildfires in Los Angeles County.³ Executive Order 14181 sparked renewed awareness of regulatory challenges associated with disaster recovery. When Hurricane Helene seriously impacted many States on the Eastern seaboard in September 2024, the EPA could not grant North Carolina’s request to use CISWI to combust disaster-related non-hazardous debris without complying with CAA section 129 standards because the CISWI regulations did not have temporary-use provisions like those in the OSWI regulations.

C. What action is the EPA taking?

As incinerators are useful for disaster/emergency cleanup and recovery efforts that directly implicate and benefit human health and the environment, the EPA does not want to hinder the temporary use of incinerators during these types of events. To respond to this need, in this rule, the EPA is including in the CISWI regulations temporary-use provisions similar to those in the Federal OSWI regulations. As amended, the EPA’s regulations will now provide that CISWI used on a temporary basis to combust debris from a disaster or emergency such as a tornado, hurricane, flood, ice storm, high winds, or act of

bioterrorism need not comply with otherwise applicable CAA section 129 requirements when used for such purposes and the requirements of the regulation for such use are satisfied. Such temporary-use provisions are provided in the following CAA section 129 regulations:

- 40 CFR part 60, subpart CCCC—Standards of Performance for Commercial and Industrial Solid Waste Incineration Units
- 40 CFR part 60, subpart DDDD—Emission Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units
- 40 CFR part 62, subpart IIIa—Federal Plan Requirements for Commercial and Industrial Solid Waste Incineration Units That Commenced Construction On or Before June 4, 2010, and Have Not Been Modified or Reconstructed Since August 7, 2013

As discussed in section II.A of this preamble, the temporary-use provisions in 40 CFR part 60, subpart DDDD do not directly apply to existing sources. However, States may amend their State plans implementing 40 CFR part 60, subpart DDDD to include these temporary-use provisions.

III. What are the actions and rationale for this rulemaking?

A. Temporary Use of CISWI During Disaster Recovery

The EPA is amending CISWI regulations to establish temporary-use disaster recovery and emergency provisions similar to those in the Federal OSWI regulations. Accordingly, like OSWI units, CISWI units used to combust debris during qualifying disaster events will no longer be bound by the CAA section 129 emission standards that apply during ordinary circumstances as long as they meet the conditions for these temporary-use provisions. Specifically, CISWI units may only be used to combust debris in an area that has been declared as a State of Emergency by a local or state government or where the President, under the authority of the Stafford Act, has declared that an emergency or a major disaster exists in the area. Under these temporary-use provisions, debris that is combusted is any non-hazardous material that must be the remains of something that was destroyed, broken, or discarded as a result of a disaster or emergency such as a tornado, hurricane, flood, ice storm, high winds, or act of bioterrorism. During the disaster recovery period, the CISWI cannot burn waste from normal operations at their facilities. As explained further below, owners and or operators must follow the

³ Executive Order 14181, Emergency Measures to Provide Water Resources in California and Improve Disaster Response in Certain Areas, 90 FR 8747 (January 24, 2025).

² 70 FR 74875 and 74879 (December 16, 2005).

notification requirements specified in the temporary-use provisions.

In addition, under the CISWI temporary-use provisions, control devices installed to comply with CISWI NSPS, the CISWI Federal plan, or a State plan implementing CISWI EG would continue operation during temporary-use status unless it is not technically feasible to do so due to conditions in the disaster recovery area.⁴ Examples of infeasibility to operate include insufficient electricity to operate a control device, lack of water to operate a wet scrubber or quench, and inability to get replacement supplies such as activated carbon or parts for maintenance because of the impacts of the disaster at issue.

We believe that during the disaster recovery period, regulatory requirements for CISWI that apply during ordinary circumstances are not appropriate for incinerators that are burning only non-hazardous debris and only long enough to complete the recovery tasks; these incinerators are not used as long-term waste disposal devices that CAA section 129 standards are designed to regulate. Also, as the EPA previously explained, “in emergency situations, quick removal of debris is of utmost importance to maintain public health and safety, and temporary-use incinerators may be best suited to dispose of debris.” 70 FR 74879 (December 16, 2005) The EPA, therefore, elected not to require OSWI compliance with the CAA section 129 standards that apply under ordinary circumstances when they are used on a short-term basis to burn debris during disaster recovery, noting that such “regulation would hinder the recovery effort, and this impact would outweigh the benefits from regulation of the units.” *Id.* The EPA found that:

“this proactive approach, which addresses the terms for use of a temporary-use incinerator during declared emergencies or disasters, is better than an approach that requires the EPA and others to react during or immediately after such an emergency or disaster strikes. We also point out that States and the Federal Government have specific procedures that are followed in declaring an area a State of Emergency

or a major disaster area. Their procedures involve extensive involvement by local, State, and Federal officials to conduct a preliminary damage assessment, develop debris removal plans, and coordinate and manage disaster assistance activities.” *Id.*

While owners or operators do not have to meet the emission limitations or other requirements applicable to the CISWI during this period as long as they follow the temporary-use provisions, failure to do so would mean that the temporary use is improperly invoked; in that event, the incinerator remains subject to the CISWI regulations that would normally apply, and the incinerator could be found to be in violation if it is not in compliance.

B. Temporary-Use Period and Notifications

Similar to the OSWI regulations, the EPA is not requiring notification of temporary use of CISWI for disaster recovery that lasts 8 consecutive weeks or less (beginning on the date the unit starts operation in response to a disaster or emergency). If the incinerator will be used for longer than 8 weeks, the owner or operator must notify the Administrator and request permission to continue to operate. The notification must be submitted in writing by the date 8 weeks after the temporary-use incinerator starts operation and must include the date the incinerator started operation within the boundaries of the current emergency or disaster declaration area, identification of the disaster or emergency for which the incinerator is being used, a description of the types of materials being burned in the incinerator, a brief description of the size and design of the unit, including any existing control devices, the reasons the incinerator must be operated for more than eight weeks, the amount of time for which the owner or operator requests permission to operate, including the date the unit is expected to cease operation, and, if applicable, a brief description of why the control devices are infeasible to operate due to the disaster.

After notifying the Administrator in accordance with the above, the owner or operator may extend operation for an additional 8 weeks for a total of 16 weeks from the date the unit started operation. Owners or operators do not have to meet the emission limitations or other requirements applicable to the CISWI during this period. This and the ability to start temporary use without notification during the first 8 weeks are aimed to ease the burden during or

immediately after a disaster or emergency.

If the request is for a period beyond another 8 weeks, at the end of 16 weeks from the date the CISWI started operation within the boundaries of the current emergency or disaster declaration area, the owner or operator must cease operation of the unit or comply with all requirements, unless the Administrator has approved in writing your request to continue operation for the requested period.

Upon the effective date of this rule, the temporary-use provisions are effective immediately for incinerators subject to CISWI NSPS (40 CFR part 60, subpart CCCC) and the Federal plan (40 CFR part 62, subpart IIIa). The EPA is adding the same temporary-use provisions in the CISWI EG, 40 CFR part 60, subpart DDDD, which would allow States to amend their State plans for existing CISWI to incorporate this temporary-use provision.

IV. Rulemaking Procedures

The EPA’s authority for the rulemaking procedures followed in this action is provided by Administrative Procedure Act (APA) section 553(b)(B), 5 U.S.C. 553(b)(B), which allows an agency to forego prior notice and comment “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”⁵ This action is being issued without prior notice or opportunity for public comment because the EPA finds that prior notice and comment would be impracticable, unnecessary, and contrary to the public interest under the circumstances.

As discussed in section II of this preamble, this interim final rule amends the EPA’s CISWI regulations to include temporary use provisions for incinerators during disaster recovery that are essentially the same as those in the existing OSWI regulations.

Prior notice and comment on the temporary-use provisions would be impracticable given the demonstrated need for enhanced disaster recovery capacity. Recent disaster events have demonstrated that more incinerators are needed in disaster recovery efforts. Because hurricane, flood, and wildfire

⁴ In promulgating the temporary use provisions in the OSWI rules, the EPA recognized that there may be instances where it is not technically feasible to operate a control device through the entire duration of a disaster recovery period. (70 FR 74880; December 16, 2005). Likewise, in this rule, the EPA is requiring that existing controls continue to operate during the temporary use period if technically feasible, thereby acknowledging potential operational issues during such period but minimizing emissions where there are not such issues.

⁵ Although the procedural requirements of CAA section 307(d) apply to the EPA’s promulgation or revision of any standard or requirement under CAA section 129, these procedural requirements do not apply “in the case of any rule or circumstance referred to in subparagraphs (A) or (B) of [APA section 553(b)].” CAA section 307(d)(1), 42 U.S.C. 7607(d)(1).

seasons are all underway, with new events continuously creating a critical demand for this authority, the EPA must take immediate action to put in place these temporary-use provisions to ensure that more incinerators are available for recovery efforts during and following emergencies and major disasters. Prior notice and comment would be impracticable given the purpose of this rulemaking to address pressing need, as standard procedures would result in delaying final action until the conclusion of many of this year's disaster seasons.

Prior notice and comment would be unnecessary because these changes are essentially the same temporary-use provisions as the long-standing OSWI temporary-use provisions that have been implemented in various disaster recovery efforts, including those in North Carolina following Hurricane Helene in September 2024. The OSWI temporary-use provisions underwent notice and comment, which the EPA considered before finalizing. It is, therefore, unnecessary to provide a new round of notice and comment on essentially the same provisions.

In addition to adopting the OSWI temporary-use provisions, the temporary-use provisions for CISWI include a condition that existing controls remain operating during the temporary-use period unless operation is infeasible due to the disaster. This condition minimizes emissions during disaster recovery and creates no additional burden on the CISWI owners and operators as the controls are already in place and operating. We, therefore, do not consider that the addition of this condition warrants a new round of notice and comment.

For much the same reasons, the EPA finds that prior notice and comment would be contrary to the public interest under the circumstances. As explained further below with respect to the effective date for this action, the public interest is furthered by an immediate availability of the allowances already afforded to OSWI units to CISWI units because of the pressing need for rapid and effective disaster relief where such circumstances are present. The EPA has successfully administered the same allowances for OSWI units for decades without experiencing significant drawbacks and is committed to reviewing and responding to public comments and revising this action if appropriate.

This rule is effective immediately upon publication. Section 553(d) of the APA requires publication of the final rule to precede the effective date by at least 30 days unless, as relevant here,

the Agency finds good cause to make the rule effective immediately upon publication under APA section 553(d)(3).⁶ For the reasons explained below, the Agency finds that there is good cause to make this rule effective immediately upon publication.

The public has a strong interest to have this rule take effect as quickly as possible considering recent flooding in Texas, New Mexico, and North Carolina, and the fact that hurricane season and the peak of wildfire season are underway. The regulated community needs little, if any, time to prepare for this rule, which adds no new burden to the owners and operators of the incinerators during the temporary-use period. The only requirement is to send a notice to the EPA if the units are to be used longer than 8 weeks. This routine notification requirement requires minimal resources and would not come into play for any unit until well after the default 30 day delayed effectiveness period. For the reasons provided above, the Agency finds that there is good cause to make this rule effective immediately upon publication. APA section 553(d)(1) also justifies making the action effective immediately as it "grants or recognizes an exemption or relieves a restriction." The temporary-use provisions relieve a restriction because they provide relaxed requirements for when CISWI units are used temporarily to combust debris in an area declared a State of Emergency that meets the requirements set out in this action.

V. Summary of Cost, Environmental, and Economic Impacts

This rule will allow for the temporary use of CISWI during a qualifying disaster. Facilities with CISWI that use the disaster recovery temporary-use provisions are not subject to additional control requirements; in fact, they do not need to meet the CAA section 129 requirements during this temporary-use period. Therefore, we anticipate there will not be any additional compliance costs. As cleanup responses are required during and following a disaster or emergency, we anticipate this action to add zero or de minimis environmental impacts due to this action supplanting alternative combustion options.

⁶ See *Omnipoint Corp. v. FCC*, 78 F.3d 620, 630 (D.C. Cir. 1996) (in determining whether good cause exists to make a rule immediately effective, an agency should "balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling").

VI. Request for Comment

As explained in section IV of this preamble, the EPA finds good cause to issue this interim final rule without prior notice or opportunity for public comment. However, the EPA is providing an opportunity for the public to comment on the temporary-use provisions established in this final rule and requests comment on the provisions described herein. The EPA will review comments received and consider whether the provisions should be revised, if appropriate, in response to comments received.

VII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at www.epa.gov/laws-regulations/laws-and-executive-orders.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is considered an Executive Order 14192 deregulatory action. This final rule provides burden reduction during emergency and disaster recovery with the temporary-use provisions for CISWI.

C. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to OMB under the PRA. The information collection request (ICR) documents that the EPA prepared have been assigned EPA ICR number 7811.01 (subpart CCCC) and number 7812.01 (subpart DDDD). You can find a copy of the ICRs in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

This action amends the current requirements in 40 CFR part 60 subparts CCCC and DDDD and 40 CFR part 62 subpart IIIa to allow owners and operators to temporarily combust debris associated with disaster recovery. As part of these new requirements, owners and operators must submit a notification to the Administrator whenever an incinerator is used to combust this type of debris for more than 8 weeks. There are no other changes to the notification, recordkeeping, and reporting requirements in these subparts. These

notifications, reports, and records are essential in determining compliance with the applicable subpart.

Respondents/affected entities: Owners and operators of new and existing CISWI units.

Respondent's obligation to respond: Mandatory if temporary use exceeds 8 weeks (40 CFR part 60, subpart CCCC, 40 CFR part 60, subpart DDDD, and 40 CFR part 62, subpart IIIa).

Estimated number of respondents: 92 (16 for 40 CFR part 60, subpart CCCC and 76 for 40 CFR part 60, subpart DDDD and 40 CFR part 62, subpart IIIa), of which the EPA estimates that approximately 4.3 (1.6 and 2.7 for new and existing units, respectively) will be subject to this new notification requirement annually.

Frequency of response: As needed for disaster recovery.

Total estimated burden: 2,230 hours per year for 40 CFR part 60, subpart CCCC and 8,660 hours per year for 40 CFR part 60, subpart DDDD and 40 CFR part 62, subpart IIIa, of which the EPA estimates approximately 3.7 and 6.2 burden hours, respectively, are associated with this notification annually. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$1,530,000 (per year) for 40 CFR part 60, subpart CCCC and 13,500,000 (per year) for 40 CFR part 60, subpart DDDD and 40 CFR part 62, subpart IIIa, of which the EPA estimates that approximately \$529 and \$893, respectively, are associated with this notification annually.

An agency may not conduct or sponsor, and a person is not required to respond to, an ICR unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

D. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the APA, 5 U.S.C. 553, or any other statute. This rule is not subject to notice-and-comment requirements because the Agency has invoked the APA "good cause" exemption under 5 U.S.C. 553(b).

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of \$100 million or more (in 1995 dollars) as described in the 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.

F. 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.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications. It will neither impose substantial direct compliance costs on Federally recognized Tribal governments, nor preempt Tribal law. Thus, Executive Order 13175 does not apply to this action.

H. 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 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 and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. Emissions changes are projected to be zero or de minimis, and therefore effects on children's health would also be zero or de minimis.

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 Supplementary Information section of this preamble.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a

significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Congressional Review Act

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

List of Subjects

40 CFR Parts 60 and 62

Environmental protection, Administrative practice and procedures, Air pollution control, Reporting and recordkeeping requirements.

Lee Zeldin,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR parts 60 and 62 as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart CCCC—Standards of Performance for Commercial and Industrial Solid Waste Incineration Units

■ 2. Under the undesignated center heading "Applicability" add § 60.2041 to read as follows:

§ 60.2041 What are the requirements for temporary-use incinerators and air curtain incinerators used in disaster recovery?

(a) If your CISWI or air curtain incinerator is used on a temporary basis to combust debris from a disaster or emergency such as a tornado, hurricane, flood, ice storm, high winds, or act of bioterrorism, it is excluded from the requirements of this subpart during the temporary-use period permitted under paragraphs (b) through (d) of this section as long as your CISWI or air curtain incinerator is used in accordance with paragraph (a) of this section. To qualify for this exclusion, the CISWI or air curtain incinerator may only be used to combust debris in an area declared a State of Emergency by a local or state government, or the President, under the authority of the

Stafford Act, has declared that an emergency or a major disaster exists in the area. If your CISWI or air curtain incinerator is equipped with a control device, you must continue to run that control device in order to qualify for this exclusion, unless the control device is infeasible to operate as a result of the disaster. Additionally, you must follow the requirements specified in paragraphs (b) through (d) of this section.

(b) If the CISWI or air curtain incinerator is used in accordance with paragraph (a) of this section during a period that begins on the date the unit started operation and lasts 8 weeks or less within the boundaries of the same emergency or disaster declaration area, then it is excluded from the requirements of this subpart. You do not need to notify the Administrator of its use or meet the emission limitations or other requirements of this subpart.

(c) If the CISWI or air curtain incinerator will be used during a period that begins on the date the unit started operation and lasts more than 8 weeks within the boundaries of the same emergency or disaster declaration area, you must notify the Administrator that the temporary-use CISWI or air curtain incinerator will be used for more than 8 weeks and request permission to continue to operate the unit as specified in paragraphs (c)(1) and (2) of this section.

(1) The notification must be submitted in writing by the date 8 weeks after you start operation of the temporary-use CISWI or air curtain incinerator within the boundaries of the current emergency or disaster declaration area.

(2) The notification must contain the date the CISWI or air curtain incinerator started operation within the boundaries of the current emergency or disaster declaration area, identification of the disaster or emergency for which the CISWI or air curtain incinerator is being used, a description of the types of materials being burned in the CISWI or air curtain incinerator, a brief description of the size and design of the unit (for example, an air curtain incinerator or a modular starved-air incinerator), the reasons the CISWI or air curtain incinerator must be operated for more than 8 weeks, and the amount of time for which you request permission to operate including the date you expect to cease operation of the unit.

(d) If you submitted the notification containing the information in paragraph (c)(2) of this section, by the date specified in paragraph (c)(1) of this section, you may continue to operate the CISWI or air curtain incinerator for

another 8 weeks, which is a total of 16 weeks from the date the unit started operation within the boundaries of the current emergency or disaster declaration area, so long as control devices continue to run as able. You do not have to meet the emission limitations or other requirements of this subpart during this period.

(1) At the end of 16 weeks from the date the CISWI or air curtain incinerator started operation within the boundaries of the current emergency or disaster declaration area, you must cease operation of the unit or comply with all requirements of this subpart, unless the Administrator has approved in writing your request to continue operation.

(2) If the Administrator has approved in writing your request to continue operation, then you may continue to operate the CISWI or air curtain incinerator within the boundaries of the current emergency or disaster declaration area until the date specified in the approval, and you do not need to comply with any other requirements of this subpart during the approved time period.

Subpart DDDD—Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units

■ 3. Under the undesignated center heading “Applicability of State Plans” add § 60.2556 to read as follows:

§ 60.2556 What are the requirements for temporary-use incinerators and air curtain incinerators used in disaster recovery?

(a) If your CISWI or air curtain incinerator is used on a temporary basis to combust debris from a disaster or emergency such as a tornado, hurricane, flood, ice storm, high winds, or act of bioterrorism, it is excluded from the requirements of this subpart during the temporary-use period permitted under paragraphs (b) through (d) of this section as long as your CISWI or air curtain incinerator is used in accordance with paragraph (a) of this section. To qualify for this exclusion, the CISWI or air curtain incinerator may only be used to combust debris in an area declared a State of Emergency by a local or state government, or the President, under the authority of the Stafford Act, has declared that an emergency or a major disaster exists in the area. If your CISWI or air curtain incinerator is equipped with a control device, you must continue to run that control device in order to qualify for this exclusion, unless the control device is infeasible to operate as a result of the disaster. Additionally, you must follow

the requirements specified in paragraphs (b) through (d) of this section.

(b) If the CISWI or air curtain incinerator is used in accordance with paragraph (a) of this section during a period that begins on the date the unit started operation and lasts 8 weeks or less within the boundaries of the same emergency or disaster declaration area, then it is excluded from the requirements of this subpart. You do not need to notify the Administrator of its use or meet the emission limitations or other requirements of this subpart.

(c) If the CISWI or air curtain incinerator will be used during a period that begins on the date the unit started operation and lasts more than 8 weeks within the boundaries of the same emergency or disaster declaration area, you must notify the Administrator that the temporary-use CISWI or air curtain incinerator will be used for more than 8 weeks and request permission to continue to operate the unit as specified in paragraphs (c)(1) and (2) of this section.

(1) The notification must be submitted in writing by the date 8 weeks after you start operation of the temporary-use CISWI or air curtain incinerator within the boundaries of the current emergency or disaster declaration area.

(2) The notification must contain the date the CISWI or air curtain incinerator started operation within the boundaries of the current emergency or disaster declaration area, identification of the disaster or emergency for which the CISWI or air curtain incinerator is being used, a description of the types of materials being burned in the CISWI or air curtain incinerator, a brief description of the size and design of the unit (for example, an air curtain incinerator or a modular starved-air incinerator), the reasons the CISWI or air curtain incinerator must be operated for more than 8 weeks, and the amount of time for which you request permission to operate including the date you expect to cease operation of the unit.

(d) If you submitted the notification containing the information in paragraph (c)(2) of this section, by the date specified in paragraph (c)(1) of this section, you may continue to operate the CISWI or air curtain incinerator for another 8 weeks, which is a total of 16 weeks from the date the unit started operation within the boundaries of the current emergency or disaster declaration area, so long as control devices continue to run as able. You do not have to meet the emission limitations or other requirements of this subpart during this period.

(1) At the end of 16 weeks from the date the CISWI or air curtain incinerator started operation within the boundaries of the current emergency or disaster declaration area, you must cease operation of the unit or comply with all requirements of this subpart, unless the Administrator has approved in writing your request to continue operation.

(2) If the Administrator has approved in writing your request to continue operation, then you may continue to operate the CISWI or air curtain incinerator within the boundaries of the current emergency or disaster declaration area until the date specified in the approval, and you do not need to comply with any other requirements of this subpart during the approved time period.

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 4. The authority citation for part 62 continues to read as follows:

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

Subpart IIIa—Federal Plan Requirements for Commercial and Industrial Solid Waste Incineration Units That Commenced Construction on or Before June 4, 2010, and Have Not Been Modified or Reconstructed Since August 7, 2013

■ 5. Under the undesignated center heading “Applicability” add § 62.14531a to read as follows:

§ 62.14531a What are the requirements for temporary-use incinerators and air curtain incinerators used in disaster recovery?

(a) If your CISWI or air curtain incinerator is used on a temporary basis to combust debris from a disaster or emergency such as a tornado, hurricane, flood, ice storm, high winds, or act of bioterrorism, it is excluded from the requirements of this subpart during the temporary-use period permitted under paragraphs (b) through (d) of this section as long as your CISWI or air curtain incinerator is used in accordance with paragraph (a) of this section. To qualify for this exclusion, the CISWI or air curtain incinerator may only be used to combust debris in an area declared a State of Emergency by a local or state government, or the President, under the authority of the Stafford Act, has declared that an emergency or a major disaster exists in the area. If your CISWI or air curtain incinerator is equipped with a control device, you must continue to run that control device in order to qualify for this exclusion, unless the control device

is infeasible to operate as a result of the disaster. Additionally, you must follow the requirements specified in paragraphs (b) through (d) of this section.

(b) If the CISWI or air curtain incinerator is used in accordance with paragraph (a) of this section during a period that begins on the date the unit started operation and lasts 8 weeks or less within the boundaries of the same emergency or disaster declaration area, then it is excluded from the requirements of this subpart. You do not need to notify the Administrator of its use or meet the emission limitations or other requirements of this subpart.

(c) If the CISWI or air curtain incinerator will be used during a period that begins on the date the unit started operation and lasts more than 8 weeks within the boundaries of the same emergency or disaster declaration area, you must notify the Administrator that the temporary-use CISWI or air curtain incinerator will be used for more than 8 weeks and request permission to continue to operate the unit as specified in paragraphs (c)(1) and (2) of this section.

(1) The notification must be submitted in writing by the date 8 weeks after you start operation of the temporary-use CISWI or air curtain incinerator within the boundaries of the current emergency or disaster declaration area.

(2) The notification must contain the date the CISWI or air curtain incinerator started operation within the boundaries of the current emergency or disaster declaration area, identification of the disaster or emergency for which the CISWI or air curtain incinerator is being used, a description of the types of materials being burned in the CISWI or air curtain incinerator, a brief description of the size and design of the unit (for example, an air curtain incinerator or a modular starved-air incinerator), the reasons the CISWI or air curtain incinerator must be operated for more than 8 weeks, and the amount of time for which you request permission to operate including the date you expect to cease operation of the unit.

(d) If you submitted the notification containing the information in paragraph (c)(2) of this section, by the date specified in paragraph (c)(1) of this section, you may continue to operate the CISWI or air curtain incinerator for another 8 weeks, which is a total of 16 weeks from the date the unit started operation within the boundaries of the current emergency or disaster declaration area, so long as control devices continue to run as able. You do not have to meet the emission

limitations or other requirements of this subpart during this period.

(1) At the end of 16 weeks from the date the CISWI or air curtain incinerator started operation within the boundaries of the current emergency or disaster declaration area, you must cease operation of the unit or comply with all requirements of this subpart, unless the Administrator has approved in writing your request to continue operation.

(2) If the Administrator has approved in writing your request to continue operation, then you may continue to operate the CISWI or air curtain incinerator within the boundaries of the current emergency or disaster declaration area until the date specified in the approval, and you do not need to comply with any other requirements of this subpart during the approved time period.

[FR Doc. 2025–16360 Filed 8–25–25; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 52c

[Docket No. NIH–2025–0001]

RIN 0925–AA72

Terminating National Institutes of Health Minority Biomedical Research Support Program and Rescinding the Program’s Related Regulation

AGENCY: National Institutes of Health, Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services (HHS), in consultation with the National Institutes of Health (NIH), is repealing the regulation relating to the Minority Biomedical Research Support (MBRS) program in compliance with Executive Order (E.O.) 14173 (*Ending Illegal Discrimination and Restoring Merit-Based Opportunity*) and E.O. 14151 (*Ending Radical and Wasteful Government DEI Programs and Preferencing*), and to abide by Supreme Court precedent. HHS remains committed to ensuring equal treatment under the law throughout its grant programs.

DATES: This final rule is effective September 25, 2025.

FOR FURTHER INFORMATION CONTACT: Matthew Zorn, Deputy General Counsel, U.S. Department of Health and Human Services, Office of the General Counsel, 200 Independence Avenue SW, Washington, DC 20201. Telephone:

(202) 795-7645. Email: Matthew.Zorn@hhs.gov.

SUPPLEMENTARY INFORMATION:

I. General Discussion

The MBRS program prioritizes racial classifications in awarding federal funding. The stated goal of the program is to “increase the numbers of ethnic minority faculty, students, and investigators engaged in biomedical research and to broaden the opportunities for participants in biomedical research of ethnic minority faculty, students, and investigators”¹ and relies on “minority student enrollment” to determine applicant eligibility.²

The regulation and the MBRS program generally are contrary to the Supreme Court’s decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*,³ which held that race-based affirmative action in college admissions violates the Equal Protection Clause of the 14th Amendment and Title VI of the Civil Rights Act of 1964. The goal of promoting diversity, even if commendable, cannot survive review under equal protection principles.⁴

The principles identified in *Students for Fair Admissions* also apply to the federal government⁵ and require repeal of the MBRS program. Therefore, HHS is repealing the regulation codified at 42 CFR 52c and terminating the MBRS program.

II. Procedural Issues

Under 5 U.S.C. 553(b)(3)(B), an agency may dispense with the notice-and-comment procedures when it finds the notice-and-comment to be “impractical, unnecessary, or contrary to the public interest.” Because the MBRS regulations are contrary to Supreme Court precedent on their face, the NIH finds good cause that notice-and-comment on this final rule is impractical, unnecessary, and contrary to the public interest.

This final rule has been determined to be exempt from review for purposes of E.O. 12866.

This rule does not impose information collection and recordkeeping requirements and therefore does not need to be reviewed by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

¹ Part 52c—Minority Biomedical Research Support Program, 45 FR 12,246 (Feb. 25, 1980).

² 42 CFR 52c.3(a).

³ 600 U.S. 181 (2023).

⁴ *Id.* at 214.

⁵ See *Fullilove v. Klutznick*, 448 U.S. 448, 480 (1980).

List of Subjects in 42 CFR Part 52c

Educational study programs, Grant programs—health, Medical research, Reporting and recordkeeping requirements.

PART 52c—[REMOVED AND RESERVED]

■ For the reasons stated in the preamble, under the authority of 42 U.S.C. 241, HHS amends Subchapter D of Chapter I of Title 42 of the Code of Federal Regulations by removing part 52c.

Robert F. Kennedy, Jr.,

Secretary, U.S. Department of Health and Human Services.

[FR Doc. 2025–16321 Filed 8–25–25; 8:45 am]

BILLING CODE 4140–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 24–136; FCC 25–27; FR ID 308172]

Promoting the Integrity and Security of Telecommunications Certification Bodies, Measurement Facilities, and the Equipment Authorization Program; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission (Commission) is correcting a final rule that appeared in the **Federal Register** on August 7, 2025. The document addressed requirements for all recognized telecommunication certification bodies (TCBs), test labs, and laboratory accreditation bodies to certify to the Commission that they are not owned by, controlled by, or subject to the direction of a prohibited entity and to report all equity or voting interests of 5% or greater by any entity. The document inadvertently included compliance dates for provisions that are delayed indefinitely and excluded a word in one section.

DATES: Effective September 8, 2025, except for the correction to indefinitely delayed amendatory instruction 16, which is effective as of August 26, 2025.

FOR FURTHER INFORMATION CONTACT:

Jamie Coleman of the Office of Engineering and Technology, at Jamie.Coleman@fcc.gov or 202–418–2705.

SUPPLEMENTARY INFORMATION: In FR Doc. 2025–14970 appearing on page 38045 in the **Federal Register** of Thursday,

August 7, 2025, the following corrections are made:

■ 1. On page 38068, in the second column, correct amendatory instruction 16 to read as follows:

16. Delayed indefinitely, amend § 2.950 by adding paragraphs (c) through (e) to read as follows:

§ 2.950 Transition periods.

* * * * *

(c) Each recognized laboratory accreditation body must provide to the Commission:

(1) No later than 30 days after [EFFECTIVE DATE OF AMENDATORY INSTRUCTION 16], certification to the Commission that the laboratory accreditation body is not owned by, controlled by, or subject to the direction of a prohibited entity pursuant to § 2.902; and

(2) No later than 90 days after [EFFECTIVE DATE OF AMENDATORY INSTRUCTION 16], documentation to the Commission identifying any entity that has equity or voting interests of 5% or greater in the laboratory accreditation body.

(d) Each recognized laboratory must provide to the Commission:

(1) No later than 30 days after [EFFECTIVE DATE OF AMENDATORY INSTRUCTION 16], certification to the Commission that the laboratory is not owned by, controlled by, or subject to the direction of a prohibited entity pursuant to § 2.902; and

(2) No later than 90 days after [EFFECTIVE DATE OF AMENDATORY INSTRUCTION 16], documentation to the Commission identifying any entity that has equity or voting interests of 5% or greater in the laboratory.

(e) Each recognized TCB must provide to the Commission:

(1) No later than 30 days after [EFFECTIVE DATE OF AMENDATORY INSTRUCTION 16], certification to the Commission that the TCB is not owned by, controlled by, or subject to the direction of a prohibited entity pursuant to § 2.902; and

(2) No later than 90 days after [EFFECTIVE DATE OF AMENDATORY INSTRUCTION 16], documentation to the Commission identifying any entity that has equity or voting interests of 5% or greater in the TCB.

■ 2. On page 38069, in the third column, in § 2.960, correct the introductory text of paragraph (h) to read as follows:

§ 2.960 Recognition of Telecommunication Certification Bodies (TCBs).

* * * * *

(h) The Commission will notify a TCB in writing of its intention to withdraw the TCB’s recognition, and provide at

least 30 days for the TCB to respond, if the Commission determines that the TCB:

* * * * *

Federal Communications Commission.

Marlene Dortch,
Secretary.

[FR Doc. 2025-16285 Filed 8-25-25; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[GN Docket No. 25-133; DA 25-736; FR ID 309943]

Delete, Delete, Delete; Removal of Obsolete Regulations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Media Bureau of the Federal Communications Commission (Commission) conforms part 76 of the Commission's rules to the court decisions in *Time Warner Cable Inc. v. FCC*, which vacated the temporary standstill rule for program carriage complaint proceedings, and *EchoStar Satellite LLC v. FCC*, which set aside two 2003 Commission orders adopting the encoding rules.

DATES: Effective August 26, 2025.

FOR FURTHER INFORMATION CONTACT: Kathy Berthot, Federal Communications Commission, Media Bureau, Policy Division, Kathy.Berthot@fcc.gov, (202) 418-7454.

SUPPLEMENTARY INFORMATION: This is a summary of the Media Bureau's Order in GN Docket No. 25-133, DA 25-736, adopted and released on August 21, 2025. The full text of this document is available for public inspection and can be downloaded at <https://docs.fcc.gov/public/attachments/DA-25-736A1.pdf>.

Procedural Matters

Paperwork Reduction Act of 1995 Analysis: This document does not contain new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501-3521. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, 44 U.S.C. 3506(c)(4).

Congressional Review Act: The Media Bureau has determined, and the Administrator of the Office of Information and Regulatory Affairs,

Office of Management and Budget concurs, that this rule is "non-major" under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Synopsis

Introduction

By this Order, we conform part 76 of the Commission's rules to court decisions nullifying certain provisions in that part. In the *Delete, Delete, Delete* proceeding, the Commission made clear its goal to "review its rules to identify and eliminate those that are unnecessary in light of current circumstances." The Media Bureau takes this action in furtherance of that goal, finding that these rules "no longer have any operative effect," and therefore should not remain in the Code of Federal Regulations (CFR). Specifically, this action will remove from our regulations approximately 14 pages, 5,855 words, and 43 rules or requirements.

We first conform part 76 to the decision of the Second Circuit Court of Appeals (Second Circuit) in *Time Warner Cable Inc. v. FCC* (*Time Warner Cable*), which vacated the temporary standstill rule for program carriage complaint proceedings set forth in § 76.1302(k) of the Commission's rules. The Commission adopted the temporary standstill rule in the *Program Carriage Second Report and Order* on July 29, 2011, establishing procedures for the Media Bureau's consideration of requests for a temporary standstill of the price, terms, and other conditions of an existing programming contract by a program carriage complainant seeking renewal of such a contract. The Commission published a summary of the *Program Carriage Second Report and Order* in the **Federal Register** on September 29, 2011. In accordance with normal procedure, the CFR was revised to reflect adoption of the temporary standstill rule. On September 4, 2013, the Second Circuit issued its decision in *Time Warner Cable* vacating the temporary standstill rule, finding that the rule was not promulgated in accordance with the Administrative Procedure Act's notice and comment rulemaking requirements. As a result of the Second Circuit's decision, the text of § 76.1302(k) that currently appears in the CFR has no legal effect and is obsolete. We note that in 2020, the Commission issued a *Report and Order* deleting § 76.1302(k) from the CFR. The Commission subsequently published a summary of this *Report and Order* in

the **Federal Register**, with an effective date of January 19, 2021. Nevertheless, section 76.1302(k) still remains in the CFR. Accordingly, we delete § 76.1302(k), finding that doing so has no effect on the scope and nature of the currently enforceable Commission requirements and simply effectuates the Second Circuit's action in *Time Warner Cable*.

We also conform part 76 to the decision of the District of Columbia Circuit Court of Appeals (D.C. Circuit) in *EchoStar Satellite LLC v. FCC* (*EchoStar Satellite*), which set aside two 2003 Commission orders adopting the encoding rules set forth in §§ 76.1901 through 76.1908 of the Commission's rules. The Commission adopted the encoding rules, which place limits on the use of encoding by cable television operators and satellite providers to prevent or limit copying of their programming, in the *Second Plug and Play Report and Order* on September 10, 2003. The Commission published a summary of the *Second Plug and Play Report and Order* in the **Federal Register** on November 28, 2003. On December 19, 2003, the Commission adopted an *Order on Reconsideration* which modified one of the definitions in the encoding rules. The Commission published a summary of the *Order on Reconsideration* in the **Federal Register** on January 28, 2004. In accordance with normal procedure, the CFR was revised to reflect adoption of the encoding rules. In *EchoStar Satellite*, the D.C. Circuit vacated in their entirety the *Second Plug and Play Report and Order* and the *Order on Reconsideration*, concluding that the Commission exceeded its statutory authority in adopting the encoding rules set forth in §§ 76.1901 through 76.1908. As a result of the D.C. Circuit's decision, the text of §§ 76.1901 through 76.1908 that currently appear in the CFR has no legal effect and is obsolete. Accordingly, we delete §§ 76.1901 through 76.1908, finding that doing so has no effect on the scope and nature of the currently enforceable Commission requirements and simply effectuates the D.C. Circuit's action in *EchoStar Satellite*.

Pursuant to 5 U.S.C. 553(b)(B), because we are simply conforming the text of the Commission's rules in the CFR to reflect the court's decisions in *Time Warner Cable* and *EchoStar Satellite*, and we are not taking any independent action or exercising any discretion, we find that notice and the opportunity for public comment are unnecessary for this action. For the same reason, pursuant to 5 U.S.C. 553(d), this action will be effective

immediately upon publication in the **Federal Register**.

The changes to part 76 of the Commission's rules to conform to these court decisions are reflected in Appendix A.

Ordering Clauses

Accordingly, *it is ordered* that part 76 of the Commission's rules, 47 CFR part 76, is amended as set forth in Appendix A effective upon publication in the **Federal Register**.

It is further ordered that the Office of the Managing Director, Performance Program Management, *shall send* a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the

Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 76

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 335, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 562, 571, 572, 573.

Subpart Q—Regulation of Carriage Agreements

§ 76.1302 [Amended]

■ 2. Amend § 76.1302 by removing paragraph (k).

Subpart W—Encoding Rules

§§ 76.1901 through 76.1908 [Removed]

■ 3. Remove §§ 76.1901 through 76.1908.

[FR Doc. 2025–16351 Filed 8–25–25; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register

Vol. 90, No. 163

Tuesday, August 26, 2025

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.

CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Part 1091

[Docket No. CFPB–2025–0018]

RIN 3170–AB45

Legal Standard Applicable to Supervisory Designation Proceedings

AGENCY: Consumer Financial Protection Bureau.

ACTION: Proposed rule; request for comment.

SUMMARY: The Consumer Financial Protection Bureau (Bureau or CFPB) is proposing to adopt a standard definition of “risks to consumers with regard to the offering or provision of consumer financial products or services” that will bind the Bureau in proceedings to designate nonbank covered persons for Bureau supervision. This will ensure that the Bureau acts within the bounds of its statutory authority and provide clarity to institutions about the standard the Bureau applies.

DATES: Comments must be received on or before September 25, 2025.

ADDRESSES: You may submit responsive information and other comments, identified by Docket No. CFPB–2025–0018, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. A brief summary of this document will be available at <https://www.regulations.gov/docket/CFPB-2025-0018>.

- *Email:* 2025DesignationStandardNPRM@cfpb.gov. Include Docket No. CFPB–2025–0018 in the subject line of the message.

- *Mail/Hand Delivery/Courier:* Comment Intake—Legal Standard Applicable to Supervisory Designation Proceedings, c/o Legal Division Docket Manager, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

Instructions: The Bureau encourages the early submission of comments. All submissions should include the agency name and docket number. Additionally, where the Bureau has asked for specific comment on a topic, commentors should seek to highlight the topic to which its comment is applicable. Because paper mail is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <https://www.regulations.gov>. All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT:

Dave Gettler, Paralegal Specialist, Office of Regulations, at 202–435–7700. If you require this document in an alternative electronic format, please contact CFPB_Accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

Section 1024(a)(1)(C) of the Consumer Financial Protection Act of 2010 (CFPA) authorizes the Bureau to supervise a nonbank covered person that the Bureau has reasonable cause to determine, by order, after notice to the covered person and a reasonable opportunity for such covered person to respond, is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services. 12 U.S.C. 5514(a)(1)(C).¹ The Bureau has existing procedures at 12 CFR part 1091 that govern the process by which the Bureau provides notice and a reasonable opportunity to respond. The Bureau has separately requested public comment on amendments to that process. 90 FR 20401 (May 14, 2025).

The Bureau has not, to date, issued a rule addressing the meaning of “risks to consumers” in the context of section

1024(a)(1)(C). Instead, the Bureau has issued orders in individual cases. The Bureau has three independent concerns about this status quo. First, the ad hoc nature of individual orders creates a danger that the Bureau’s application of “risks to consumers” may not be consistent between orders. Second, because the applicability of the precedents in past orders to new contexts can be unclear, and also because the agency may depart from an existing precedent in a later case, the status quo creates uncertainty for institutions facing potential designation about what standard the Bureau will apply to their case. Third, without a binding framework on the meaning of “risks to consumers,” the Bureau may not conform to the best reading of section 1024(a)(1)(C) in individual cases. The proposed rule is intended to address these issues by binding the Bureau to a standard that is consistent, foreseeable, and based on the best reading of section 1024(a)(1)(C).

II. Legal Authority

Section 1024(b)(7) of the CFPA authorizes the Bureau to “prescribe rules to facilitate supervision” of the nonbank covered persons described in section 1024(a). 12 U.S.C. 5514(b)(7). Additionally, section 1022(b)(1) provides, in relevant part, that the Bureau’s Director “may prescribe rules . . . as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.” 12 U.S.C. 5512(b)(1). The Bureau issues this proposed rule based on its authority under section 1024(b)(7) and section 1022(b)(1).

III. Discussion of Proposal

The proposed rule would explain that, for purposes of section 1024(a)(1)(C) of the CFPA, “conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services” consists of conduct that: (a) presents a high likelihood of significant harm to consumers; and (b) is directly connected to the offering or provision of a consumer financial product or service as defined in section 1002 of the CFPA.

In the Bureau’s preliminary view, Congress would not have expected it to expend its supervisory resources on issues that are speculative in likelihood

¹ The Bureau must base such reasonable-cause determinations on complaints collected by the Bureau under 12 U.S.C. 5493(b)(3), or on information collected from other sources. 12 U.S.C. 5514(a)(1)(C).

or trivial in impact. Although some prior orders have adopted a broad approach to the phrase “risks to consumers” under section 1024(a)(1)(C), asserting that it can include even immaterial potential harms, the Bureau proposes to reconsider this approach.² The context of section 1024(a)(1)(C) indicates that Congress intended the Bureau to be squarely focused on serious conduct.

In addition, the Bureau proposes to find that the phrase “with regard to the offering or provision of consumer financial products or services” requires a direct connection to a statutorily defined “consumer financial product or service.” It is essential that the Bureau focus only on the specific categories of products and services that Congress charged the Bureau with overseeing.

The Bureau requests comment on all aspects of this standard. The Bureau specifically requests comment on whether “risks to consumers” must be potential violations of law in the context of section 1024(a)(1)(C).

IV. Proposed Effective Date of Final Rule

The Bureau proposes that the final rule take effect 30 days after publication in the **Federal Register**, consistent with the Administrative Procedure Act, 5 U.S.C. 553(d). However, if the final rule is determined to be a “major rule” as defined in the Congressional Review Act, 5 U.S.C. 804(2),³ the Bureau proposes that it take effect 60 days after publication in the **Federal Register**, consistent with 5 U.S.C. 801(a)(3)(A).

V. Consumer Financial Protection Act Section 1022(b)(2) Analysis

In developing this proposed rule, the Bureau has considered its potential benefits, costs, and impacts in accordance with section 1022(b)(2)(A) of the CFPA, 12 U.S.C. 5512(b)(2)(A).

There are generally limited data with which to quantify potential costs, benefits, and impacts of the proposed

rule. The Bureau conducted a limited number of supervisory designation proceedings under the existing rules, but the Bureau does not have quantitative data regarding the costs to respondents or other impacts of those proceedings. The Bureau also does not have quantitative data to predict most of the impacts of the changes made by this rule relative to the current state of affairs based on the broad understanding of “risks to consumers” drawn from prior orders, which is the comparison that is relevant for this analysis.

In light of these data limitations, the analysis below generally provides a qualitative discussion of the benefits, costs and impacts of the proposed rule. General economic principles and the Bureau’s experience and expertise in consumer financial markets, together with the limited data that are available, provide insight into these benefits, costs, and impacts.

In evaluating the benefits, costs, and impacts of the proposed rule, the Bureau considers the impacts against a baseline that includes the legal and procedural framework that currently exists regarding supervisory designation proceedings for nonbank covered persons.

The proposed rule would apply to covered persons as defined in the CFPA, which are generally persons that engage in offering or providing a consumer financial product or service. There is a large population of firms potentially affected by this proposed rule.⁴ The Bureau does not currently have access to comprehensive data on the number of nonbank covered persons subject to supervisory authority. To establish an estimate of the population of nonbank covered entities potentially subject to the proposed rule, the Bureau uses publicly available data from the 2022 Economic Census (the most recent version currently available), which provides counts of firms by North American Industry Classification System (NAICS) industry codes. Based on the 2022 Economic Census data for NAICS codes that align with financial

services,⁵ the Bureau estimates there are approximately 154,430 entities in these covered industries. It should also be noted that this estimate does not include other nonbank covered entities not categorized in one of the enumerated industries, e.g., if consumer financial services are not their primary business activity. To date, the Bureau has exercised its supervisory authority under existing 12 CFR part 1091 over fewer than twenty covered entities.⁶

The Bureau expects that under the proposed rule it will be less likely to designate any particular entity for supervision, all other factors being equal. This would reduce the costs of supervision for entities that might otherwise have been designated. The proposed rule also could influence behavior for entities that would otherwise have seen themselves as being on the margin of being designated or not. Because supervision is costly for entities, entities on the margin of being designated may be more likely to avoid conduct that could be seen as posing risks to consumers, and thus may spend more on compliance reviews in order to avoid being designated. Under the proposed rule, firms will have more clarity as to what conduct might trigger supervision, potentially lowering compliance review costs. At the same time, firms may be more likely to engage in conduct that could be said to present some probability of harm to consumers, but does not rise to the level of a high likelihood of significant harm. To the extent this occurs, it would impose costs on consumers and may provide some benefits to firms, depending on the nature of the conduct. Given that the Bureau has exercised the supervisory authority that the proposed rule would clarify in only a limited number of cases, and given the many other factors incentivizing compliance with Federal consumer financial laws, including private litigation and State and Federal enforcement actions, the aggregate impact of these effects on entities on the margin of being designated is likely to be small. The Bureau requests comments that provide additional data

² See, e.g., *Google Payment Corp.*, File No. 2024–CFPB–SUP–0001, at 16–17 (Nov. 8, 2024), https://files.consumerfinance.gov/f/documents/cfpb_Publication-Redacted-Decision-and-Order-Designating-Google-Payment-for-Su_6EZQyMz.pdf, withdrawn (May 7, 2025), https://files.consumerfinance.gov/f/documents/cfpb_gpc-withdrawal_2025-05.pdf.

³ A major rule is a rule that the Office of Information and Regulatory Affairs finds has resulted in or is likely to result in: (A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. 5 U.S.C. 804(2).

⁴ The procedures in the existing 12 CFR part 1091 are only to assess whether a nonbank covered person will be made subject to the Bureau’s supervisory authority based on a determination under section 1024(a)(1)(C) of the CFPA, 12 U.S.C. 5514(a)(1)(C). In general, there is no reason to make a determination under section 1024(a)(1)(C) with respect to a nonbank covered entity subject to the Bureau’s supervisory authority under some other provision of section 1024(a) of the CFPA, 12 U.S.C. 5514(a). However, this is possible. Therefore, the Bureau does not exclude from its analysis nonbank covered entities that may be subject to supervision under a separate provision of section 1024(a).

⁵ The relevant NAICS codes examined are 5222 (Nondepository credit intermediation); 5223 (Activities related to credit intermediation); 523920 (Portfolio management); 523930 (Investment advice); 532112 (Passenger car leasing); 532120 (Truck, utility trailer, and recreational vehicle rental and leasing); 5313 (Activities related to real estate); 561450 (Consumer reporting); and 561440 (Debt collection).

⁶ The Bureau’s designations of Google Payment Corp., which formerly provided a peer-to-peer payment product, and World Acceptance Corp., which is an installment lender, have been publicly disclosed. The Bureau is currently reconsidering its approach to publication of designation orders. 90 FR 20401 (May 14, 2025).

on estimates of behavioral changes as a result of this proposed rule, including impacts on consumers and the population of entities potentially subject to this rule.

To the extent that some entities would be designated under the current understanding of “risks to consumers,” but would not be under the proposed rule, the proposed rule would reduce the direct costs of supervision to those entities. The Bureau has previously estimated the cost of compliance with supervisory activity based on reported average exam length and labor costs incurred by firms to participate in supervisory exams.⁷ This calculation results in an estimate of approximately \$27,000 in labor costs to comply with a supervisory examination. The Bureau recognizes that this estimate reflects national average labor costs and are thus subject to variability with respect to specific firms’ realized costs. Furthermore, the Bureau recognizes that the staffing estimates are assessments for an average firm’s needs and may also be subject to variability with respect to specific firms’ requirements. The Bureau requests comments that provide additional data on estimates of staffing requirements and costs for compliance with supervisory activities.⁸ Because the Bureau has exercised the supervisory authority that the proposed rule would clarify in a limited number of cases, and because the Bureau does not conduct exams of all supervised entities each year, it is unlikely that the proposed

rule would reduce the aggregate number of exams by much more than one exam per year across the entire economy.

The proposed rule would not have an impact on insured depository institutions or insured credit unions with \$10 billion or less in assets as described in section 1026(a) of the CFPB. See 12 U.S.C. 5512(b)(2)(A)(ii), 5516(a). Nor would the proposed rule have a unique impact on rural consumers. 12 U.S.C. 5512(b)(2)(A)(ii).

VI. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) 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. 5 U.S.C. 601 *et seq.* The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives before proposing a rule for which an IRFA is required. 5 U.S.C. 609.

The number of entities that will be subject to supervisory designation proceedings is small, and within that group the number that would be small entities is likely to be either none or in the single digits each year, representing a very small fraction of small entities in the relevant consumer finance markets.

Accordingly, the Acting Director hereby certifies that this proposed 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 is required for this proposal. The Bureau requests comment on the analysis above.

VII. Executive Order 12866

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select those regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; and distributive impacts). Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as any regulatory action that is likely to result in a rule that may: (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local,

or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, or the President’s priorities. The Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) has determined that this action is a “significant regulatory action” under Executive Order (E.O.) 12866 as amended. Accordingly, OMB has reviewed this action.

Section 1 of E.O. 12866 states that “Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets. . . .” The Bureau requests comment on the application of that standard to this rulemaking.

List of Subjects in 12 CFR Part 1091

Administrative practice and procedure, Consumer protection, Credit, Trade practices.

Authority and Issuance

As discussed above, the Bureau proposes to amend 12 CFR part 1091 as follows:

PART 1091—PROCEDURES FOR SUPERVISORY DESIGNATION PROCEEDINGS

- 1. The authority citation for part 1091 continues to read as follows:

Authority: 12 U.S.C. 5512(b)(1), 5514(a)(1)(C), 5514(b)(7).

- 2. Add subpart E, consisting of § 1091.501, to read as follows:

Subpart E—Scope of Designation Authority

§ 1091.501 Legal Standard Applicable to Proceedings.

For purposes of 12 U.S.C. 5514(a)(1)(C), conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services consists of conduct that:

- (a) Presents a high likelihood of significant harm to consumers; and
- (b) Is directly connected to the offering or provision of a consumer

⁷ For an estimate of the length of examination, see Office of the Inspector General of the Board of Governors of the Federal Reserve System and the CFPB, “The Bureau Can Improve Its Risk Assessment Framework for Prioritizing and Scheduling Examination Activities” (Mar. 25, 2019) at 13, available at <https://oig.federalreserve.gov/reports/bureau-risk-assessment-framework-mar2019.pdf>.

⁸ The Bureau has previously estimated the cost of compliance with supervisory activity based on reported average exam lengths, which would average one supervisory examination per year and require one-tenth of a full-time equivalent attorney and one full-time compliance officer. Furthermore, the Bureau estimates that supervisory examinations would last for 8 weeks on average, with an additional two weeks of preparation. Using the national average hourly labor cost of \$84.84 for attorneys and \$38.55 for compliance officers, the Bureau estimates that the direct labor costs for a supervisory examination would total approximately \$19,000 (See U.S. Bureau of Labor Statistics, National Occupational Employment and Wage Estimates United States, May 2023, <https://www.bls.gov/oes/current/oes-nat.htm>). Assuming that wages represent approximately 70.4% of the total labor costs using the estimate of total compensation for private employees (See U.S. Bureau of Labor Statistics, Employer Costs for Employee Compensation: Private Industry Database, March 2024, <https://www.bls.gov/web/cecc/eccec-private-dataset.xlsx>), this results in an estimate of approximately \$27,000 in labor costs to comply with a supervisory examination.

financial product or service as defined in 12 U.S.C. 5481.

Russell Vought,

Acting Director, Consumer Financial Protection Bureau.

[FR Doc. 2025–16352 Filed 8–25–25; 8:45 am]

BILLING CODE 4810-AM-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2025–2269; Project Identifier MCAI–2025–00188–T]

RIN 2120-AA64

Airworthiness Directives; ATR—GIE Avions de Transport Régional Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all ATR—GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes. This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by October 10, 2025.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to [regulations.gov](https://www.regulations.gov). Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2025–2269; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except

Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For European Union Aviation Safety Agency (EASA) material identified in this proposed AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2025–2269.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT:

Fatin Saumik, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7350; email: 9-AVS-AIR-BACO-COS@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments using a method listed under the **ADDRESSES** section. Include “Docket No. FAA–2025–2269; Project Identifier MCAI–2025–00188–T” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to [regulations.gov](https://www.regulations.gov), including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial

information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Fatin Saumik, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7350; email: 9-AVS-AIR-BACO-COS@faa.gov. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2025–0044, dated February 19, 2025 (EASA AD 2025–0044) (also referred to as the MCAI), to correct an unsafe condition for all ATR—GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes. The MCAI states that new or more restrictive airworthiness limitations have been developed.

EASA AD 2025–0044 specifies that it requires a task (limitation) already in ATR 42 Time Limits Document (TLD), Revision 13, dated January 31, 2024, that is required by EASA AD 2024–0121, dated June 27, 2024 (which corresponds to FAA AD 2025–10–06, Amendment 39–23040 (90 FR 21851, May 22, 2025) (AD 2025–10–06)), and that incorporation of EASA AD 2025–0044 invalidates (terminates) prior instructions for that task. This proposed AD therefore would terminate the corresponding limitations required by paragraph (j) of AD 2025–10–06 for the tasks identified in the material referenced in EASA AD 2025–0044.

The FAA is proposing this AD to address the potential of ignition sources inside fuel tanks. The unsafe condition, if not addressed, could result in fuel tank ignition. You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2025–2269.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed EASA AD 2025–0044, which specifies new or more restrictive airworthiness limitations related to fuel tank ignition prevention.

This material is reasonably available because the interested parties have access to it through their normal course

of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

These products have been approved by the civil aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, that authority has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, which are specified in EASA AD 2025–0044 described previously, as incorporated by reference. Any differences with EASA AD 2025–0044 are identified as exceptions in the regulatory text of this proposed AD.

This proposed AD would require revisions to certain operator maintenance documents to include new Critical Design Configuration Control Limitations (CDCCLs). Compliance with CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (k)(1) of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2025–0044 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2025–0044 through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the

same as the heading of a particular section in EASA AD 2025–0044 does not mean that operators need comply only with that section. For example, where the AD requirement refers to "all required actions and compliance times," compliance with this AD requirement is not limited to the section titled "Required Action(s) and Compliance Time(s)" in EASA AD 2025–0044. Material required by EASA AD 2025–0044 for compliance will be available at regulations.gov by searching for and locating Docket No. FAA–2025–2269 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (e.g., inspections), intervals, or CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an AMOC in accordance with the procedures specified in the AMOC paragraph under "Additional AD Provisions." This new format includes a "Provisions for Alternative Actions, Intervals, and CDCCLs" paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action, interval, or CDCCL.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 17 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA has determined that revising the existing maintenance or inspection

program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the agency estimates the average total cost per operator to be \$7,650 (90 work-hours × \$85 per work-hour).

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA has determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

ATR—GIE Avions de Transport Régional:
Docket No. FAA–2025–2269; Project Identifier MCAI–2025–00188–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 10, 2025.

(b) Affected ADs

This AD affects AD 2025–10–06, Amendment 39–23040 (90 FR 21851, May 22, 2025) (AD 2025–10–06).

(c) Applicability

This AD applies to all ATR—GIE Avions de Transport Régional Model ATR42–200, –300, and –320 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address the potential of ignition sources inside fuel tanks. The unsafe condition, if not addressed, could result in fuel tank ignition.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2025–0044, dated February 19, 2025 (EASA AD 2025–0044).

(h) Exceptions to EASA AD 2025–0044

(1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2025–0044.

(2) Paragraph (3) of EASA AD 2025–0044 specifies revising “the approved AMP,” within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(3) This AD does not adopt the provisions specified in paragraphs (4) of EASA AD 2025–0044.

(4) This AD does not adopt the “Remarks” section of EASA AD 2025–0044.

(i) Provisions for Alternative Critical Design Configuration Control Limitations (CDCCLs)

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative CDCCLs are allowed unless they are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2025–0044.

(j) Terminating Action for Certain Tasks Required by AD 2025–10–06

Accomplishing the actions required by this AD terminates the corresponding requirements of paragraph (j) of AD 2025–10–06 for the tasks identified in the material referenced in EASA AD 2025–0044 only.

(k) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (l) of this AD and email to: AMOC@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or ATR—GIE Avions de Transport Régional’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Additional Information

For more information about this AD, contact Fatin Saumik, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7350; email: 9-AVS-AIR-BACO-COS@faa.gov.

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the material listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this material as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2025–0044, dated February 19, 2025.

(ii) [Reserved]

(3) For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221

8999 000; email ADs@easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Issued on August 21, 2025.

Steven W. Thompson,

Acting Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2025–16319 Filed 8–25–25; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2025–0061; FRL–12606–01–R9]

Air Plan Revisions; California; Heavy-Duty Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove or, in the alternative, to fully approve a submission by the State of California to revise its State Implementation Plan (SIP) relating to the control of emissions from non-gasoline combustion vehicles over 14,000 pounds. EPA is proposing to disapprove the State’s “Heavy-Duty Inspection and Maintenance Regulation” to the extent it applies to vehicles registered out-of-state or out-of-country. The EPA has substantial concerns that the State has not provided adequate assurances under Clean Air Act (CAA) section 110(a)(2)(E)(i) that implementation of the SIP is not prohibited by Federal law. EPA seeks comment on this and other aspects of this proposed rule. If finalized as a partial approval and partial disapproval, this rule would allow certain aspects of the covered State regulations to go into effect and would not trigger CAA section 179 sanctions because the submittal is not a required submission under CAA section 110(a)(2). If finalized as an approval, this rule would allow all

covered State regulations to go into effect.

DATES: Comments must be received on or before September 25, 2025.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2025–0061 at <https://www.regulations.gov>. In accordance with 5 U.S.C. 553(b)(4), a summary of this rule may be found at [Regulations.gov](https://www.regulations.gov). For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Doris Lo, EPA Region IX, 75 Hawthorne

St., San Francisco, CA 94105; telephone number: (415) 972–3959; email address: lo.doris@epa.gov.

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

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I. Background

Under the CAA, the EPA establishes national ambient air quality standards (NAAQS) to protect public health and welfare. The EPA has established NAAQS for certain pervasive air pollutants including ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide, lead, and particulate matter. Under CAA section 110(a)(1), States must submit plans that provide for the implementation, maintenance, and enforcement of the NAAQS within each State. Such plans are referred to as State Implementation Plans (SIPs), and revisions to those plans are referred to as “SIP revisions.” CAA section 110(a)(2) sets forth the content requirements for SIPs. Among the various requirements, SIPs must include enforceable emissions limitations and other control measures, means, or techniques as may be necessary or appropriate to meet the applicable requirements of the CAA.¹ SIP revisions may be submitted to address specific CAA requirements (such as the elements and demonstrations required within an attainment plan), or, as with the State submittal addressed in this action, may

be provided to demonstrate emissions reductions to support attainment.

Upon receiving a SIP that meets the completeness criteria in CAA section 110(k)(1)(A), the EPA must determine whether the submission meets all applicable CAA requirements.² The EPA must either approve, conditionally approve, approve in part or disapprove in part, or disapprove a complete State submission within twelve months.³ In addition to the limitations described above, CAA section 110(a)(2)(E) provides that a SIP must include “necessary assurances” that the State “is not prohibited by any Federal or State law from carrying out such implementation plan or portion thereof” and that the State or applicable State entity has adequate authority, personnel, and funding to carry out adequate implementation of the SIP.

Under California law, the California Air Resources Board (CARB) is the State agency responsible for adopting and submitting SIP revisions to the EPA for review. These include both local rules adopted by county and regional air districts (typically regulating stationary source emissions) and statewide regulations adopted by CARB and other State agencies. If approved into the SIP, submitted regulations become federally enforceable pursuant to CAA section 110(a)(2)(A).

II. The State’s Submittal

A. What regulations did the State submit?

CARB submitted the “Heavy-Duty Inspection and Maintenance Regulation”⁴ (“HD I/M Regulation”) as a revision to the California SIP on December 14, 2022.⁵ Table 1 identifies the regulatory sections included in the HD I/M Regulation and addressed by this proposal with the dates that they were adopted by CARB and submitted to the EPA.

TABLE 1—SUBMITTED REGULATIONS

Agency	Regulation title	Relevant sections of California Code of Regulations (CCR)	Adopted	Submitted
CARB	Heavy-Duty Vehicle Inspection and Maintenance Program.	Amended section: 13 CCR §2193; New sections: 13 CCR §§2195, 2195.1, 2196, 2196.1, 2196.2, 2196.3, 2196.4, 2196.5, 2196.6, 2196.7, 2196.8, 2197, 2197.1, 2197.2, 2197.3, 2198, 2198.1, 2198.2, 2199, and 2199.1.	12/09/2021	12/14/2022

The HD I/M Regulation incorporates by reference the “California Standards

for Heavy-Duty Remote On-Board Diagnostic Devices” (“OBD Standards”).

CARB approved the HD I/M Regulation on December 9, 2021, through

¹ See CAA section 110(a)(2)(A).
² See CAA section 110(k)(3).
³ *Id.*; CAA section 110(k)(4).
⁴ The State of California more commonly refers to the HD I/M Regulation as the “Clean Truck Check.”

See, e.g., CARB, Clean Truck Check (HD I/M), <https://ww2.arb.ca.gov/our-work/programs/CTC> (last visited on January 27, 2025).
⁵ Letter (with enclosures) dated December 7, 2022, from Steven S. Cliff, Ph.D., Executive Officer,

CARB, to Martha Guzman, Regional Administrator, EPA Region IX (submitted electronically December 14, 2022). The letter and enclosures, which include the HD I/M Regulation, among other materials, are included in the docket for this rulemaking.

Resolution 21–29. Following minor non-substantive edits by CARB staff,⁶ CARB formally adopted the final HD I/M Regulation and OBD Standards on August 22, 2022, through CARB Executive Order R–22–002.

CARB's SIP submittal package for the HD I/M Regulation includes CARB Resolution 21–29,⁷ Executive Order R–22–002, public notice of CARB's hearing on the proposed SIP revision, CARB's Initial Statement of Reasons and appendices ("Staff Report"),⁸ public comments and responses, the Final Statement of Reasons and addendum, and emission reduction estimates calculated using the State's "EMission FACtor" (EMFAC) model.

On June 14, 2023, the submittal from CARB was deemed by operation of law to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review pursuant to CAA section 110(k)(1).

B. Are there other versions of these regulations?

On May 10, 2022, we approved an earlier version of the Heavy-Duty Vehicle Inspection Program⁹ and a Periodic Smoke Inspection Program¹⁰ into the California SIP.¹¹ The current SIP submittal was intended to replace these previously approved revisions to the SIP; if the EPA finalizes a partial disapproval of the current submittal, the partially approved aspects of the revision would become the SIP and the earlier versions of the Heavy-Duty Vehicle Inspection Program and the Periodic Smoke Inspection Program would remain in the SIP only to the extent not superseded by the partially approved aspects of the SIP revisions.

C. What is the purpose of the submitted regulations?

Based on ambient data collected at numerous sites throughout the State, the EPA has designated certain areas within California as nonattainment for the ozone NAAQS and the particulate matter (PM) NAAQS, which includes both coarse and fine particulate matter (*i.e.*, PM₁₀ and PM_{2.5}).¹² Several areas in

California that had been designated as nonattainment for the carbon monoxide NAAQS have been redesignated by the EPA to attainment because these areas have attained the standard and are subject to an approved maintenance plan demonstrating how the State will maintain the carbon monoxide standard into the future.

Mobile source emissions constitute a significant portion of overall emissions of ozone precursors, including volatile organic compounds (VOC) and oxides of nitrogen (NO_x), as well as direct PM and PM precursors, including NO_x, sulfur dioxide (SO₂), and carbon monoxide in the various air quality planning areas within California.¹³ Although heavy-duty vehicles comprise about 3% of the State's vehicle fleet, they constitute 52% of the on-road NO_x emissions and 54% of on-road PM_{2.5} emissions.¹⁴ In addition, out-of-state or out-of-country heavy-duty vehicles are approximately half of the total heavy-duty vehicles travelling in the State and constitute approximately 30% of heavy-duty NO_x.¹⁵ According to CARB, the HD I/M Regulation is intended to reduce PM_{2.5} and NO_x emissions from heavy-duty non-gasoline combustion vehicles operating in California to further ozone and PM attainment throughout the State.¹⁶ In establishing the applicable NAAQS, the EPA has concluded that at elevated levels, ozone and PM harm human health and the environment by contributing to premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems.

The HD I/M Regulation establishes a comprehensive I/M program for HD vehicles driven in the State of California to ensure that vehicle emissions control systems on these vehicles are operating as designed and are repaired quickly if they malfunction. CARB has explained that this regulatory revision builds on CARB's current heavy-duty inspection programs, including building on and replacing the Heavy-Duty Vehicle Inspection Program and Periodic Smoke Inspection regulations for heavy-duty vehicles.

The HD I/M Regulation applies to all non-gasoline combustion vehicles above 14,000 gross vehicle weight rating (GVWR) that operate in California.

Unlike virtually all prior CARB regulations and similar regulations adopted by other States, however, the regulation submitted for review would also apply to vehicles registered out-of-state and out-of-country that operate within the State of California for almost any length of time.¹⁷ Some vehicle categories are exempted, including zero-emission vehicles, emergency and military tactical vehicles, and other classes defined by use or purpose.

The HD I/M Regulation requires owners of HD vehicles operating in California (including out-of-state vehicles) to report owner and vehicle information to CARB. It also requires owners of HD vehicles to demonstrate that their vehicle emissions control systems are properly functioning through vehicle compliance tests completed by CARB-approved testers and periodically submit vehicle compliance test results to CARB to show compliance with the HD I/M regulation. Vehicles equipped with on-board diagnostic (OBD) systems can be tested using OBD data, while older non-OBD vehicles are subject to smoke opacity and visual inspections. Vehicle owners are also required to have a valid HD I/M compliance certificate with the vehicle while operating in California, which they must present to a CARB inspector and/or CHP officer upon request.

The regulation also establishes a referee testing network to provide independent evaluations of heavy-duty vehicles and services for vehicles with inspection incompatibilities or compliance issues. Finally, the regulation describes procedures for HD I/M roadside inspections, including roadside monitoring and field inspections.

III. The EPA's Evaluation and Action

A. How is the EPA evaluating the rules and do the rules meet the evaluation criteria?

The EPA has evaluated the HD I/M Regulation against the applicable procedural and substantive requirements of the CAA for SIPs and SIP revisions and proposes to find that the HD I/M Regulation meets the applicable requirements to the extent the substantive requirements apply to vehicles registered in California. Among other requirements, a SIP must include

⁶ CARB, Addendum to the Final Statement of Reasons, "Public Hearing to Consider Proposed Heavy-Duty Inspection and Maintenance Regulation," October 4, 2022.

⁷ CARB Board Resolution 21–29, December 9, 2021.

⁸ CARB, Staff Report: Initial Statement of Reasons, "Public Hearing to Consider the Proposed Heavy-Duty Inspection and Maintenance Regulation," October 8, 2021 ("Staff Report").

⁹ California Code of Regulations Title 13, Division 3, Chapter 3.5.

¹⁰ California Code of Regulations Title 13, Division 3, Chapter 3.6.

¹¹ 87 FR 27949.

¹² See, generally, 40 CFR 81.305.

¹³ VOC and NO_x are precursors responsible for the formation of ozone, and NO_x and SO₂ are precursors for PM_{2.5}. SO₂ belongs to a family of compounds referred to as sulfur oxides. PM_{2.5} precursors also include VOC and ammonia. See 40 CFR 51.1000.

¹⁴ See, Staff Report at I–2.

¹⁵ *Id.* at II–2.

¹⁶ See Staff Report at II–1.

¹⁷ The HD I/M regulation permits entities subject to the rule to apply once per calendar year for a five-day "pass through" exception which must be granted in each instance and on an individualized basis. The EPA notes that California has not provided assurances that this additional compliance step meaningfully changes the coverage of the HD I/M regulations.

enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, that may be necessary to meet the requirements of the Act.¹⁸ The EPA proposes to find that the State's I/M measures generally meet the requirements of the CAA and the EPA's implementing regulations with respect to vehicles registered in California including because it satisfies the applicable requirements of CAA sections 110(a)(2)(A) and (E).¹⁹

However, the EPA has substantial concerns that the HD I/M Regulation does not provide necessary assurances that the State is not prohibited by any provision of Federal or State law from carrying out such SIP or a portion thereof²⁰ to the extent the HD I/M Regulation purports on its face to regulate vehicles that merely pass through or operate within California for almost any length of time. For the reasons set out below, the EPA also has substantial concerns that approving the extraterritorial reach of the HD I/M Regulation could interfere with other applicable requirements of the Act concerning attainment and reasonable further progress (RFP), as well as the implementation of SIPs submitted by other States and approved by the EPA.²¹

Unlike other SIP provisions that apply to sources that are registered within the State, the HD I/M Regulation adds requirements on heavy-duty vehicles that are registered in other States that merely pass through or do business within California for almost any length of time. The EPA has substantial concerns that this aspect of the regulation is prohibited by the U.S. Constitution and proposes to disapprove this portion of the SIP because EPA finds that California has not provided the necessary assurances that, if approved, the SIP could be implemented consistent with Federal law.

Here, the Commerce Clause appears to prohibit the implementation of the HD

I/M Regulation because its extraterritorial reach burdens interstate commerce. The U.S. Supreme Court has explained that the Commerce Clause contains “a negative command” that forbids “certain state [economic regulations] even when Congress has failed to legislate on the subject.” *Okla. Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 179 (1995). Generally applicable State regulations that further a legitimate interest and burden interstate commerce incidentally are nevertheless invalid when “the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.” *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970). Thus, “even nondiscriminatory burdens on commerce” may run afoul of the Commerce Clause “on a showing that those burdens clearly outweigh the benefits of a state or local practice.” *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 392 (2023) (Roberts, C.J., concurring in part and dissenting in part).²² Burdens on interstate commerce are of particular concern when they impose costs on interstate trade, *see, e.g., Kassel v. Consol. Freightways Corp.*, 450 U.S. 662, 674 (1981) (plurality op.); *Raymond Motor Transp., Inc. v. Rice*, 434 U.S. 429, 445 & n.21 (1978), where “the nature of” the market means that a State regulation generates costs whether or not participants sell into the regulating State, *Nat'l Pork Producers*, 598 U.S. at 400 (Roberts, C.J., concurring in part and dissenting in part), and where a State regulation targets “instrumentalities of interstate transportation—trucks, trains, and the like,” *id.* at 379 n.2, 380 (plurality op.); *accord id.* at 392 (Sotomayor, J., concurring in part).

The impact of California's HD I/M Regulation on vehicles registered out of state and on interstate shipping is undoubtably significant. The HD I/M Regulation adds significant costs to operation of heavy-duty vehicles in California. According to a CARB's Staff Report, the HD I/M Regulation will cost \$4.12 billion between 2023–2050, with a maximum annual cost of \$350 million in 2024. Much of these costs relate to HD vehicle testing, repair, and compliance fee costs.²³ CARB also estimated the total direct costs on a

typical California fleet (seven vehicles) to be \$772 to \$2,180 annually.²⁴ CARB estimated the total direct costs on single-vehicle fleets (*i.e.*, small businesses, as defined by CARB) to be \$225 to \$701 annually.²⁵ To the extent the HD I/M Regulation applies to out-of-state vehicles that pass through or operate within California for almost any length of time, this cost structure would also be imposed on other States and regulated entities in those States. The EPA notes that many heavy-duty vehicles covered by the regulations at issue are used for purposes of interstate shipping, and that maintenance of those vehicles could occur in any number of States, meaning the burdens of compliance could be felt across the country and even in other countries.

The EPA's concern in this respect is heightened by the structure of CAA section 110 and the way in which an approval of this provision would operate on the ground. In effect, an approval would delegate to California the ability to enforce the State's I/M requirements throughout the nation to the extent a vehicle passes through or operates within the State for almost any length of time. As a result, an approval would effectively force regulated entities in other States to comply with California's HD I/M requirements, rather than the applicable requirements in their respective States, including requirements approved by the EPA pursuant to the CAA. That interstate regulatory function is vested exclusively in Congress by the Commerce Clause, and the result of EPA's approval under the circumstances risks precisely the abrogation of Federal authority that the Supreme Court has held the Commerce Clause prohibits.

Moreover, the extraterritorial reach of the HD I/M regulation appears to abrogate the foreign relation powers vested exclusively in the Federal Government by the U.S. Constitution. The EPA is aware that vehicles registered in Mexico and Canada regularly pass through or do business in California for the purposes of international trade, tourism, and other forms of economic activity. California shares a land border with Mexico, and Mexico maintains a consulate within

¹⁸ See CAA section 110(a)(2)(A).

¹⁹ See EPA, “Technical Support Document for EPA's Rulemaking for the California State Implementation Plan—California Air Resources Board Heavy-Duty Inspection and Maintenance Regulation,” March 3, 2025 (included in the docket for this proposed action).

²⁰ See CAA section 110(a)(2)(E)(i).

²¹ See *id.* CAA section 193, which prohibits any pre-1990 SIP control requirement relating to nonattainment pollutants in nonattainment areas from being modified unless the SIP is revised to ensure equivalent or greater emission reductions of such air pollutants, does not apply to the HD I/M Regulation because it includes only new regulations and amended regulations that were previously approved into the California SIP in 2022, and thus, does not constitute an amendment to a pre-1990 SIP control requirement.

²² In *National Pork Producers*, “six Justices of [the] Court affirmatively retain[ed] the longstanding *Pike* balancing test for analyzing dormant Commerce Clause challenges to state economic regulations.” 598 U.S. at 403 (Kavanaugh, J., concurring in part and dissenting in part); *see id.* at 391 (Sotomayor, J., joined by Kagan, J., concurring in part); *id.* at 394 (Roberts, C.J., joined by Alito, Kavanaugh, Jackson, JJ., concurring in part and dissenting in part).

²³ Staff Report at IX–14.

²⁴ Staff Report at IX–18–20. CARB states according to vehicle registration data, of fleets consisting of at least three vehicles, 75 percent have four to ten vehicles.

²⁵ Staff Report at IX–20–21. CARB defines “small businesses” as HD fleets consisting of one to three vehicles, and that 79 percent of “small businesses” consist of single-vehicle fleets. CARB further states that based on vehicle registration data small businesses constitute approximately 89 percent of fleets and 44 percent of the vehicle population in California.

the State, meaning that vehicles registered in Mexico are also passing through or doing business in California for diplomatic purposes. The HD I/M regulation does not include an international exclusion or narrower exclusion for diplomatic purposes, for example. As a result, the HD I/M regulation may already be in conflict with applicable international treaties and conventions adopted by the United States for trade and diplomatic purposes, and the State has not provided necessary assurances that adoption into the SIP would not be prohibited by the Constitution's assignment of foreign affairs authority to Congress and the President, respectively.

For many of the same reasons, the EPA proposes to partially disapprove because it finds that California has not provided necessary assurances that the extraterritorial reach of the HD I/M regulation into other States does not violate CAA section 110 and related provisions by infringing upon, or frustrating the implementation of, SIPs submitted by other States and approved by the EPA. Some States have HD I/M provisions that differ from California's in material respects but none of these have been approved into SIPs. If approved in all respects, California's HD I/M Regulation would be federally enforceable to the same extent as other State I/M regulations potentially approved by the EPA in the future pursuant to CAA section 110. The result is potentially multiple conflicting sources of obligations that are enforceable both within the respective States and federally under the CAA. EPA solicits comment on these potential conflicts and whether they would frustrate the ability of other States to implement their SIPs and achieve and attain compliance with the NAAQS.

Accordingly, the EPA is proposing to partially disapprove the State's HD I/M Regulation to the extent it applies to vehicles registered out-of-state or out-of-country, and is proposing to approve the remainder. The EPA acknowledges, however, that the extraterritorial reach of the State's regulation is unusual in the SIP context and that the EPA's response would necessarily be the first instance in which the Agency has disapproved a SIP on this basis. We therefore seek comment on all aspects of this proposal, including whether extraterritorial application of California's regulation would be prohibited by Federal law on the bases presented here, as well as on other bases under Federal or State law. We also seek comment on any ways in which Federal enforcement of California's HD I/M

Regulation could conflict with the approved SIPs for other States. Moreover, we seek comment on the aspects of the submission that the EPA proposes to partially approve, that is, the application of the HD I/M Regulation to vehicles registered in California.

In the alternative, the EPA proposes to approve if the State's submission sufficiently demonstrates that implementation of the HD I/M Regulation would not be prohibited by Federal or State law. The EPA seeks comment on whether California has provided necessary assurances that its submission meets the requirements of CAA section 110(a)(2)(E)(i) and the extent and nature of potential Federal and State law prohibitions on implementing California's submission as proposed.

B. Public Comment and Proposed Action

The EPA proposes to partially disapprove the submitted rules because, while they fulfill many of the relevant CAA requirements, the application of the rules to vehicles registered out of state and out of country appears to be prohibited by Federal law. We will accept comments from the public on this proposal until September 25, 2025.

Neither sanctions nor a Federal Implementation Plan (FIP) would be imposed should the EPA finalize this partial disapproval. Sanctions would not be imposed under CAA section 179(b) because the submittal of the HD I/M Regulation is discretionary (*i.e.*, not required to be included in the SIP), and the EPA would not promulgate a FIP under CAA section 110(c)(1) because the disapproval does not reveal a deficiency in the SIP for the area that such a FIP must correct. Note that the submitted rule has been adopted by the State of California, and a final partial disapproval by the EPA would not by its own force prevent the State from attempting to enforce it within California.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This is a significant regulatory action as per Executive Order 12866 and was submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is not expected to be an Executive Order 14192 regulatory action. The proposed SIP partial disapproval, if finalized, will not in-and-of itself create any new requirements but will simply disapprove certain State requirements for inclusion in the SIP. The proposed SIP approval, if finalized, would not impose any requirements, but rather would determine that the State's submission complies with the CAA and applicable regulations.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The proposed SIP partial disapproval, if finalized, will not in-and-of itself create any new requirements but will simply disapprove certain State requirements for inclusion in the SIP. The proposed SIP approval, if finalized, would not impose any requirements, but rather would determine that the State's submission complies with the CAA and applicable regulations.

E. 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 proposes to disapprove pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

F. 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.

G. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have Tribal implications, as specified in Executive Order 13175, because the SIP revision that the EPA is proposing to disapprove

would not apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction, and will not impose substantial direct costs on Tribal governments or preempt Tribal law. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. Therefore, this action is not subject to Executive Order 13045 because this proposed SIP disapproval, if finalized, will not in-and-of itself create any new regulations, but will simply partially disapprove or approve certain State requirements for inclusion in the SIP, thereby determining whether the requirements are or are not federally enforceable. Furthermore, the EPA’s Policy on Children’s Health does not apply to this action.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This action on an inspection and maintenance measure for heavy-duty vehicles in California does not relate to or affect energy supply, distribution, or use.

J. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 20, 2025.

Joshua F.W. Cook,

Regional Administrator, Region IX.

[FR Doc. 2025–16325 Filed 8–25–25; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 10 and 11

[PS Docket No. 25–224, FCC 25–50; FR ID 309226]

Modernization of the Nation’s Alerting Systems

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Federal Communications Commission (Commission) begins a reexamination of the Emergency Alert System (EAS) and Wireless Emergency Alerts (WEA) from the ground up and seeks comment on whether fundamental changes could make these alerting systems more effective, efficient, and better able to serve the public’s needs. EAS was introduced 31 years ago, and WEA was introduced 13 years ago, using the technology available at the time. The Commission seeks comment on what goals these alerting systems should aim to achieve, whether these systems are currently effective at achieving these goals, and what steps should be taken to modernize these systems to improve their usefulness and better leverage modern technology while minimizing burdens on stakeholders.

DATES: Comments will be accepted until September 25, 2025. Reply comments will be accepted until October 10, 2025.

ADDRESSES: You may submit comments, identified by PS Docket No. 25–224, by any of the following methods:

- *Federal Communications Commission’s Website:* <https://www.fcc.gov/ecfs>. Follow the instructions for submitting comments.
- *Mail/Paper Filings:* See the instructions in the **SUPPLEMENTARY INFORMATION** section of this document.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: FCC504@fcc.gov or phone: 202–418–0530.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: George Donato, Associate Division

Chief, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, at (202) 418–0729, or george.donato@fcc.gov; or Tara Shostek, Attorney-Advisor, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, at (202) 418–8130, or tara.shostek@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Notice of Proposed Rulemaking (NPRM), PS Docket No. 25–224; FCC 25–50, adopted August 7, 2025, and released August 8, 2025. The full text of this document is available by downloading the text from the Commission’s website at: <https://www.fcc.gov/document/fcc-proposes-modernization-nations-alerting-systems>. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, 45 L Street NE, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to FCC504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice).

Procedural Matters

Comment Filing Requirements

Pursuant to §§ 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of the NPRM. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

- Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. All filings must be addressed to the Secretary, Federal Communications Commission.

- Hand-delivered or messenger-delivered paper filings for the Commission’s Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the Commission’s mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial courier deliveries (any deliveries not by the U.S. Postal Service)

must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

- *People with Disabilities*: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530.

Ex Parte Rules

The proceeding this NPRM initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning potential rule and policy changes contained in this NPRM. The IRFA is set forth in Appendix A of the FCC document, <https://www.fcc.gov/document/fcc-proposes-modernization-alerting-systems>. The Commission invites the general public, in particular small businesses, to comment on the IRFA. Comments must be filed by the deadlines for comments on the NPRM indicated on the first page of the NPRM and must have a separate and distinct heading designating them as responses to the IRFA.

Paperwork Reduction Act

This NPRM does not contain proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501–3521. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, 44 U.S.C. 3506(c)(4).

Providing Accountability Through Transparency Act

Consistent with the Providing Accountability Through Transparency Act, Public Law 118–9, a summary of this NPRM will be available on <https://www.fcc.gov/proposed-rulemakings>.

Synopsis

Congress established the Commission for the purposes of, among other things, the national defense and “promoting safety of life and property through the regulation of wire and radio communications networks.” For nearly 75 years, the Commission has implemented this mandate by adopting rules that set technical and other requirements to provide the public with an effective national public alert and warning system. The Commission’s approach to emergency alerting has been to implement regulations intended to leverage existing commercial communications infrastructure for public safety purposes and to update that existing capability over time to reflect advances in technology and

evolving consumer expectations. While this approach has gradually improved the nation’s alerting capabilities, it may also have restricted innovation by preserving alerting frameworks that are decades old without examining whether more fundamental structural changes are warranted.

In this NPRM, the Commission takes a novel approach by seeking first to identify what goals the nation’s alert and warning systems should be designed to serve. Proceeding from these first principles will enable the Commission to explore alternatives to our historical regulatory approach and consider how to maximize the usefulness, effectiveness, and resiliency of EAS and WEA consistent with our legal authority. As part of this examination, the Commission seeks to identify the objectives that an effective national alerting system should advance, how alerting systems should be designed to ensure that they serve the needs of alerting authorities, what kinds of information alerting systems should deliver, how that information can be most effectively conveyed to the public, public expectations when receiving that information, and other important considerations necessary for modernizing the nation’s public alert and warning capabilities.

A. Objectives of Alerting Systems

The Commission seeks comment on the objectives that effective alert and warning systems should serve. Based on our experience in overseeing requirements for EAS and WEA, the Commission identifies and seeks comment on the following three goals: (1) alerting systems should provide authorities with the ability to rapidly notify the public of emergencies that may put the public at risk; (2) alerting systems should be capable of delivering instructions that facilitate the protection of life and property; and (3) alerting systems should provide a mechanism for government officials to provide additional authoritative communications with the public before, during, and after an emergency. Do these statements accurately reflect the core goals of alerting systems, and if not, should they be articulated in a different way? Are there additional objectives related to the protection of life and property that the nation’s alerting systems should serve? Should the objectives of these alerting systems be grounded solely in the capabilities that the alerting service should provide, or should the objectives also be grounded in achieving particular public safety outcomes (e.g., ensuring that all

members of the public receive an alert and take protective action)?

B. The Role of Alerting Authorities

The Commission seeks comment on which entities need to be able to send alerts to fully accomplish these objectives in order to maximize the capabilities and effectiveness of alerting systems. Government entities, including agencies at the federal, state, Tribal, territorial, or local level, are currently allowed to send alerts. Because of government agencies' differing responsibilities and geographic jurisdictions, the Commission believes that the objectives of alerting systems are best served by all of these types of agencies having the ability to send alerts. The Commission seeks comment on this view. Is it important that each of these types of government agencies be able to send alerts? How does the ability to send alerts at different levels of government advance the objectives of the nation's alerting systems? Are there ways in which the current range of alert originators either undermines or fails to adequately support these objectives? For example, are there agencies, especially at different levels of government, that have similar roles, and if so, can and should alerting systems reconcile alerts from different sources so as to avoid duplication and alert fatigue? If so, how should this be done?

The Commission has consistently concluded that a core purpose of EAS is to enable the transmission of an emergency alert from the President or his designee during a national emergency. The Commission believes that the President's ability to effectively communicate with the public in times of crisis remains of paramount importance to public safety during a national emergency and therefore is critical to accomplishing the nation's alerting objectives. In furtherance of those objectives, the Commission believes that the nation's alerting systems should be designed to allow the President to both send the public an immediate warning to take protective action and to later provide additional information and reassurance to the public. The Commission seeks comment on these views. How should alerting systems be designed to ensure that these capabilities are available and maximally effective during national emergencies? For example, would it be most effective for alerting systems to be able to support video messages from the President? The Commission seeks estimates of the incremental cost of implementing a universal, "video-rich" alert system for the United States. What are the different ways that video-based alerts could be

implemented in EAS and WEA today? The Commission encourages commenters to provide cost estimates on implementing a video-rich alert system and address how video-rich alerts may impact network availability for the public and public safety. What technical steps would EAS Participants and Participating CMS Providers need to take to implement video alerting capabilities within the next two years?

Nearly all alerts that the public receives day-to-day are originated by other agencies at the federal, state, Tribal, territorial, or local level. This includes weather alerts sent by NWS, early earthquake warnings sent by the Department of Interior's United States Geological Survey, and AMBER alerts sent by numerous state and local agencies nationwide. In light of the essential role that these other agencies play in achieving the nation's alert and warning objectives, the Commission believes that the alerting needs of these agencies should also play a driving role in the design of the nation's alerting systems. The Commission seeks comment on this view. Are EAS and WEA, as designed today, effective tools that allow these agencies to fully achieve their alerting objectives? If not, what changes should be made to these systems to better support these agencies? Would it be effective for alerting systems to be able to support video messages from these agencies? Are there certain kinds of emergencies that EAS and WEA are not designed to adequately support today, and if so, what steps can be taken to better support those emergencies? If the Commission were to incentivize greater use of EAS and WEA by local officials, would the resulting increase in alerts make the public more likely to receive life-saving alerts? Does alerting by local officials offer any unique benefits? Would an increase in local alerting increase the risk of alert fatigue, and if so, how can this risk be mitigated?

Are there any circumstances in which it would serve the objectives of the nation's alert and warning systems for non-government entities to send safety-related alerts via these systems? If so, which types of entities should be permitted to send alerts and in what situations should they be permitted to send them? For example, should utility companies have the ability to more immediately notify the public of hazards like downed power lines, gas leaks, rolling blackouts, or dangers in the potable water supply, rather than relying on government entities to relay messages on their behalf? Does accomplishing the nation's alert and warning objectives require an expansion

of the ability of EAS and WEA to support machine-to-machine alerting (e.g., using networked sensors to trigger automated protective action, such as slowing trains or closing water valves)? How should EAS and WEA be redesigned to better support these types of alerts? In cases of non-governmental entities transmitting safety-related alerts and machine-to-machine alerting, what level of transparency and governmental oversight would be needed to ensure effective and resilient alerting, and preserve consumer trust in the information being conveyed? On the other hand, should government agencies be the sole initiators of alerts via the nation's alert and warning systems because of their unique responsibilities, such as their roles in protecting public safety? Would allowing only government agencies to originate alerts preserve public trust in alert and warning systems and maintain democratic accountability?

C. Transmission Capabilities of Alerting Systems

The Commission seeks comment on the alert transmission capabilities that a national public alert and warning system must have to achieve its objectives. What are alert originators' expectations for the ways and the circumstances under which alerts should be successfully delivered? Should the nation's alerting systems be designed with the purpose of guaranteeing delivery of each alert to the intended audience, regardless of the conditions on the ground? Or should these alerting systems instead be designed to require only a "best effort" attempt at delivery and rely on a likelihood that the audience will receive at least one alert from a number of possible sources? Are there certain types of alerts, such as alerts sent by the President, for which delivery must be consistently guaranteed for the objectives of the alerting system to be satisfied? Does voluntary, rather than mandatory, participation in the nation's alerting systems diminish alert originators' confidence that their alert will reach their targeted audience? Today, it is voluntary for EAS Participants to transmit state and local alerts. For WEA, participation by CMS providers is voluntary, though once a CMS provider elects to participate in WEA, it is required to transmit alerts in a manner consistent with the Commission's rules. Is voluntary participation consistent with the objectives of the nation's alert and warning systems? The Commission seeks comment on the steps that the Commission and other stakeholders

should take to strike a better balance between burdens of supporting EAS and WEA and the goals of ensuring uniformity and consistency in alert transmission.

The Commission believes that not only is it reasonable to expect that alerts will be successfully delivered to all targeted members of the public during blue-sky conditions, but that alerting systems should also incorporate resilience to common causes of disruption to communications, such as power outages and physical damage to infrastructure. The Commission seeks comment on this view, including what approaches to resiliency would best achieve the objectives of the nation's alert and warning systems. EAS, for instance, was originally designed to continue operating when traditional communication methods are not functioning and alerts can only be delivered via independently powered broadcast facilities. Does this approach to EAS resiliency remain necessary today? Are there other alternative communications pathways that EAS and WEA can leverage to ensure redundancy? Should EAS and WEA both be independently resilient (*i.e.*, having multiple redundant pathways within EAS, as well as within WEA) or is it sufficient for EAS to provide a redundant source of alerts to WEA and vice versa? Could existing public alert and warning infrastructure be made more resilient by increasing the interoperability of EAS and WEA (*e.g.*, by enabling mobile devices capable of receiving a WEA to receive EAS alerts when cellular infrastructure is damaged)?

The Commission also believes that it is necessary for alerting systems to be capable of delivering alerts to specific populations that are targeted by alerting authorities, without delivering the alert to populations that are not targeted. The Commission seeks comment on this view. What levels of precision and accuracy do alerts need to fulfill the objectives of the nation's alert and warning systems? Can existing technologies deliver alerts with that precision or accuracy, and if so, should those technologies be integrated into the design of EAS and WEA? What is the potential for future technologies to improve upon the geographic precision with which alerts can be delivered? How can the Commission's rules be amended to facilitate such innovation and not impede it? Are alert originators less likely to use alerting systems when their geographic targeting is insufficiently accurate? The Commission has historically been concerned that the receipt of alerts that

are not relevant to the recipient can cause alert fatigue, which can cause people to ignore future alerts and, in the case of WEA, opt out of receiving certain types of alerts. The Commission seeks comment on what the threshold should be at which geographic overshoot becomes unreasonable and undermines alerting objectives. What changes would need to be made to EAS and WEA to ensure that overshoot does not exceed that threshold? In the past, NWS has observed that threats that arise due to extreme weather are not stationary, but continually in motion (*e.g.*, tornados, hurricanes, wildfires, extreme winds, storm surges). Should alerting systems be designed to support the targeting of alerts to a continually updated target area and to the people entering and leaving that area? If so, what technical changes would need to be made for EAS and WEA to support this capability?

The Commission believes that the nation's alerting systems should be designed to be secure against cyberattacks from our nation's adversaries. If an adversary were to gain access to these systems, they could potentially send a false alert, which could cause public panic, or prevent a real alert from being issued, which could cause a significant loss of life. As a consequence, keeping these systems secure is essential to both national security and achieving the nation's alerting objectives. The Commission seeks comment on this view. Are there specific authentication, validation, and security measures that EAS and WEA should be designed to incorporate? Would public trust in alerts be enhanced if alerting systems provided some kind of visual indication that an alert is authoritative and trustworthy? When considering the tradeoffs of competing aspects of the design of EAS and WEA such as security, the support of multimedia alert content, and the speed of alert delivery, which should the Commission prioritize? Commenters are encouraged to address any trade-offs to implementation on security and authentication based on the urgency or severity of an event. For example, for large or impactful disasters, how would security validation or authentication require adjustments due to lack of access to infrastructure or to ensure resiliency?

D. Information Conveyed to the Public

The Commission seeks comment on the kinds of information that alerts need to be able to convey to the public for the nation's alert and warning systems to effectively accomplish their objectives. For instance, our WEA rules require

Participating CMS Providers to support five mandatory elements in WEA messages: the type of hazard event, the geographic area affected, a recommended protective action, the expiration time of the alert, and the identity of the sending agency. Research indicates that when people receive this information, they are much more likely to take the protective actions described in the alert. The Commission believes that the nation's alert and warning systems should be designed to support the transmission of each of these elements in an alert message to the public. The Commission seeks comment on this view. Notwithstanding EAS and WEA's capability to support these informational elements, research has found that most WEA messages lack some of this information. The Commission seeks comment on whether there are resources, such as training materials or best practices, that could be made available to alert originators to promote alert message quality, uniformity, and consistency.

Should EAS and WEA be designed to require that all of these elements be included in the alerts that are sent to the public, or would such an approach be too inflexible for alerting authorities, and if so, how? What approaches to EAS and WEA design can be taken to maximize the likelihood that alerts include information that is most relevant to their recipients? Are there other types of information or ways of communicating that alerting systems need to support in order to be effective? For example, would the ability to include a static graphic or a video as part of an alert better allow alerting authorities to achieve their public safety goals? The Commission seeks comment on how the nation's alerting systems can better serve communities by delivering alerts in the languages they understand. Building on prior efforts to support multilingual alerting, should the Commission take additional steps to ensure alerts effectively reach non-English-speaking populations? The Commission invites input on how multilingual capabilities should inform the design and modernization of EAS and WEA.

E. How the Public Receives Alerts

The Commission seeks comment on how alerts must be received by the public for the objectives of the nation's alert and warning systems to be realized. Today, the public can receive emergency alerts from various sources like mobile devices, radio and television broadcasts, cable services, wireline video services, and road signs. The public, however, increasingly engages

with content through other media and platforms that are not equipped to interrupt content to provide emergency messages, such as personal computers, tablets without commercial mobile service, wearable technology, gaming consoles, smart speakers, streaming services, and social media. This shift in consumer behavior indicates that fewer people may be using the platforms through which emergency messages have been traditionally issued, which may frustrate the EAS and WEA systems' objectives of widespread public notification about emergencies. Are the services that transmit EAS alerts—radio and television broadcast, cable service, wireline video services, and certain satellite services—representative of how people consume video and audio services today? Does EAS remain an effective tool for alert originators if it only makes alerts available over those services? If the public's media habits are changing, what changes can the Commission implement to make sure that EAS and WEA continue to follow the public's eyes and ears, consistent with the scope of its legal authority? Alternatively, is a new alerting system needed to reach the public on these other media and platforms? If so, what minimum requirements would be necessary to preserve consumer trust?

The Commission seeks comment on whether the nation's alert and warning systems would be more effective if their design placed a greater focus on the capabilities of the end-user devices that receive and present alerts, rather than solely around the communications pathways that transmit them. For example, would EAS be more effective if consumer "smart" devices connected to the internet (e.g., radios, TVs, and other video displays) were able to directly receive EAS messages from alerting sources, regardless of the user's choice of programming at the time that the alert is received? Would this allow for new alerting capabilities that the current design of EAS cannot technically support? Could introducing the capability to receive and present EAS messages into end user devices promote flexibility and consumer choice by allowing for greater tailoring as to how alerts are received and presented (e.g., language, locations, screen placement, font size, text-to-speech, and other accessibility options)? Would these changes allow EAS to better achieve its public safety objectives or be a more efficient way of distributing alerts to the public? Would these changes enable the Commission to reduce regulatory burdens for EAS

Participants? What communications paths (e.g., internet, radio, satellite) would be required to connect devices to alerting sources? What changes to or limitations imposed by communications service provider networks would affect implementation of these capabilities? The Commission invites comment on any technical or procedural challenges that equipment manufacturers would confront in supporting the capability to monitor IPAWS for EAS messages directly, rather than, or in addition to, receiving them from communications service providers. What can the Commission do to mitigate these challenges and otherwise encourage the adoption of alerting capabilities on end-user devices? How would these changes affect device costs, including upfront incremental labor and material costs for redesign, reprogramming, retooling, etc.?

The Commission seeks comment on the general public's experience with emergency alerts. Do consumers have frustrations with the alerts that they are receiving today, and if so, what are those frustrations? What can the Commission do to help alleviate them? Are there changes that should be made to how emergency alerts are presented to make them easier to understand? Are there end-user features that the public would like to see and utilize in their devices that are capable of presenting emergency messages? Conversely, are there end-user features that alert originators, Participating CMS Providers, or equipment and device manufacturers believe should not be left to end-user customization because they would likely frustrate the goal of these alerting systems? How can the Commission balance consumer choice over the products that consumers use and the emergency alerts that they want presented with alert originator expectations and objectives? Under what circumstances should one be prioritized over the other and how should the Commission measure the costs and benefits of those tradeoffs?

F. Other Issues

In light of the discussion above, the Commission seeks comment on whether EAS and WEA are meeting the needs and expectations of both the public and alerting authorities. Do EAS and WEA remain useful? Are there situations in which EAS and WEA are proving to have limited value and in what ways are they falling short? Do EAS and WEA need to be redesigned or otherwise modified to fully reach their potential for achieving the nation's alerting objectives? What should EAS and WEA be technically capable of achieving in

the next five to ten years? What technical steps would need to be taken to implement these modifications, how long would they take, and how much would these technical steps cost? Conversely, are there aspects of EAS and WEA that exist today that do not serve the objectives discussed above that should be eliminated? Are there aspects of EAS and WEA whose purported benefits seem outweighed by the burdens involved in their provision? What costs would be associated with any steps taken to improve the effectiveness of EAS and WEA and how could the Commission limit these costs for small entities? The Commissions seek comment on whether certain reforms or modifications offer greater cost effectiveness than others or significantly improve outcomes that align with the objectives of EAS and WEA. Commenters are encouraged to submit quantitative analyses, supporting data, and documentation associated with the modernization or redesign of the EAS and WEA systems.

The Commission seeks comment on how increased training for alert originators, education for the public, and collaboration among all alerting stakeholders can help alerting systems meet the goals they are designed to achieve. Are there gaps in the trainings or best practices available to alert originators? Is there sufficient and meaningful public outreach and education about how alerts are received, alert system capabilities, the purpose of alerts, and the action the public should take if it receives an alert? If so, the Commission seeks comment on how these gaps should be filled, and who should be responsible for filling them. Can voluntary collaboration between alerting stakeholders help to close these gaps?

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the policies and rules proposed in the NPRM assessing the possible significant economic impact on a substantial number of small entities. The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments specified on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for the Small Business Administration (SBA) Office of Advocacy. In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

In the Communications Act of 1934, Congress mandated that the Commission promote the safety of life and property through the use of wire and radio communication, and, by extension, ensure that the public is able to receive critical information regarding impending disasters and other emergencies in a timely fashion. The performance and accessibility of the nation's alert and warning systems, which includes the Emergency Alert System (EAS) and Wireless Emergency Alert System (WEA), are essential to safeguarding the lives and property of all people. In the NPRM, the Commission seeks comment on the goals that the nation's public alert and warning systems should aim to achieve, how emergency alerting systems should be designed to achieve those objectives, what kinds of information emergency alerting systems need to convey to accomplish their objectives, how that information needs to be conveyed so that the objectives are fully realized, how emergency alert systems should be able to geographically target alerts so that their objectives are fully realized, and what kinds of end-user features they should offer to maximize value for recipients. The Commission also seeks comment on whether any changes should be made to EAS and WEA to either better ensure that nation's alerting objectives are being achieved or to eliminate unnecessary requirements that do not advance those objectives.

B. Legal Basis

The proposed action is authorized pursuant to sections 1, 2, 4(i), 4(n), 301, 303(b), 303(e), 303(g), 303(j), 303(r), 303(v), 307, 309, 316, 335, 403, 624(g), 706 and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(n), 301, 303(b), 303(e), 303(g), 303(j), 303(r), 303(v), 307, 309, 316, 335, 403, 544(g), 606, and 613, as well as by sections 602(a), (b), (c), (f), 603, 604 and 606 of the WARN Act, 47 U.S.C. 1201(a), (b), (c), (f), 1203, 1204 and 1205, and the National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283, 134 Stat. 3388, 9201, 47 U.S.C. 1201, 1206.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as

having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

Small Businesses, Small Organizations, Small Governmental Jurisdictions. Our actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes three broad groups of small entities that could be directly affected by our actions. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, in general, a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 34.75 million businesses. Next, “small organizations” are not-for-profit enterprises that are independently owned and operated and not dominate their field. While the Commission does not have data regarding the number of non-profits that meet that criteria, over 99 percent of nonprofits have fewer than 500 employees. Finally, “small governmental jurisdictions” are defined as cities, counties, towns, townships, villages, school districts, or special districts with populations of less than fifty thousand. Based on the 2022 U.S. Census of Governments data, the Commission estimates that at least 48,724 out of 90,835 local government jurisdictions have a population of less than 50,000.

Radio Stations. This industry is comprised of “establishments primarily engaged in broadcasting aural programs by radio to the public.” Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies firms having \$47 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year. Of this number, 1,879 firms operated with revenue of less than \$25 million per year. Based on this data and the SBA's small business size standard, the Commission estimates a majority of such entities are small entities.

The Commission estimates that as of March 31, 2025, there were 4,367 licensed commercial AM radio stations and 6,621 licensed commercial FM

radio stations, for a combined total of 10,988 commercial radio stations. Of this total, 10,987 stations (or 99.99%) had revenues of \$47 million or less in 2023, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Database (BIA) on April 4, 2025, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates that as of March 31, 2025, there were 4,634 licensed noncommercial (NCE) FM radio stations, 1,976 low power FM (LPFM) stations, and 8,891 FM translators and boosters. The Commission however does not compile, and otherwise does not have access to financial information for these radio stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of radio station licensees, the Commission presumes that all of these entities qualify as small entities under the above SBA small business size standard.

The Commission notes, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of “small business” requires that an entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific radio or television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and is therefore possibly over-inclusive. An additional element of the definition of “small business” is that the entity must be independently owned and operated. Because it is difficult to assess these criteria in the context of media entities, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and similarly may be over-inclusive.

FM Translator Stations and Low Power FM Stations. FM translators and Low Power FM Stations are classified in the industry for Radio Stations. The

Radio Stations industry comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies firms having \$47 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 2,963 firms operated during that year. Of that number, 1,879 firms operated with revenue of less than \$25 million per year. Therefore, based on the SBA's size standard the Commission concludes that the majority of FM Translator stations and Low Power FM Stations are small. Additionally, according to Commission data, as of March 31, 2025, there were 8,891 FM Translator Stations and 1,976 Low Power FM licensed broadcast stations. The Commission, however, does not compile and otherwise does not have access to information on the revenue of these stations that would permit it to determine how many of the stations would qualify as small entities. For purposes of this regulatory flexibility analysis, the Commission presumes the majority of these stations are small entities.

Television Broadcasting. This industry is comprised of "establishments primarily engaged in broadcasting images together with sound." These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies businesses having \$47 million or less in annual receipts as small. 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year. Of that number, 657 firms had revenue of less than \$25 million per year. Based on this data the Commission estimates that the majority of television broadcasters are small entities under the SBA small business size standard.

As of March 31, 2025, there were 1,384 licensed commercial television stations. Of this total, 1,307 stations (or 94.4%) had revenues of \$47 million or less in 2023, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on April 4, 2025, and therefore these licensees qualify as small entities

under the SBA definition. In addition, the Commission estimates as of March 31, 2025, there were 383 licensed noncommercial educational (NCE) television stations, 383 Class A TV stations, 1,786 LPTV stations and 3,099 TV translator stations. The Commission, however, does not compile and otherwise does not have access to financial information for these television broadcast stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these television station licensees, the Commission presumes that all of these entities qualify as small entities under the above SBA small business size standard.

Cable Television Distribution Services. Cable television distribution services fall within the U.S. Census Bureau industry classification category of Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.

The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard,

most of these providers can be considered small entities.

Cable System Operators (Telecom Act Standard). The Communications Act of 1934, as amended, contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 498,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator. Based on industry data, only six cable system operators have more than 498,000 subscribers. Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. The Commission notes however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. Therefore, the Commission is unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

Cable Companies and Systems (Rate Regulation). The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide. Based on industry data, there are about 420 cable companies in the U.S. Of these, only seven have more than 400,000 subscribers. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Based on industry data, there are about 4,139 cable systems (headends) in the U.S. Of these, about 639 have more than 15,000 subscribers. Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

Satellite Telecommunications. This industry comprises firms "primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." Satellite telecommunications service providers include satellite and earth station

operators. The SBA small business size standard for this industry classifies a business with \$44 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year. Of this number, 242 firms had revenue of less than \$25 million. Consequently, using the SBA's small business size standard most satellite telecommunications service providers can be considered small entities. The Commission notes however, that the SBA's revenue small business size standard is applicable to a broad scope of satellite telecommunications providers included in the U.S. Census Bureau's Satellite Telecommunications industry definition. Additionally, the Commission neither requests nor collects annual revenue information from satellite telecommunications providers and is therefore unable to more accurately estimate the number of satellite telecommunications providers that would be classified as a small business under the SBA size standard.

All Other Telecommunications. This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (e.g., dial-up ISPs) or Voice over Internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of \$40 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than \$25 million. Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

Broadband Radio Service and Educational Broadband Service. Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the

Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). Wireless cable operators that use spectrum in the BRS often supplemented with leased channels from the EBS, provide a competitive alternative to wired cable and other multichannel video programming distributors. Wireless cable programming to subscribers resembles cable television, but instead of coaxial cable, wireless cable uses microwave channels.

In light of the use of wireless frequencies by BRS and EBS services, the closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (except Satellite). The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

According to Commission data as of December 2021, there were approximately 5,869 active BRS and EBS licenses. The Commission's small business size standards with respect to BRS involves eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of BRS licenses, the Commission adopted criteria for three groups of small businesses. A very small business is an entity that, together with its affiliates and controlling interests, has average annual gross revenues exceed \$3 million and did not exceed \$15 million for the preceding three years, a small business is an entity that, together with its affiliates and controlling interests, has average gross revenues exceed \$15 million and did not exceed \$40 million for the preceding three years, and an entrepreneur is an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$3 million for the preceding three years. Of the ten winning bidders for BRS licenses, two bidders claiming the small business status won 4 licenses, one bidder claiming the very small business status won three licenses and two bidders claiming entrepreneur status won six licenses. One of the winning bidders claiming a small business status classification in the BRS license auction

has an active licenses as of December 2021.

The Commission's small business size standards for EBS define a small business as an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than \$55 million for the preceding five (5) years, and a very small business is an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than \$20 million for the preceding five (5) years. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time the Commission is not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

Direct Broadcast Satellite (DBS) Service. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic "dish" antenna at the subscriber's location. DBS is included in the Wired Telecommunications Carriers industry which comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.

The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau

data for 2017 show that 3,054 firms operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Based on this data, the majority of firms in this industry can be considered small under the SBA small business size standard. According to Commission data, however, only two entities provide DBS service—DIRECTV (owned by AT&T) and DISH Network, which require a great deal of capital for operation. DIRECTV and DISH Network both exceed the SBA size standard for classification as a small business. Therefore, the Commission must conclude based on internally developed Commission data, in general DBS service is provided only by large firms.

Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small. U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year. Of this number, 624 firms had fewer than 250 employees. Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

Electronic Computer Manufacturing. This industry comprises establishments primarily engaged in manufacturing and/or assembling electronic computers, such as mainframes, personal computers, workstations, laptops, and computer servers. Computers can be analog, digital, or hybrid. Digital computers, the most common type, are devices that do all of the following: (1) store the processing program or programs and the data immediately necessary for the execution of the program; (2) can be freely programmed in accordance with the requirements of the user; (3) perform arithmetical computations specified by the user; and (4) execute, without human intervention, a processing program that requires the computer to modify its execution by logical decision during the processing run. Analog computers are capable of simulating mathematical models and contain at least analog, control, and programming elements.

The manufacture of computers includes the assembly or integration of processors, coprocessors, memory, storage, and input/output devices into a user-programmable final product. The SBA small business size standard for this industry classifies a business as small if it has 1,000 or fewer employees. According to U.S. Census Bureau data for 2017, there were 300 firms in this industry that operated for the entire year. Of this number, 291 firms had less than 250 employees. Consequently, the Commission estimates that the majority of firms in this industry are small entities.

Audio and Video Equipment Manufacturing. This industry comprises establishments primarily engaged in electronic audio and video equipment for home entertainment, motor vehicles, and public address and musical instrument amplification. Examples of products made by these establishments are video cassette recorders, televisions, stereo equipment, speaker systems, household-type video cameras, jukeboxes, and amplifiers for musical instruments and public address systems. The SBA small business size standard for this industry classifies firms with 750 employees or less as small. According to 2017 U.S. Census Bureau data, 464 firms in this industry operated that year. Of this number, 399 firms operated with less than 250 employees. Based on this data and the associated SBA size standard, the Commission concludes that the majority of firms in this industry are small.

Wireless Telecommunications Carriers (except Satellite). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard,

most of these providers can be considered small entities.

Broadband Personal Communications Service. The broadband personal communications services (PCS) spectrum encompasses services in the 1850–1910 and 1930–1990 MHz bands. The closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (except Satellite). The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

Based on Commission data as of November 2021, there were approximately 5,060 active licenses in the Broadband PCS service. The Commission's small business size standards with respect to Broadband PCS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. In auctions for these licenses, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding \$15 million for the preceding three years. Winning bidders claiming small business credits won Broadband PCS licenses in C, D, E, and F Blocks.

In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these, at this time the Commission is not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

Narrowband Personal Communications Services. Narrowband Personal Communications Services

(Narrowband PCS) are PCS services operating in the 901–902 MHz, 930–931 MHz, and 940–941 MHz bands. PCS services are radio communications that encompass mobile and ancillary fixed communication that provide services to individuals and businesses and can be integrated with a variety of competing networks. Wireless Telecommunications Carriers (except Satellite) is the closest industry with a SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

According to Commission data as of December 2021, there were approximately 4,211 active Narrowband PCS licenses. The Commission's small business size standards with respect to Narrowband PCS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of these licenses, the Commission defined a "small business" as an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A "very small business" is defined as an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. Pursuant to these definitions, 7 winning bidders claiming small and very small bidding credits won approximately 359 licenses. One of the winning bidders claiming a small business status classification in these Narrowband PCS license auctions had an active license as of December 2021.

In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time the Commission is not able to estimate the number of licensees with active licenses that

would qualify as small under the SBA's small business size standard.

Wireless Communications Services. Wireless Communications Services (WCS) can be used for a variety of fixed, mobile, radiolocation, and digital audio broadcasting satellite services. Wireless spectrum is made available and licensed for the provision of wireless communications services in several frequency bands subject to Part 27 of the Commission's rules. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

The Commission's small business size standards with respect to WCS involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in WCS. When bidding credits are adopted for the auction of licenses in WCS frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in the designated entities section in part 27 of the Commission's rules for the specific WCS frequency bands.

In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time the Commission is not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

700 MHz Guard Band Licensees. The 700 MHz Guard Band encompasses spectrum in 746–747/776–777 MHz and 762–764/792–794 MHz frequency

bands. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to licensees providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

According to Commission data as of December 2021, there were approximately 224 active 700 MHz Guard Band licenses. The Commission's small business size standards with respect to 700 MHz Guard Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years, and a "very small business" an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. Pursuant to these definitions, five winning bidders claiming one of the small business status classifications won 26 licenses, and one winning bidder claiming small business won two licenses. None of the winning bidders claiming a small business status classification in these 700 MHz Guard Band license auctions had an active license as of December 2021.

In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time the Commission is not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

Lower 700 MHz Band Licensees. The lower 700 MHz band encompasses spectrum in the 698–746 MHz

frequency bands. Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services.

Wireless Telecommunications Carriers (except Satellite) is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

According to Commission data as of December 2021, there were approximately 2,824 active *Lower 700 MHz Band licenses*. The Commission's small business size standards with respect to Lower 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For auctions of Lower 700 MHz Band licenses the Commission adopted criteria for three groups of small businesses. A very small business was defined as an entity that, together with its affiliates and controlling interests, has average annual gross revenues not exceeding \$15 million for the preceding three years, a small business was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years, and an entrepreneur was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$3 million for the preceding three years. In auctions for Lower 700 MHz Band licenses 72 winning bidders claiming a small business classification won 329 licenses, 26 winning bidders claiming a small business classification won 214 licenses, and three winning bidders claiming a small business classification won all five auctioned licenses.

In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses

currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time the Commission is not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

Upper 700 MHz Band Licenses. The upper 700 MHz band encompasses spectrum in the 746–806 MHz bands. Upper 700 MHz D Block licenses are nationwide licenses associated with the 758–763 MHz and 788–793 MHz bands. Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services. Wireless Telecommunications Carriers (except Satellite) is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

According to Commission data as of December 2021, there were approximately 152 active Upper 700 MHz Band licenses. The Commission's small business size standards with respect to Upper 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years, and a "very small business" an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. Pursuant to these definitions, three winning bidders claiming very small business status won five of the twelve available licenses.

In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time the Commission is not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

Advanced Wireless Services (AWS)—(1710–1755 MHz and 2110–2155 MHz bands (AWS–1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS–2); 2155–2175 MHz band (AWS–3); 2000–2020 MHz and 2180–2200 MHz (AWS–4)). Spectrum is made available and licensed in these bands for the provision of various wireless communications services. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

According to Commission data as of December 2021, there were approximately 4,472 active AWS licenses. The Commission's small business size standards with respect to AWS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of AWS licenses, the Commission defined a "small business" as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a "very small business" as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. Pursuant to these definitions, 57 winning bidders claiming status as small or very small businesses won 215 of 1,087 licenses. In the most recent auction of AWS licenses 15 of 37 bidders qualifying for status as small or very small businesses won licenses.

In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time the Commission is not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

The Educational Broadcasting Services. According to Commission data as of December 2021, there were 4,477 active EBS licenses. The Commission estimates that the majority of these licenses are held by non-profit educational institutions and school districts and are likely small entities.

Software Publishers. This industry comprises establishments primarily engaged in computer software publishing or publishing and reproduction. Establishments in this industry carry out operations necessary for producing and distributing computer software, such as designing, providing documentation, assisting in installation, and providing support services to software purchasers. These establishments may design, develop, and publish, or publish only. The SBA small business size standard for this industry classifies businesses having annual receipts of \$47 million or less as small. U.S. Census Bureau data for 2017 indicate that 7,842 firms in this industry operated for the entire year. Of this number 7,226 firms had revenue of less than \$25 million. Based on this data, the Commission concludes that a majority of firms in this industry are small.

Noncommercial Educational (NCE) and Public Broadcast Stations. Noncommercial educational broadcast stations and public broadcast stations are television or radio broadcast stations which under the Commission's rules are eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station and are owned and operated by a public agency or nonprofit private foundation, corporation, or association; or are owned and operated by a municipality which transmits only noncommercial programs for education purposes.

The SBA small business size standards and U.S. Census Bureau data

classify radio stations and television broadcasting separately and both categories may include both noncommercial and commercial stations. The SBA small business size standard for both radio stations and television broadcasting classify firms having \$47 million or less in annual receipts as small. For Radio Stations, U.S. Census Bureau data for 2017 show that 1,879 of the 2,963 firms that operated during that year had revenue of less than \$25 million per year. For Television Broadcasting, U.S. Census Bureau data for 2017 show that 657 of the 744 firms that operated for the entire year had revenue of less than \$25 million per year. While the U.S. Census Bureau data does not indicate the number of non-commercial stations, the Commission estimates that under the applicable SBA size standard the majority of noncommercial educational broadcast stations and public broadcast stations are small entities.

According to Commission data as of March 31, 2025, there were 5,017 licensed noncommercial educational radio and television stations. In addition, the Commission estimates as March 31, 2025, there were 383 licensed noncommercial educational (NCE) television stations, 383 Class A TV stations, 1,786 LPTV stations and 3,099 TV translator stations. The Commission does not compile and otherwise does not have access to financial information for these stations that permit it to determine how many stations qualify as small entities under the SBA small business size standards. However, given the nature of these services, the Commission will presume that all noncommercial educational and public broadcast stations qualify as small entities under the above SBA small business size standards.

Cable and Other Subscription Programming. The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA small business size standard for this industry classifies firms with annual receipts less than \$47 million as small. Based on U.S. Census Bureau data for 2017, 378 firms operated in this

industry during that year. Of that number, 149 firms operated with revenue of less than \$25 million a year and 44 firms operated with revenue of \$25 million or more. Based on this data, the Commission estimates that a majority of firms in this industry are small.

D. Description of Economic Impact and Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

The RFA directs agencies to describe the economic impact of proposed rules on small entities, as well as projected reporting, recordkeeping and other compliance requirements, including an estimate of the classes of small entities which will be subject to the requirements and the type of professional skills necessary for preparation of the report or record.

The Commission does not expect the actions proposed in the NPRM will impose additional reporting or recordkeeping requirements for small entities that currently participate in EAS or WEA. However, small and other EAS Participants and Participating CMS providers could be subject to compliance obligations based on the Commission's inquiries in the NPRM. In addition, the Commission explores how effectively the EAS and WEA systems are performing their objectives and what steps, if any, the Commission should take to update these capabilities for the modern technological environment. The Commission also seeks comment on how EAS and WEA are working in practice for the public and public safety authorities, and whether they are structured to perform efficiently and with minimal unnecessary burdens for stakeholders. This includes whether a new alerting system inclusive of other media and platforms is needed to reach the public given consumers' shift away from traditional platforms that transmit EAS alerts. Such a system may impact small entities affiliated with platforms that are not currently equipped to transmit EAS alerts.

At this time, the record does not include sufficient information to allow the Commission to effectively quantify the costs of compliance for small entities, including whether it will be necessary for small entities to hire professionals to comply with the matters upon which the Commission seeks comment in the NPRM. To help the Commission fully evaluate the cost of compliance for small entities, the Commission requests comment on the cost implications of potential changes to the EAS and/or WEA systems, including the quantification of, and any

recommendations for, minimizing the costs for small entities related to the discussions in the NPRM. The Commission expects the information it receives in comments, including cost and benefit analyses, to help the Commission identify and evaluate relevant matters for small entities, including compliance costs and other burdens, that may result from the proposals and inquiries the Commission makes in the NPRM.

E. Discussion of Significant Alternatives Considered That Minimize the Significant Economic Impact on Small Entities

The RFA directs agencies to provide a description of any significant alternatives to the proposed rules that would accomplish the stated objectives of applicable statutes, and minimize any significant economic impact on small entities. The discussion is required to include alternatives such as: “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for such small entities.”

In the NPRM, the Commission seeks comment on alternatives to the existing EAS and WEA, some of which may impact small entities if adopted. This includes whether a new alerting system, inclusive of other media and platforms with greater focus on the capabilities of end-use devices, is needed to reach the public, in contrast with the existing, traditional platforms that transmit EAS

and WEA alerts. The NPRM also requests comment on whether and how the potential for non-government entities to send alerts during emergencies should be taken into account when modernizing EAS and WEA. The Commission seeks comment on whether the nation’s alerting system should be designed to guarantee delivery of each alert, or whether those originating alerts should rely on “best effort” at delivery. Relatedly, the NPRM asks whether additional resiliency should be incorporated in EAS and WEA to allow for redundancy that could limit disruptions to emergency communications and promote the systems’ objectives of widespread public notification about emergencies.

The Commission seeks comment on compliance cost information, including asking for recommendations to reduce any compliance burdens for EAS Participants and participating commercial service providers, including those that are small entities. The Commission expects to consider more fully the economic impact on small entities following its review of comments filed in response to the NPRM, including cost analysis information. The Commission’s evaluation of the comments filed in this proceeding will shape the next steps it ultimately takes to ensure the effectiveness of EAS and WEA while also minimizing the economic impact and burdens that small entities may incur from any rules the Commission adopts in this proceeding.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Ordering Clauses

Accordingly, *it is ordered*, pursuant to sections 1, 2, 4(i), 4(n), 301, 303(b), 303(e), 303(g), 303(j), 303(r), 303(v), 307, 309, 316, 335, 403, 624(g), 706 and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(n), 301, 303(b), 303(e), 303(g), 303(j), 303(r), 303(v), 307, 309, 316, 335, 403, 544(g), 606, and 613, as well as by sections 602(a), (b), (c), (f), 603, 604 and 606 of the WARN Act, 47 U.S.C. 1201(a), (b), (c), (f), 1203, 1204 and 1205, and the National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283, 134 Stat. 3388, 9201, 47 U.S.C. 1201, 1206, that this Notice of Proposed Rulemaking is hereby *adopted*.

It is further ordered that, pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments on the Notice of Proposed Rulemaking on or before 30 days after publication in the **Federal Register**, and reply comments on or before 45 days after publication in the **Federal Register**. Pursuant to Executive Order 14215, 90 FR 10447 (Feb. 20, 2025), this regulatory action has been determined to be significant under Executive Order 12866, 58 FR 68708 (Dec. 28, 1993).

It is further ordered that the Commission’s Office of the Secretary *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2025–16333 Filed 8–25–25; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 90, No. 163

Tuesday, August 26, 2025

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture 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 September 25, 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 Service Agency

Title: Request for Special Priorities Assistance (Agriculture Priorities and Allocations System (APAS)).

OMB Control Number: 0560–0280.

Summary of Collection: The Request for Special Priorities Assistance (Agriculture Priorities and Allocations System (APAS)) regulation is promulgated in 7 CFR 789. This information is used to support the APAS managed by the United States Department of Agriculture, Farm Service Agency (FSA). The APAS program supports not only national defense needs (such as food for combat rations), but also emergency preparedness initiatives by addressing essential civilian needs (food and food resources) through the placing of priorities on contracts for items and services or allocating resources, as necessary. Priorities contracts are required to be given preference over other respective contracts to ensure timely delivery of an item that has been deemed necessary only in times of emergency or to promote the U.S. national defense.

Need and Use of the Information: Information collected on the form AD–2102, Request for Special Priorities Assistance for Emergency Preparedness form is used to grant a priority rating request on contract(s) between the government and private parties or between private parties for the production or delivery of food, food resources (including livestock, feed, and agriculture seed), fertilizer, and farm equipment. The information collected on the Request for Special Priorities Assistance is limited to: (1) Name, address, and contact information of the person making the request for priority rating of a contract, (2) Name, address, and contact information of the vendor supplying the item, (3) Items the person is requesting for a priority rating on a contract, including 'required by shipping dates' and (4) Explanatory section for the person to include circumstances requiring this request.

Failure to collect and maintain the data collected on the form will limit or eliminate USDA's ability to prepare for, respond to, and conduct emergency recovery actions because of an actual or impending hazard.

Description of Respondents: Business or other for-profit.

Number of Respondents: 50.

Frequency of Responses:

Recordkeeping; Reporting: Annually.

Total Burden Hours: 25.

Rachelle Ragland-Greene,

Departmental Information Collection Clearance Officer.

[FR Doc. 2025–16350 Filed 8–25–25; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Generic Clearance for the Development of Nutrition Education Messages and Products for the General Public (Generic Clearance To Conduct Formative Research/CNPP)

AGENCY: Food and Nutrition Service (FNS), U.S. Department of Agriculture (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 is an extension, without change, of a currently approved collection. The purpose of performing consumer research is to identify consumers' understanding of proposed nutrition education messages and obtain their reaction to prototypes of nutrition education products, including internet-based tools. The information collected will be used to refine messages and improve the usefulness of products as well as aid consumer understanding of *Dietary Guidelines*-grounded messages and related materials.

DATES: Written comments must be received on or before October 27, 2025.

ADDRESSES: Comments may be sent to: Jessica Larson, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Fourth Floor, Alexandria, VA 22314. Comments may also be submitted via email to SM.FN.CNPPSupport@usda.gov. Comments will also be accepted through the Federal eRulemaking Portal. Go to <http://www.regulations.gov>, and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) 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 Jessica Larson at 703-305-2062.

SUPPLEMENTARY INFORMATION:

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of agency functions 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 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: Generic Clearance for the Development of Nutrition Education Messages and Products for the General Public (Generic Clearance to Conduct Formative Research/CNPP).

Form Number: None.

OMB Number: 0584-0523.

Expiration Date: November 30, 2025.

Type of Request: Extension, without change, of a currently approved collection.

Abstract: This notice announces the intent of the Center for Nutrition Policy and Promotion (CNPP) of the U.S. Department of Agriculture (USDA) to request approval from the Office of Management and Budget (OMB) for information collection processes and instruments used during consumer research that tests nutrition education messages and products for the general public. CNPP conducts consumer research to identify key issues of concern related to the public understanding of key guidance from the *Dietary Guidelines for Americans* (*Dietary Guidelines*). These key issues are then translated into consumer messages, tools, and resources.

As background, the *Dietary Guidelines* is a primary source of dietary health information. Users include Federal agencies, health professionals, policy makers, and nutrition educators. Issued jointly by the USDA and U.S. Department of Health and Human Services (HHS) every five years, the *Dietary Guidelines* serve as the

cornerstone of Federal nutrition policy and form the basis for these agencies' development of consumer nutrition education efforts (nutrition messaging and development of consumer materials). Consumer messages and resources are essential so that the public has resources to help them make healthier eating choices. Information collected from consumer research will further develop consumer nutrition messages and related resources to be communicated through a food guidance symbol and other channels. These may include:

1. Messages and resources that help consumers make healthier food choices grounded in the latest *Dietary Guidelines*;

2. Amendments to current or subsequent consumer food guidance symbols and their supporting implementation website;

3. Materials relaying consumer messages grounded in the latest *Dietary Guidelines*, for different population groups (e.g., women who are pregnant or lactating, parents, families, etc.); and

4. New policy, messages, resources, and tools that may be developed as a result of the most current *Dietary Guidelines*, as well as the most currently available technologies.

Among its major functions, CNPP develops and coordinates nutrition guidance within USDA and investigates techniques for effective nutrition communication. Under Subtitle D of the National Agriculture Research, Extension, and Teaching Policy Act of 1997 (7 U.S.C. 3171-3173, 3175), the Secretary of Agriculture is required to develop and implement a national food and human nutrition research and extension program, including research on the factors affecting food preference and habits; and the development of techniques and equipment to assist consumers in the home or in institutions in selecting food that supplies a nutritionally adequate diet. Pursuant to 7 CFR 2.19(a)(3), the Secretary of Agriculture has delegated authority to the Food, Nutrition, and Consumer Services (FNCS) for, among other things, developing techniques, equipment, and materials to aid the public in selecting food for good nutrition; coordinating nutrition education promotion and professional education projects within the Department; and consulting with Federal and State agencies, the Congress, universities, other public and private organizations, and the general public regarding food consumption and dietary adequacy.

Under Section 301 of Public Law 101-445 (7 U.S.C. 5341, the National

Nutrition Monitoring and Related Research Act of 1990, Title III), the Secretaries of USDA and HHS are directed to publish the *Dietary Guidelines for Americans* jointly at least every five years. The law instructs that this publication shall contain nutritional and dietary information and guidelines for the general public, shall be based on the preponderance of scientific and medical knowledge which is current at the time the report is prepared, and shall be promoted by each Federal agency in carrying out any Federal food, nutrition, or health program. Recent editions of the *Dietary Guidelines* provide dietary advice for Americans across the lifespan. By providing consumer-friendly nutrition education and communication materials, CNPP and partnering agencies are able to help Americans improve food and beverage choices to promote health. One of the primary ways CNPP helps Americans apply the nutrition guidance in their daily lives is by developing and maintaining interactive, digital tools. CNPP's digital resources and tools provide hands-on learning opportunities that empower Americans to think critically about their food and beverage choices. Maintaining and enhancing CNPP's digital resources and tools are part of a broad Government wide effort to reverse the trend of childhood obesity and build a healthier next generation.

Under Section 3 of Public Law 88-525 (7 U.S.C. 2012, the Food and Nutrition Act of 2008), USDA is required to integrate current dietary guidance into reevaluations of the Thrifty Food Plan at five-year intervals. The Thrifty Food Plan outlines nutrient-dense foods and beverages, their amounts, and associated costs that can be purchased on a limited budget to support a healthy diet through nutritious meals and snacks at home. The Thrifty Food Plan is one of the ways the *Dietary Guidelines* is used to inform policy, as it serves as the basis for setting maximum Supplemental Nutrition Assistance Program (SNAP) benefit allotments and supports public-facing communications related to the basis for establishing benefit levels.

Conducting research to ensure effective implementation of the *Dietary Guidelines* through consumer food guidance resources and related tools that are relevant and useful to intended audiences is critical to CNPP's work, and is a major activity included in its 5-year strategic plan in fulfillment of the Government Performance and Results Act of 1993 (31 U.S.C. 9701).

Affected Public: Individual/households.

Estimated Number of Respondents: 57,700.

Estimated Number of Responses per Respondent: 1.006932 (One for focus group screeners, interview screeners, focus groups, journaling, interviews,

web-based collections and consent forms. Three for consumer panels).

Estimated Total Annual Responses: 58,100.

Estimated Reporting Time per Response: 12.759 minutes (0.21265 hours). The estimated time of response

varies from approximately 5 minutes (.08 hours) to 2 hours, depending on the activity, as shown in the table below.

Estimated Annual Burden: 12,355 hours. See the table below for estimated total annual burden for each type of respondent.

Testing instrument	Estimated number of individual respondents	Number of responses per respondent	Estimated total annual responses per respondent	Estimated time per response in hours	Estimated total annual burden in hours
Focus Group Screeners	7,500	1	7,500	.25	1,875
Interview Screeners	7,500	1	7,500	.25	1,875
Focus Groups	500	1	500	2	1,000
Journaling	500	1	500	.25	125
Interviews	500	1	500	1	500
Consumer Panels	200	3	600	.50	300
Web-based Collections	20,000	1	20,000	.25	5,000
Consent Form	21,000	1	21,000	.08	1,680
Total	57,700	1.006932	58,100	0.21265	12,355

The total estimated annual burden is 57,700 total annual respondents, 12,355 hours, and 58,100 responses. The agency multiplies the annual total estimates to derive the estimated three-year total estimates required for generic request; thus, we are requesting 173,100 total respondents, 37,065 burden hours, and 174,300 total responses for the three-year approval period. Current estimates are based on both the historical number of respondents from past projects as well as estimates for projects to be conducted in the next three years.

James C. Miller,
Administrator, Food and Nutrition Service.
[FR Doc. 2025-16308 Filed 8-25-25; 8:45 am]
BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Urban Agriculture and Innovative Production Advisory Committee Meeting

AGENCY: Natural Resources Conservation Service, U.S. Department of Agriculture (USDA).

ACTION: Notice of public and virtual meetings.

SUMMARY: The Natural Resources Conservation Service (NRCS) will hold three public meetings for the Urban Agriculture and Innovative Production Advisory Committee (UAIPAC). UAIPAC will discuss proposed recommendations for the Secretary of Agriculture on the development of policies and outreach for urban, indoor,

and other emerging agriculture production practices. UAIPAC is authorized under the Agriculture Improvement Act of 2018 (2018 Farm Bill), as amended, and operates in compliance with the Federal Advisory Committee Act (FACA), as amended.

DATES:

Meetings: The UAIPAC meetings will be held on:

- Wednesday, September 10, 2025, from 2:00 p.m. to 4:00 p.m. Eastern Daylight Time (EDT).
- Wednesday, September 17, 2025, from 2:00 p.m. to 4:00 p.m. EDT.
- Wednesday, September 24, 2025, from 2:00 p.m. to 4:00 p.m. EDT.

Written Comments: Written comments will be accepted until Tuesday, September 30, 2025, at 11:59 p.m. EDT.

Oral Comments: Registration to provide oral comments during the meeting will be open until Monday, September 8, 2025, at 11:59 p.m. EDT.

ADDRESSES:

Meeting Location: All meetings will be held virtually via Zoom webinar. Pre-registration is required to attend the UAIPAC meetings and access information will be provided to registered individuals via email. Registration details can be found at: <https://www.usda.gov/partnerships/federal-advisory-committee-urban-ag>.

Written Comments: We invite you to send comments in response to this notice via email to UrbanAgricultureFederalAdvisoryCommittee@usda.gov.

Oral Comments: Only pre-registered individuals will be permitted to provide oral comments. Instructions to register and participate can be found at: <https://www.usda.gov/partnerships/federal-advisory-committee-urban-ag>.

FOR FURTHER INFORMATION CONTACT:

Markus Holliday; Acting Designated Federal Officer; telephone: (301) 974-1287; email: UrbanAgricultureFederalAdvisoryCommittee@usda.gov.

Individuals who require alternative means for communication may contact the USDA TARGET Center at (202) 720-2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay service (both voice and text telephone users can initiate this call from any telephone). Additionally, program information may be made available in languages other than English.

SUPPLEMENTARY INFORMATION:

UAIPAC Purpose

The Federal Advisory Committee for Urban Agriculture and Innovative Production is one of several ways that USDA is extending support and building frameworks to support urban agriculture and innovative production. Section 222 of the Department of Agriculture Reorganization Act of 1994, as amended by section 12302 of the 2018 Farm Bill (7 U.S.C. 6923; Pub. L. 115-334), directed the Secretary to establish an "Urban Agriculture and Innovative Production Advisory Committee" to advise the Secretary of Agriculture on any aspect of section 222, including the development of policies and outreach for urban, indoor, and other emerging agricultural production practices, as well as identify any barriers to urban agriculture. UAIPAC will host public meetings to deliberate on recommendations for the Secretary of Agriculture. These recommendations provide advice to the Secretary on supporting urban agriculture and innovative production through USDA's programs and services.

Meeting Agenda

The agenda items may include, but are not limited to, welcome and introductions; administrative matters; presentations from the UAIPAC or USDA staff; and deliberations for proposed recommendations and plans. The USDA UAIPAC website (<https://www.usda.gov/partnerships/federal-advisory-committee-urban-ag>) will be updated with the final agenda at least 24 hours before the meeting.

Written and Oral Comments

Comments should address specific topics about urban agriculture and innovative production. Written comments will be accepted via email (UrbanAgricultureFederalAdvisoryCommittee@usda.gov) until 11:59 p.m. EDT on Tuesday, September 30, 2025. Requests made after that date may be considered, but it may not be possible to fulfill them.

Only pre-registered individuals may provide oral comments. Instructions to register and participate in the meeting can be found at: <https://www.usda.gov/partnerships/federal-advisory-committee-urban-ag>.

Meeting Materials

All written comments received by the deadline specified above will be compiled for UAIPAC review. Duplicate comments from multiple individuals will appear as one comment with a note that multiple copies of the comment were received. Please visit <https://www.usda.gov/partnerships/federal-advisory-committee-urban-ag> to view the agenda and minutes from each meeting.

Meeting Accommodations

If needed, please request reasonable accommodations by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** section. Determinations for reasonable accommodation will be made on a case-by-case basis.

This notice of meeting is given under section 10 of the Federal Advisory Committee Act (5 U.S.C. 10).

Equal opportunity practices, in accordance with USDA policies, will be followed in all membership appointments to the committee.

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, 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.

Dated: August 18, 2025.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2025–16309 Filed 8–25–25; 8:45 am]

BILLING CODE 3410–16–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 July 2025.

DATES: Applicable August 26, 2025.

FOR FURTHER INFORMATION CONTACT: Yasmin Bordas, 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) 482–3813.

Notice of Scope Ruling Applications

In accordance with 19 CFR 351.225(d)(3), we are notifying the public of the following scope ruling applications related to AD and CVD orders and findings filed in or around the month of July 2025. 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

Mobile Access Equipment and

Subassemblies Thereof from The People's Republic of China (China) (A–570–139/C–570–140); Plate Blanks;² produced and exported from China; submitted by Hunan Kunding CNC Technology Co., Ltd. (Hunan Kunding); July 10, 2025; ACCESS scope segment “Telescopic Boom Lift Plate Blanks”

Magnesium Metal from China (A–570–896); Magnesium Extrusions;³ produced and exported from China; submitted by Galvotec Mag and Metal Works, Inc. (Galvotec); July 11, 2025; ACCESS scope segment “Galvotec magnesium extrusions”

Certain Pasta from Italy (A–475–818/C–475–819); Lumpini Bean Pasta;⁴

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 pieces of steel plates of different steel grades, thickness, shapes and sizes. Plate blanks are to be welded together to form the basic steel frames of the three main subassemblies of a telescopic boom lift: chassis assembly, turntable assembly, and boom assembly.

³ The products are various magnesium alloy extrusion profiles in standard lengths typically ranging in lengths of 6 to 288 inches (24 feet). The profiles are specially designed to have surface and edge characteristics that are optimal for the finishing of poured concrete. Typical Mg alloys used to produce the extrusion profiles are AZ31B or AZ31C which contain a nominal 3% aluminum, 1% Zinc, with the balance of the material being magnesium.

⁴ The product is a food product which is prepared and eaten by the ultimate consumer. It is made from a proprietary blend of Lupini Bean and Durum Wheat Semolina. The product has a high fiber and high protein content. It has 13 grams of protein per each 3.5 ounce serving, 11 grams of fiber, and 54 grams of net carbs.

produced and exported from Italy; submitted by La Molisana SpA (La Molisana); July 15, 2025; ACCESS scope segment “Lupini Bean Pasta” Stainless Steel Flanges from India (A–533–877/C–533–878); Ring-Shaped Components;⁵ produced and exported from India; submitted by Pradeep Metals Limited, Inc. (Pradeep); July 18, 2025; ACCESS scope segment “Ring-shaped Components”

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 31.⁶ 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.⁷ 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 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.⁸

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 19 CFR 351.225(n) and Commerce’s procedures.⁹

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: August 21, 2025.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2025–16276 Filed 8–25–25; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–013]

Carbon and Certain Alloy Steel Wire Rod From the People’s Republic of China: Final Results of the Expedited Second Sunset Review of the Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) order on carbon and certain alloy steel wire rod (steel wire rod) from the People’s Republic of China (China) would be likely to lead to continuation or recurrence of countervailable subsidies at the levels indicated in the “Final Results of Sunset Review” section of this notice.

DATES: Applicable August 26, 2025.

FOR FURTHER INFORMATION CONTACT: Emily Eshoo, Trade Agreements Policy and Negotiations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–6296.

SUPPLEMENTARY INFORMATION:

Background

On January 8, 2015, Commerce published the *Order* on steel wire rod from China.¹ On May 1, 2025, Commerce published the notice of initiation of the second sunset review of the *Order*, pursuant to section 751(c) of the Act and 19 CFR 351.218(c).² On May 16, 2025, Commerce received a notice of intent to participate in this review from

¹ See *Carbon and Certain Alloy Steel Wire Rod from the People’s Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 80 FR 1018 (January 8, 2015) (*Order*).

² See *Initiation of Five-Year (Sunset) Reviews*, 90 FR 18642 (May 1, 2025).

⁵ The products are ring-shaped, custom-made, precision-machined stainless-steel components used in measurement instruments; these include flow meters; pressure sensors; radio wave sensors; and vibration sensors. The components house sensor assemblies, the designs of which are proprietary to the end customer. The components are not manufactured to any nominal pipe size. The ring-shaped components are not used in line connections, to slide over pipe, to fit a pipe into a recession, create a threaded pipe connection, or to seal off a line.

⁶ 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.

⁷ 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).

⁸ 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.

⁹ See *Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*, 86 FR 53205 (September 27, 2021).

Charter Steel, Commercial Metals Company, Liberty Steel USA, Nucor Corporation, and Optimus Steel LLC (Domestic Interested Parties), within the deadline specified in 19 CFR 351.218(d)(1)(i).³ The Domestic Interested Parties parties claim interested party status within the meaning of section 771(9)(C) of the Act and 19 CFR 351.102(b)(29)(v) as producers of the domestic like product.⁴

On June 2, 2025, Commerce received an adequate substantive response from the Domestic Interested Parties, within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁵ Commerce did not receive a substantive response from either the Government of China or a respondent interested party to this proceeding. On June 20, 2025, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent

interested parties.⁶ As a result, Commerce conducted an expedited (120-day) sunset review of the *Order*, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B)(2) and (C)(2).

Scope of the Orders

The product covered by this *Order* is steel wired rod from China. For the full description of the scope of the *Order*, see the Issues and Decisions Memorandum.⁷

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review, including the likelihood of continuation or recurrence of subsidization and the countervailable subsidy rates likely to prevail if the *Order* were to be revoked, is contained in the accompanying Issues and Decision Memorandum.⁸ A list of the topics discussed in the Issues and

Decision Memorandum is attached as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), which is available to registered users at <https://access.trade.gov>. In addition, complete versions of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Final Results of Sunset Review

Pursuant to sections 751(c) and 752(b) of the Act, Commerce determines that revocation of the *Order* would be likely to lead to continuation or recurrence of countervailable subsidies at the following net countervailable subsidy rates:

Producers/exporters	Net countervailable subsidy rate (percent <i>ad valorem</i>)
Benxi Steel ⁹	193.31
Hebei Iron & Steel Co., Lt. Tangshan Branch	178.46
All Others	185.89

Notification Regarding Administrative Protective Orders

This notice also serves as the only 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. Timely notification of the return or destruction of APO materials, or conversion to judicial protective, orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act, and 19 CFR 351.221(c)(5)(ii).

Dated: August 22, 2025.
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. History of the *Order*
 - V. Legal Framework
 - VI. Discussion of the Issues
 - 1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
 - 2. Net Countervailable Subsidy Rates Likely to Prevail
 - 3. Nature of the Subsidies
 - VII. Final Results of Sunset Review
 - VIII. Recommendation

[FR Doc. 2025–16344 Filed 8–25–25; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
[RTID 0648–XF082]
Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting
AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.
ACTION: Notice of public meeting.

SUMMARY: The Scientific and Statistical Committee (SSC) of the Mid-Atlantic Fishery Management Council (Council) will hold a meeting.
DATES: The meeting will be held on Tuesday, September 9, 2025, starting at 10:30 a.m. and continue through 1 p.m. on Wednesday, September 10, 2025. See **SUPPLEMENTARY INFORMATION** for agenda details.

³ See Domestic Interested Parties' Letter, "Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Domestic Interested Parties' Notice of Intent to Participate," dated May 16, 2025 (Domestic Interested Parties' Notice of Intent).
⁴ *Id.* at 3.
⁵ See Domestic Interested Parties' Letter, "Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Substantive Response," dated June 2, 2025 (Domestic Interested Parties' Substantive Response).

⁶ See Commerce's Letter, "Sunset Reviews Initiated on May 1, 2025," dated June 20, 2025.
⁷ See Memorandum, "Issues and Decision Memorandum for the Final Results of the Expedited Sunset Review of the Countervailing Duty Order on Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice.
⁸ *Id.*
⁹ Benxi Steel is comprised of: Benxi Beiyong Iron & Steel Group Import & Export Corp.; Benxi Beiyong Iron & Steel (Group) Co., Ltd.; Benxi Steel Group Corporation; Beitai Iron & Steel (Group) Co., Ltd.; Benxi Northern Steel Rolling Co., Ltd.; Benxi Beifang Gaosu Steel Wire Rod Co., Ltd.; Benxi Beitai Gaosu Steel Wire Rod Co., Ltd.; Benxi Northern Steel Co., Ltd.; Benxi Beifang Second Rolling Co., Ltd.; Benxi Beitai Ductile Iron Pipes Co., Ltd.; Benxi Iron and Steel (Group) Metallurgy Co., Ltd.; Benxi Iron and Steel (Group) Real Estate Development Co., Ltd.; Benxi Iron & Steel (Group) Co., Ltd.; Bei Tai Iron and Steel Group Imp. And Exp. (Dalian) Co., Ltd.; and Bengang Steel Plate Co., Ltd.

ADDRESSES: This will be an in-person meeting with a virtual option. SSC members, other invited meeting participants, and members of the public will have the option to participate in person at the Hyatt Place Inner Harbor (511 South Central Ave., Baltimore, MD) or virtually via Webex webinar. Webinar connection instructions and briefing materials will be available at: www.mafmc.org/ssc.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; website: www.mafmc.org.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: During this meeting, the SSC will review updated stock projections and the most recent survey and fishery data and make 2026–2027 Acceptable Biological Catch (ABC) recommendations for Spiny Dogfish. The SSC will receive an update on the Council's Essential Fish Habitat (EFH) Amendment and an overview of the different habitat tools and applications that have been developed to support the Council's habitat initiatives. The SSC will also receive an overview of recent and upcoming activities for the Marine Recreational Information Program (MRIP) and an update on the Northeast commercial port sampling program. The SSC will discuss research activities, science implications, and fishery interactions associated with offshore wind in the Mid-Atlantic. The SSC will also discuss outcomes from the July SSC meeting. The SSC may take up any other business as necessary.

A detailed agenda and background documents will be made available on the Council's website (www.mafmc.org) prior to the meeting.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 22, 2025.

Rey Israel Marquez,
Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 2025–16338 Filed 8–25–25; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XF084]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Spiny Dogfish Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on Friday, September 12, 2025, from 11 a.m.–1:30 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar. Connection information will be posted to the Council's calendar prior to the meeting at www.mafmc.org.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; www.mafmc.org.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Mid-Atlantic Fishery Management Council's Spiny Dogfish Monitoring Committee will meet via webinar on Friday, September 12, 2025, from 11 a.m. until 1:30 p.m. The purpose of this meeting is for the Monitoring Committee to provide advice regarding the framework adjustment action that would modify spiny dogfish fishery accountability measures (including catch overage paybacks) and set upcoming (2026+) specifications. More information on this action is available at <https://www.mafmc.org/actions/spiny-dogfish-accountability-measures-fw>.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shelley Spedden, (302) 526–5251 at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 22, 2025.

Becky J. Curtis,
Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 2025–16355 Filed 8–25–25; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

2025 NTIA Spectrum Policy Symposium

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, will host a public spectrum policy symposium on September 10, 2025, providing a forum for NTIA to publicly announce its spectrum policy.

DATES: The 2025 NTIA Spectrum Policy Symposium will be held on September 10, 2025, from 9:30 a.m. to 12:30 p.m., Eastern Daylight Time (EDT).

ADDRESSES: The symposium will take place at the Ronald Reagan Building and International Trade Center, located at 1300 Pennsylvania Avenue NW, Washington, DC 20004. The event also will be webcast through the NTIA website at <https://www.ntia.gov/page/ntia-spectrum-policy-symposium>.

FOR FURTHER INFORMATION CONTACT: Please direct questions regarding this notice to John Alden, Chief, Spectrum Affairs and Information Division, Office of Spectrum Management, NTIA, at (202) 482–8046 or spectrumsymposium@ntia.gov. Please direct media inquiries to NTIA's Office of Public Affairs, email: press@ntia.gov.

SUPPLEMENTARY INFORMATION: NTIA serves as the president's principal advisor on telecommunications policies and manages the use of the radio-frequency spectrum by federal agencies. See 47 U.S.C. 902(b)(2). NTIA is hosting a symposium to focus on the Administration's implementation of spectrum policies to accelerate U.S. dominance in spectrum-dependent wireless industries. The symposium will feature plans for implementing the spectrum provisions of the One Big Beautiful Bill Act.

Several speakers have been invited to provide keynote remarks. Panelists are expected to include participants from the Executive Office of the President, the FCC, Executive Branch agencies, and leading wireless and satellite companies. Prior to the event, NTIA will post detailed program information on its website: www.ntia.gov.

The symposium is open to the public and members of the press to attend or to view through a webcast available on the NTIA website. While it is not

required, NTIA asks that online attendees provide registration information prior to the event. This information will include names, email addresses, and organizations (optional). Registration information, the agenda, meeting updates, if any, and other relevant documents will be available on NTIA's website.

The event webcast will be close-captioned. Individuals requiring special accommodations, such as sign language interpretation or other ancillary aids, should notify Mr. Alden at the contact information listed above at least ten (10) business days before the event.

Dated: August 18, 2025.

David Brodian,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2025-16291 Filed 8-25-25; 8:45 am]

BILLING CODE 3510-60-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees—Defense Policy Board

AGENCY: Department of Defense (DoD).

ACTION: Renewal of Federal advisory committee.

SUMMARY: The DoD is publishing this notice to announce that it is renewing the Defense Policy Board (DPB).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, DoD Advisory Committee Management Officer, 703-692-5952.

SUPPLEMENTARY INFORMATION: The DoD is renewing the DPB in accordance with chapter 10 of title 5, United States Code (U.S.C.) (commonly known as the "Federal Advisory Committee Act" or "FACA") and 41 Code of Federal Register (CFR) 102-3.50(d). The charter and contact information for the DPB's Designated Federal Officer (DFO) are found at <https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation>.

The DPB provides the Secretary of Defense and the Deputy Secretary of Defense ("the DoD Appointing Authority") independent advice and recommendations on matters concerning defense policy and national security issues. Specifically, the DPB will focus 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 and national security

issues of special interest to the DoD raised by the DoD Appointing Authority, or the Under Secretary of Defense for Policy as the DPB's Sponsor.

The DPB shall be composed of not more than 20 members who have distinguished backgrounds in defense and national security affairs. These members will come from varied backgrounds including prior government or military service, multinational corporations, academia, or other non-government organizations. Individual members will be appointed according to DoD policy and procedures and serve a term of service of one-to-four years with annual renewals. One member will be appointed as Chair of the DPB. No member, unless approved according to DoD policy and procedures, may serve more than two consecutive terms of service on the DPB, or serve on more than two DoD Federal advisory committees at one time.

Individual members are appointed according to DoD policy and procedures and serve a term of service of one-to-four years with annual renewals. One member will be appointed as Chair of the DPB. No member, unless approved according to DoD policy and procedures, may serve more than two consecutive terms of service on the DPB, or serve on more than two DoD Federal advisory committees at one time.

DPB members who are not full-time or permanent part-time Federal civilian officers or employees, or active-duty members of the Uniformed Services, are appointed as experts or consultants, pursuant to 5 U.S.C. 3109, to serve as special government employee members. DPB members who are full-time or permanent part-time Federal civilian officers or employees, or active-duty members of the Uniformed Services are appointed pursuant to 41 CFR 102-3.130(a), to serve as regular government employee members.

All DPB members are appointed to provide advice based on their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Except for reimbursement of official DPB-related travel and per diem, members serve without compensation.

The public or interested organizations may submit written statements about the DPB's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the DPB. All written statements shall be submitted to the DFO for the DPB using the link provided in **SUPPLEMENTARY INFORMATION** above, and this individual will ensure that the written statements

are provided to the membership for their consideration.

Dated: August 22, 2025.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2025-16326 Filed 8-25-25; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2025-SCC-0548]

Agency Information Collection Activities; Comment Request; Foreign Schools Eligibility Criteria Apply To Participate in Title IV HEA Programs

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change to a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before October 27, 2025.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED-2025-SCC-0548. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the [regulations.gov](http://www.regulations.gov) site is not available to the public for any reason, the Department will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to Carolyn Rose, U.S. Department of Education, Federal Student Aid, 400 Maryland Avenue SW, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carolyn Rose, (202) 453-5967.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA)

(44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Foreign Schools Eligibility Criteria Apply to Participate in Title IV HEA Programs.

OMB Control Number: 1845–0105.

Type of Review: Extension without change to a currently approved ICR.

Respondents/Affected Public: Individual and Households; Private Sector.

Total Estimated Number of Annual Responses: 27,578.

Total Estimated Number of Annual Burden Hours: 8,023.

Abstract: This request is for an extension of the information collection of the requirements in the policies and procedures related to the eligibility of foreign schools to apply to participate in Title IV, HEA programs that were added by the Higher Education Opportunity Act of 2008 (HEOA). The information in 34 CFR 600.54, 600.55, 600.56, and 600.57 is used by the Department during the initial review for eligibility certification, recertification and annual evaluations. These regulations help to ensure that all foreign institutions participating in the Title IV, HEA programs are meeting the minimum participation standards.

Ross Santy,

Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2025–16345 Filed 8–25–25; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2025–SCC–0547]

Agency Information Collection Activities; Comment Request; Generic Clearance for Federal Student Aid Customer Satisfaction Surveys and Focus Groups Master Plan

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision to a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before October 27, 2025.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED–2025–SCC–0547. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the www.regulations.gov site is not available to the public for any reason, the Department will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to Carolyn Rose, U.S. Department of Education, Federal Student Aid, 400 Maryland Avenue SW, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carolyn Rose, (202) 453–5967.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested

data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Generic Clearance for Federal Student Aid Customer Satisfaction Surveys and Focus Groups Master Plan.

OMB Control Number: 1845–0045.

Type of Review: Revision to a currently approved ICR.

Respondents/Affected Public: Individual and Households.

Total Estimated Number of Annual Responses: 8,050,000.

Total Estimated Number of Annual Burden Hours: 400,000.

Abstract: The Higher Education Amendments of 1998 established Federal Student Aid (FSA) as the first Performance-Based Organization (PBO). One purpose of the PBO is to improve service to students and other participants in the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended, including making those programs more understandable to students and their parents. To do that, FSA has committed to ensuring that all people receive service that matches or exceeds the best service available in the private sector. Requirements of the legislation establish an on-going need for FSA to be engaged in an interactive process of collecting information and using it to improve program services and processes. The use of customer surveys and focus groups allows FSA to gather that information from the affected parties in a timely manner to improve communications with our product users.

Ross Santy,

Chief Data Officer Office of Planning, Evaluation and Policy Development.

[FR Doc. 2025–16346 Filed 8–25–25; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION**[Docket No.: ED–2025–SCC–0517]****Agency Information Collection Activities; Comment Request; Required Information for Annual Improper Payment Estimation****AGENCY:** Federal Student Aid (FSA), Department of Education (ED).**ACTION:** Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before October 27, 2025.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED–2025–SCC–0517. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the [regulations.gov](http://www.regulations.gov) site is not available to the public for any reason, the Department will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to Carolyn Rose, U.S. Department of Education, Federal Student Aid, 400 Maryland Avenue SW, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carolyn Rose, (202) 453–5967.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The

Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Required Information for Annual Improper Payment Estimation.

OMB Control Number: 1845–NEW.

Type of Review: New ICR.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 3,349.

Total Estimated Number of Annual Burden Hours: 1,089.

Abstract: The Department executes a two-stage Sampling and Estimation Methodology Plan (S&EMP) that is based in part on the results of compliance audits to estimate its improper payments and unknown payments in accordance with the Public Law 116–117, Payment Integrity Information Act of 2019 (PIIA) and OMB Circular A–123, Part C (A–123C). This is a request for a new information collection to develop a form for institutions of higher education to have a mechanism to report to the Department information required to carry out the S&EMP and publish payment integrity information on an annual basis.

Ross Santy,

Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2025–16348 Filed 8–25–25; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket Nos. UL25–2–000, UL25–4–000]****Green Mountain Power Corporation; Notice of Pending Jurisdictional Inquiry, and Soliciting Comments, Protests, and Motions To Intervene**

On May 30, 2025, the Federal Energy Regulatory Commission (Commission) received requests from the Vermont Department of Environmental Conservation (Vermont DEC) for updated jurisdictional determinations for the unlicensed Middlesex and Gorge Hydroelectric Projects. The projects are located on the Winooski River in Washington and Chittenden Counties, Vermont.

Pursuant to section 23(b)(1) of the Federal Power Act (FPA),¹ a non-federal hydroelectric project must be licensed if it: (a) is located on a navigable water of the United States; (b) occupies lands or reservations of the United States; (c) utilizes surplus water or waterpower from a government dam;² or (d) is located on a stream over which Congress has Commerce Clause jurisdiction, is constructed or modified on or after August 26, 1935, and affects the interests of interstate or foreign commerce.

A stream is navigable under section 3(8) of the FPA³ if: (1) it is currently being used or is suitable for use, or (2) it has been used or was suitable for use in the past, or (3) it could be made suitable for use in the future by reasonable improvements, to transport persons or property in interstate or foreign commerce.⁴ Navigability under section 3(8) of the FPA is not destroyed by obstructions or disuse of many years; personal or private use may be sufficient to demonstrate the availability of the river for commercial navigation; and the seasonal floatation of logs is sufficient to determine that a river is navigable.

Commission staff previously investigated the Commission's jurisdiction over the Middlesex and Gorge Hydroelectric Projects. On August 24, 1979, staff determined that the projects were non-jurisdictional based on staff's finding that there was insufficient evidence that the Winooski River was navigable above Winooski Falls at river mile 9.5 (the Middlesex

¹ 16 U.S.C. 817(1).

² A project that meets condition (a), (b), or (c) is not required to be licensed if it holds a still valid pre-1920 federal permit.

³ 16 U.S.C. 796(8).

⁴ See *Rochester Gas and Elec. Corp.*, 344 F.2d 594, 596 (2d Cir. 1965).

Project is at river mile 49.3 and the Gorge Project is at river mile 10.6) and that there was no post-1935 construction at either project.⁵ Commission staff's prior finding regarding navigability relied primarily on the lack of evidence of running logs above Winooski Falls. Vermont DEC requests that the Commission reexamine navigability of the Winooski River and look specifically at the river's use or suitability for commercial use. A stream's suitability for commercial use can be demonstrated based on its physical characteristics, as well as its actual use or suitability for use for recreational boating, if this information shows the river is suitable for the simpler types of commercial navigation.⁶

In response to Vermont DEC's requests, Commission staff is investigating the jurisdictional status of the Middlesex Hydroelectric Project (UL25-2-000) and the Gorge Hydroelectric Project (UL25-4-000). A copy of Vermont DEC's requests may be viewed on the Commission's website at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number, UL25-2-000 or UL25-4-000. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502-8659.

The Commission is soliciting comments, motions to intervene, and protests in these proceedings. Comments, motions to intervene, and protests must be filed by 45 days from notice or October 6, 2025, by 5:00 p.m. Eastern Time. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules and Practice and Procedure, 18 CFR 385.210, 211, and 214. In determining the appropriate action to take, the Commission will consider all protests or comments filed, but only those who file a motion to intervene in accordance with the Commission's Rule may become a party

to the proceedings. Any comments, protests, or motions to intervene must be received on or before the specified comment date.

The Commission strongly encourages electronic filing. Please file comments, protests, and motions to intervene using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue Rockville, Maryland 20852. The first page of any filing should include Docket Numbers UL25-2-000 and/or UL25-4-000.

For further information, please contact Rebecca Martin at (202) 502-6012 or rebecca.martin@ferc.gov.

Dated: August 20, 2025.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2025-16304 Filed 8-25-25; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2587-066]

Northern States Power Company; Notice of Reasonable Period of Time for Water Quality Certification Application

On August 11, 2025, the Wisconsin Department of Natural Resources (Wisconsin DNR) submitted to the Federal Energy Regulatory Commission (Commission) notice that it received a request for a Clean Water Act section

401(a)(1) water quality certification as defined in 40 CFR 121.5, from Northern States Power Company, in conjunction with the above captioned project on December 4, 2024. Pursuant to the Commission's regulations,¹ we hereby notify Wisconsin DNR of the following dates.

Date of Receipt of the Certification Request: December 4, 2024.

Reasonable Period of Time to Act on the Certification Request: One year, December 4, 2025.

If Wisconsin DNR fails or refuses to act on the water quality certification request on or before the above date, then the certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: August 20, 2025.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2025-16302 Filed 8-25-25; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2610-012]

Northern States Power Company; Notice of Reasonable Period of Time for Water Quality Certification Application

On August 11, 2025, the Wisconsin Department of Natural Resources (Wisconsin DNR) submitted to the Federal Energy Regulatory Commission (Commission) notice that it received a request for a Clean Water Act section 401(a)(1) water quality certification as defined in 40 CFR 121.5, from Northern States Power Company, in conjunction with the above captioned project on December 4, 2024. Pursuant to the Commission's regulations,¹ we hereby notify Wisconsin DNR of the following dates.

Date of Receipt of the Certification Request: December 4, 2024.

Reasonable Period of Time to Act on the Certification Request: One year, December 4, 2025.

¹ 18 CFR 4.34(b)(5)(iii).

¹ 18 CFR 4.34(b)(5)(iii).

⁵ See *Green Mountain Power Corp.*, 8 FERC ¶ 62,077 (1979).

⁶ See *FPL Energy Maine Hydro LLC v. FERC*, 287 F.3d 1151, 1158 (D.C. Cir. 2002) (affirming navigability finding based on stream characteristics and test trips by canoe).

If Wisconsin DNR fails or refuses to act on the water quality certification request on or before the above date, then the certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: August 20, 2025.
Debbie-Anne A. Reese,
Secretary.
[FR Doc. 2025–16305 Filed 8–25–25; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY
Federal Energy Regulatory Commission
[Project No. 2716–051]
Virginia Electric and Power Company d/b/a Dominion Energy Virginia, Allegheny Generating Company, and Bath County Energy, LLC; Notice of Revised Procedural Schedule
Take notice that the schedule for processing the Bath County Pumped

Storage Project No. 2716 final license application has been updated. Subsequent revisions to the schedule may be made as appropriate.

Milestone	Target date
Issue Acceptance Letter	October 2025.
Issue Notice of Ready for Environmental Analysis	October 2025.
Comments, Recommendations, and Agency Terms and Conditions/Prescriptions	December 2025.

Dated: August 20, 2025.
Debbie-Anne A. Reese,
Secretary.
[FR Doc. 2025–16299 Filed 8–25–25; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY
Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC25–133–000.
Applicants: MRP Elgin LLC, MRP Rocky Road LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of MRP Elgin LLC, et al.

Filed Date: 8/19/25.
Accession Number: 20250819–5160.
Comment Date: 5 p.m. ET 9/9/25.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1470–018; ER10–3026–016; ER16–1833–013.
Applicants: Sempra Gas & Power Marketing, LLC, Termoelectrica U.S., LLC, Energia Sierra Juarez U.S., LLC.
Description: Notice of Non-Material Change in Status of Energia Sierra Juarez U.S., LLC, et al.

Filed Date: 8/20/25.
Accession Number: 20250820–5187.
Comment Date: 5 p.m. ET 9/10/25.

Docket Numbers: ER24–1847–002.
Applicants: Sierra Pacific Power Company, Nevada Power Company.
Description: Compliance filing: Nevada Power Company submits tariff filing per 35: Third Order 2023

Compliance Filing ER24–1847 to be effective 7/1/2024.
Filed Date: 8/21/25.
Accession Number: 20250821–5104.
Comment Date: 5 p.m. ET 9/11/25.
Docket Numbers: ER25–2856–000.
Applicants: Casey Fork Solar, LLC.
Description: Second Supplement to July 15, 2025, Casey Fork Solar, LLC tariff filing.
Filed Date: 8/20/25.
Accession Number: 20250820–5177.
Comment Date: 5 p.m. ET 9/10/25.
Docket Numbers: ER25–3076–000.
Applicants: Arlington Valley Solar Energy, LLC.
Description: Supplement to 08/01/2025, Arlington Valley Solar Energy, LLC tariff filing.
Filed Date: 8/21/25.
Accession Number: 20250821–5098.
Comment Date: 5 p.m. ET 9/11/25.
Docket Numbers: ER25–3241–000.
Applicants: Emily Solar, LLC.
Description: § 205(d) Rate Filing: Revised Market Based Rate Tariff to be effective 8/21/2025.
Filed Date: 8/20/25.
Accession Number: 20250820–5151.
Comment Date: 5 p.m. ET 9/10/25.
Docket Numbers: ER25–3242–000.
Applicants: Limon Wind III Energy, LLC.
Description: § 205(d) Rate Filing: Limon Wind III Energy MBR Application to be effective 10/21/2025.
Filed Date: 8/20/25.
Accession Number: 20250820–5161.
Comment Date: 5 p.m. ET 9/10/25.
Docket Numbers: ER25–3243–000.
Applicants: Logan Wind, LLC.
Description: § 205(d) Rate Filing: Logan Wind MBR Application to be effective 10/21/2025.
Filed Date: 8/20/25.
Accession Number: 20250820–5162.

Comment Date: 5 p.m. ET 9/10/25.
Docket Numbers: ER25–3244–000.
Applicants: Thunder Wolf II, LLC.
Description: § 205(d) Rate Filing: Thunder Wolf II MBR Application to be effective 10/21/2025.
Filed Date: 8/20/25.
Accession Number: 20250820–5165.
Comment Date: 5 p.m. ET 9/10/25.
Docket Numbers: ER25–3245–000.
Applicants: Highland Solar I, LLC.
Description: § 205(d) Rate Filing: Highland Solar I MBR Application to be effective 10/21/2025.
Filed Date: 8/20/25.
Accession Number: 20250820–5168.
Comment Date: 5 p.m. ET 9/10/25.
Docket Numbers: ER25–3246–000.
Applicants: South Platte Storage, LLC.
Description: § 205(d) Rate Filing: South Platte Storage MBR Application to be effective 10/21/2025.
Filed Date: 8/20/25.
Accession Number: 20250820–5171.
Comment Date: 5 p.m. ET 9/10/25.
Docket Numbers: ER25–3247–000.
Applicants: South Platte Solar, LLC.
Description: § 205(d) Rate Filing: South Platte Solar MBR Application to be effective 10/21/2025.
Filed Date: 8/20/25.
Accession Number: 20250820–5172.
Comment Date: 5 p.m. ET 9/10/25.
Docket Numbers: ER25–3248–000.
Applicants: Dry Land Prairie Energy Storage, LLC.
Description: § 205(d) Rate Filing: Dry Land Prairie Energy Storage MBR Application to be effective 10/21/2025.
Filed Date: 8/20/25.
Accession Number: 20250820–5174.
Comment Date: 5 p.m. ET 9/10/25.
Docket Numbers: ER25–3249–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Notice of Cancellation of ISA, Service

Agreement No. 7094; Queue No. AG1–041 to be effective 10/21/2025.

Filed Date: 8/21/25.

Accession Number: 20250821–5024.

Comment Date: 5 p.m. ET 9/11/25.

Docket Numbers: ER25–3250–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to GIA, Service Agreement No. 7233; AG1–348 to be effective 10/21/2025.

Filed Date: 8/21/25.

Accession Number: 20250821–5030.

Comment Date: 5 p.m. ET 9/11/25.

Docket Numbers: ER25–3251–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 5680; Queue No. AC1–120/AC1–121 to be effective 10/21/2025.

Filed Date: 8/21/25.

Accession Number: 20250821–5041.

Comment Date: 5 p.m. ET 9/11/25.

Docket Numbers: ER25–3252–000.

Applicants: Dry Falls Energy Center, LLC.

Description: § 205(d) Rate Filing: Dry Falls Energy Center MBR Application to be effective 10/21/2025.

Filed Date: 8/21/25.

Accession Number: 20250821–5044.

Comment Date: 5 p.m. ET 9/11/25.

Docket Numbers: ER25–3253–000.

Applicants: ISO New England Inc.

Description: Request of ISO New England Inc. Limited Waivers of Section III.13.7.2.6 of its Tariff and Section 3.3(e) of its Billing Policy.

Filed Date: 8/20/25.

Accession Number: 20250820–5196.

Comment Date: 5 p.m. ET 9/10/25.

Docket Numbers: ER25–3255–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2025–08–21 Tariff Clarifications Filing—Summer 2025 to be effective 11/19/2025.

Filed Date: 8/21/25.

Accession Number: 20250821–5053.

Comment Date: 5 p.m. ET 9/11/25.

Docket Numbers: ER25–3256–000.

Applicants: Windy Lane Energy Center, LLC.

Description: § 205(d) Rate Filing: Windy Lane Energy Center, LLC MBR Application to be effective 10/21/2025.

Filed Date: 8/21/25.

Accession Number: 20250821–5054.

Comment Date: 5 p.m. ET 9/11/25.

Docket Numbers: ER25–3257–000.

Applicants: Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: Attachment J to Joint OATT (LGIP/

LGIA), Ministerial Clean-Up Filing to be effective 4/1/2024.

Filed Date: 8/21/25.

Accession Number: 20250821–5081.

Comment Date: 5 p.m. ET 9/11/25.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES25–54–000.

Applicants: AEP Texas Inc.

Description: Supplement to Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of AEP Texas Inc.

Filed Date: 8/19/25.

Accession Number: 20250819–5159.

Comment Date: 5 p.m. ET 8/29/25.

Docket Numbers: ES25–56–000.

Applicants: AEP Texas Inc.

Description: Supplement to Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of AEP Texas Inc.

Filed Date: 8/19/25.

Accession Number: 20250819–5158.

Comment Date: 5 p.m. ET 8/29/25.

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: <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, community organization, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Dated: August 21, 2025.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2025–16317 Filed 8–25–25; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP25–534–000]

ANR Pipeline Company; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on August 8, 2025, ANR Pipeline Company (ANR), 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(b) of the Commission's regulations under the Natural Gas Act (NGA), and ANR's blanket certificate issued in Docket No. CP82–480–000, for authorization to construct and operate two new injection/withdrawal storage wells (Wells 103HD and 104 HD), two associated storage field lines, and appurtenances, located in the Goodwell Storage Field in Newaygo County, Michigan (Goodwell New Drills Project). The Project will allow ANR to restore deliverability lost over time due to geologic degradation and increase reliability of the field by improving overall field drainage. Further, the project will not change the certificated physical parameters storage field. The estimated cost for the project is \$7 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 LaShawndra R. Proctor, Manager, Project Authorizations, ANR Pipeline Company, 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, by phone at (832) 320–5232 or by email to Lashawndra_proctor@tcenergy.com.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on October 20, 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, community organizations, 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 5:00 p.m. Eastern Time on October 20, 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 5:00 p.m. Eastern Time on October 20, 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 5:00 p.m. Eastern Time on October 20, 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 CP25–534–000 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 CP25–534–000.

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: LaShawndra R. Proctor, Manager, Project Authorizations, ANR Pipeline Company, 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700 or by email (with a link to the document) at Lashawndra_proctor@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–

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 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.

FERC, or on the FERC website at www.ferc.gov using the “eLibrary” link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to www.ferc.gov/docs-filing/esubscription.asp.

Dated: August 20, 2025.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2025–16300 Filed 8–25–25; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 96–048]

Pacific Gas and Electric Company; Notice of Reasonable Period of Time for Water Quality Certification Application

On August 14, 2025, the California State Water Resources Control Board (Water Board) submitted to the Federal Energy Regulatory Commission (Commission) notice that it received a request for a Clean Water Act section 401(a)(1) water quality certification as defined in 40 CFR. 121.5, from Pacific Gas and Electric Company, in conjunction with the above captioned project, on July 16, 2025. Pursuant to the Commission’s regulations,¹ we hereby notify the Water Board of the following:

Date of Receipt of the Certification Request: July 16, 2025.

Reasonable Period of Time to Act on

If the Water Board fails or refuses to act on the water quality certification request on or before the above date, then the certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: August 20, 2025.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2025–16306 Filed 8–25–25; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15055–001]

Northern States Power Company; Notice of Reasonable Period of Time for Water Quality Certification Application

On August 11, 2025, the Wisconsin Department of Natural Resources (Wisconsin DNR) submitted to the Federal Energy Regulatory Commission (Commission) notice that it received a request for a Clean Water Act section 401(a)(1) water quality certification as defined in 40 CFR 121.5, from Northern States Power Company, in conjunction with the above captioned project on November 12, 2024. Pursuant to the Commission’s regulations,¹ we hereby notify Wisconsin DNR of the following dates.

Date of Receipt of the Certification Request: November 12, 2024.

Reasonable Period of Time to Act on the Certification Request: One year, November 12, 2025.

If Wisconsin DNR fails or refuses to act on the water quality certification request on or before the above date, then the certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: August 20, 2025.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2025–16301 Filed 8–25–25; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC25–15–000]

Commission Information Collection Activity (Ferc–592); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collections, FERC–592 (Standards of Conduct for

Transmission Providers and Marketing Affiliates of Interstate Pipelines).¹ There are no changes to the reporting requirements for this information collection.

DATES: Comments on the collections of information are due October 27, 2025.

ADDRESSES: Please submit comments via email to DataClearance@FERC.gov. You must specify the Docket No. (IC25–15–000) and the FERC Information Collection number (FERC–592) in your email. If you are unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery:

- *Mail via U.S. Postal Service only, addressed to:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

- *Hand (including courier) delivery to:* Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Docket: To view comments and issuances in this docket, please visit <https://elibrary.ferc.gov/eLibrary/search>. Once there, you can also sign-up for automatic notification of activity in this docket.

FOR FURTHER INFORMATION CONTACT:

Kayla Williams, (202) 502–6468.
DataClearance@FERC.gov.

SUPPLEMENTARY INFORMATION:

Title: Standards of Conduct for Transmission Provider and Marketing Affiliates of Interstate Pipelines.

OMB Control No.: 1902–0157.

Type of Request: Three-year extension of the FERC–592 information collection requirements with no changes to the current reporting requirements.

Abstract: The Commission uses the information maintained and posted by the respondents to monitor the pipeline’s transportation, sales, and storage activities for its marketing affiliate to deter undue discrimination by pipeline companies in favor of their marketing affiliates. Non-affiliated shippers and other entities (e.g. state commissions) also use the information to determine whether they have been harmed by affiliate preference and to prepare submissions and formulate positions in rate cases and other proceedings.

¹ The Standards for Business Practices and Communications Protocols for Public Utilities, FERC–717, is reflected in a separate and currently approved information collection (OMB Control No. 1902–0173).

¹ 18 CFR 5.23(b).

¹ 18 CFR 5.23(b)(2).

18 CFR Part 358 (Standards of Conduct)

Respondents maintain and provide the information required by 18 CFR part 358 on their public websites. This requirement ensures that non-affiliated shippers obtain comparable access to non-public transportation information which allows them to compete with marketing affiliates on a more equal basis.

18 CFR 250.16, and the FERC–592 Log/Format

This form (log/format) provides the electronic formats for maintaining

information on discounted transportation transactions and capacity allocation to support monitoring of activities of interstate pipeline marketing affiliates.

- Without this information collection:
- the Commission would have difficulty effectively monitoring whether pipelines are giving discriminatory preference to their marketing affiliates; and
 - non-affiliated shippers, state commissions, and others have difficulty determining whether they have been harmed by affiliate preference,

preparing submissions for rate cases and other proceedings.

Type of Respondents: Natural gas pipelines.

Estimate of Annual Burden:² The Commission estimates the annual reporting burden and cost for the information collection as shown in the following table:

FERC–592—ESTIMATED ANNUAL BURDENS

Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response ³	Total annual burden hours & total annual cost	Cost per respondent (\$)
(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
85	1	85	117 hrs.; \$12,051	9,945 hrs.; \$1,024,335	\$12,051

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency’s estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: August 20, 2025.
Debbie-Anne A. Reese,
Secretary.
[FR Doc. 2025–16303 Filed 8–25–25; 8:45 am]
BILLING CODE 6717–01–P

Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Compliance filing: Rate Schedule S–2 OFO Refund Report August 2025 to be effective N/A.
Filed Date: 8/21/25.
Accession Number: 20250821–5027.
Comment Date: 5 p.m. ET 9/2/25.
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.
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: <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, community organizations, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Dated: August 21, 2025.
Carlos D. Clay,
Deputy Secretary.
[FR Doc. 2025–16318 Filed 8–25–25; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP25–1078–000.

² “Burden” is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further

explanation of what is included in the information collection burden, reference 5 CFR 1320.3.
³ The cost is based on FERC’s 2025 Commission-wide average salary cost (salary plus benefits) of

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2490–031]

Green Mountain Power Corporation; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission’s (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for license for a subsequent license to continue to operate and maintain the Taftsville Hydroelectric Project No. 2490. The project is located on the Ottauquechee River in the Village

\$103.00/hour. The Commission staff believes the FERC FTE (full-time equivalent) average cost for wages plus benefits is representative of the corresponding cost for the industry respondents.

of Taftsville, in Windsor County, Vermont. Commission staff has prepared an Environmental Assessment (EA) for the project.¹

The EA contains staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the EA via the internet through the Commission's Home Page (<http://www.ferc.gov/>), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov, or at (866) 208-3676 (toll-free), 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.

Any comments should be filed on or before 5:00 p.m. Eastern Time on September 2, 2025.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at <https://ferconline.ferc.gov/ferconline.aspx>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <https://ferconline.ferc.gov/QuickComment.aspx>. For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P-2490-031.

For further information, contact David Gandy at (202) 502-8560 or by email at david.gandy@ferc.gov.

Dated: August 20, 2025.

Debbie-Anne A. Reese,
Secretary.

[FR Doc. 2025-16298 Filed 8-25-25; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Southwestern Power Administration; Robert D. Willis Hydropower Project— Rate Order No. SWPA-88

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: The Acting Administrator of the Southwestern Power Administration (Southwestern) has confirmed, approved and placed into effect on an interim basis Rate Order No. SWPA-88 (Rate Order), which provides the rate schedule *Wholesale Rates for Hydro Power and Energy at Robert D. Willis Hydropower Project* (RDW-23). This new rate schedule for the Robert D. Willis Hydropower Project (Robert D. Willis) replaces the existing power rate under Rate Schedule RDW-15 which expires on September 30, 2025. Rate Schedule RDW-23 increases the annual wholesale power rate for Willis by 28.6 percent.

DATES: The effective period for the rate schedule specified in Rate Order No. SWPA-88 is October 1, 2025, through September 30, 2027, pending confirmation and approval by the Federal Energy Regulatory Commission (FERC) on a final basis, or until superseded.

FOR FURTHER INFORMATION CONTACT: Ms. Fritha Ohlson, Senior Vice President, Chief Operating Officer, Southwestern Power Administration, (918) 595-6684 or fritha.ohlson@swpa.gov.

SUPPLEMENTARY INFORMATION: On June 15, 2016, FERC confirmed and approved Rate Schedule RDW-15 under Rate Order No. SWPA-70 on a final basis through September 30, 2019. Rate Schedule RDW-15 was subsequently extended through September 30, 2025. Southwestern published a **Federal Register** notice (Proposed FRN) on May 16, 2025 (90 FR 21029), proposing to increase the annual rate by approximately 28.6 percent from \$1,282,836 to \$1,650,648. The Proposed FRN also initiated a 30-day public consultation and comment period. No written comments were received.

Following review of the proposal, Rate Order No. SWPA-88, which provides the rate for the hydro power and energy from Robert D. Willis Hydropower Project, is hereby

confirmed, approved, and placed into effect on an interim basis. Southwestern will submit Rate Order No. SWPA-88 to FERC for confirmation and approval on a final basis.

UNITED STATES OF AMERICA

Department of Energy

Acting Administrator, Southwestern Power Administration

In the matter of: Southwestern Power Administration), Robert D. Willis Hydropower Project Rate Schedule, Rate Order No. SWPA-88

Order Confirming, Approving, and Placing Increased Power Rate Schedule in Effect on an Interim Basis ()

Pursuant to sections 301(b) and 302(a) of the Department of Energy Organization Act, 42 U.S.C. 7151(b) and 7152(a), the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southwestern Power Administration (Southwestern), were transferred to, and vested in the Secretary of Energy. 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 Southwestern's 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 the Federal Energy Regulatory Commission (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-SWPA1-2023, effective April 10, 2023, the Under Secretary for Infrastructure redelegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Southwestern Administrator.

Background

On December 17, 2015, in Rate Order No. SWPA-70, the Deputy Secretary of Energy placed into effect the current Robert D. Willis Hydropower Project (Robert D. Willis) rate schedule (RDW-15) on an interim basis for the period January 1, 2016, to September 30, 2019. FERC confirmed and approved RDW-15 on a final basis on June 15, 2016, for a period ending September 30, 2019. On September 22, 2019, in Rate Order No.

¹ For tracking purposes under the National Environmental Policy Act, the unique identification number for documents relating to this environmental review is EAXX-019-20-000-1728292340.

SWPA-76, the Assistant Secretary for Electricity extended RDW-15 for two years, for the period of October 1, 2019, through September 30, 2021. On August 30, 2021, in Rate Order No. SWPA-79, the Administrator, Southwestern, extended RDW-15 for two years, for the period of October 1, 2021, through September 30, 2023. On September 25, 2023, in Rate Order No. SWPA-83, the Administrator, Southwestern, temporarily extended RDW-15 for one year, for the period of October 1, 2023, through September 30, 2024. On September 13, 2024, in Rate Order No. SWPA-86, the Administrator, Southwestern, temporarily extended RDW-15 for one year, for the period of October 1, 2024, through September 30, 2025.

Discussion

Southwestern's current rate schedule for the Robert D. Willis isolated rate system, RDW-15, is based on the 2015 Power Repayment Studies (PRS). Each subsequent annual PRS from 2016 through 2022 indicated the need for a revenue adjustment within a plus or minus five percent range of the current revenue estimate. It is Southwestern's practice for the Administrator to defer, on a case-by-case basis, revenue adjustments that are within plus or minus five percent of the revenue estimated from the current rate schedule. Therefore, the Administrator deferred revenue adjustments annually for Robert D. Willis through 2022. Southwestern prepared a 2023 Current PRS which indicated that the existing power rate would not satisfy present financial criteria regarding repayment of investment within a 50-year period due to increased operations and maintenance expenses as well as increased cost of replacements in the hydroelectric generating facilities. The 2023 Revised PRS indicates the need for an increase in annual revenues of \$367,812 (28.6 percent) is necessary to accomplish repayment in the required number of years. Accordingly, Southwestern has prepared a new proposed rate schedule (RDW-23) based on the additional revenue requirement to ensure repayment.

Southwestern conducted the rate adjustment proceeding in accordance with title 10, part 903, subpart A of the Code of Federal Regulations (10 CFR part 903), "Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions." Opportunities for public review and comment during a 30-day period on the proposed Robert D. Willis power rate were announced by a **Federal Register** notice published on

May 16, 2025 (90 FR 21029), with written comments due June 16, 2025. Southwestern published the **Federal Register** notice, the proposed rate schedule, and the draft 2023 PRS on its website for interested parties to review and comment upon during the public comment period.

Following the conclusion of the comment period on June 16, 2025, Southwestern finalized the Power Repayment Studies and Rate Schedule RDW-23 for the proposed annual rate of \$1,650,648 which is the lowest possible rate needed to satisfy the repayment criteria set forth within the provisions of U.S. Department of Energy (DOE) Order No. RA 6120.2. This rate represents an annual increase of 28.6 percent. The Acting Administrator made the decision to approve the rate proposal for implementation.

Southwestern will continue to perform its Power Repayment Studies annually, and if the 2025 results should indicate the need for additional revenues, another rate adjustment proceeding will be conducted to implement the updated revenue requirements.

Comments and Responses

Southwestern did not receive any written comments during the 30-day public review and comment period.

Availability of Information

Information regarding the rate adjustment proceeding, including the Final 2023 PRS and Rate Proposal, for Rate Schedule RDW-23 is available for public review in the offices of Southwestern Power Administration, 6655 S Lewis Ave, Tulsa, Oklahoma 74136. Rate Schedule RDW-23 is available on Southwestern's website at www.energy.gov/swpa/rates-and-repayment.

Certification of Rates

I have certified that the provisional rate under Rate Schedule RDW-23 is the lowest possible rate consistent with sound business principles. The rate was developed following administrative policies and applicable laws.

Ratemaking Procedure Requirements

Environmental Compliance

Southwestern has determined that this action fits within the following categorical exclusions listed in appendix B to subpart D of 10 CFR 1021.410: B4.3 (Electric power marketing rate changes). Categorically excluded projects and activities do not require preparation of either an environmental impact statement or an environmental assessment. A copy of

the categorical exclusion determination is available on Southwestern's website at www.energy.gov/swpa/southwestern-power-administration.

Determination Under Executive Order 12866

Southwestern 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.

Submission to the Federal Energy Regulatory Commission

Rate Schedule RDW-23 herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and final approval.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm, approve and place in effect on an interim basis, effective October 1, 2025, Rate Schedule RDW-23, *Wholesale Rates for Hydro Power and Energy at Robert D. Willis Hydropower Project*. The rate schedule shall remain in effect on a temporary basis through September 30, 2027, or until the FERC confirms and approves the rate on a final basis, or until it is superseded by a subsequent rate.

Signing Authority

This document of the Department of Energy was signed on August 20, 2025, by Marshall Boyken, Acting Administrator for Southwestern 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 DOE. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC on August 22, 2025.

Jennifer Hartzell,

Alternate Federal Register Liaison Officer,
U.S. Department of Energy.

Rate Schedule RDW–23
(Supersedes Rate Schedule RDW–15)
Effective October 1, 2025

United States Department of Energy
Southwestern Power Administration

Rate Schedule RDW–23

Wholesale Rates for Hydro Power and Energy at Robert D. Willis Hydropower Project

Effective

During the period October 1, 2025, through September 30, 2027, in accordance with interim approval from Rate Order No. SWPA–88 issued by the Acting Administrator on August 20, 2025, and pursuant to final approval by the Federal Energy Regulatory Commission.

Applicable

To the power and energy purchased from the Southwestern Power Administration (Southwestern) for the sale of all Hydro Power and Energy generated at the Robert Douglas Willis Hydropower Project (Robert D. Willis) (formerly designated as Town Bluff).

Character and Conditions of Service

Three-phase, alternating current, delivered at approximately 60 Hertz, at the nominal voltage, at the point of delivery, and in such quantities as are specified by contract.

1. Wholesale Rates, Terms, and Conditions for Hydro Power and Energy

1.1. These rates shall be applicable regardless of the quantity of Hydro Power and Energy available or delivered; provided, however, that if an Uncontrollable Force prevents utilization of both of the project's power generating units for an entire billing period, and if during such billing period water releases were being made which otherwise would have been used to generate Hydro Power and Energy, then Southwestern shall, upon request, suspend billing for subsequent billing periods, until such time as at least one of the project's generating units is again available.

1.2. The term "Uncontrollable Force," as used herein, shall mean any force which is not within the control of the party affected, including, but not limited to, failure of water supply, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, riot, civil disturbance, labor disturbance, sabotage, war, acts of war, terrorist acts, or restraint by court of general jurisdiction, which by exercise of due diligence and foresight such party could

not reasonably have been expected to avoid.

1.3. Hydro Power Rates, Term, and Conditions:

1.3.1. Charge for the Period of October 1, 2025, through September 30, 2027 \$137,554 per month (\$1,650,648 per year) for Robert D. Willis Hydro Power and Energy purchased from October 1, 2025, through September 30, 2027.

[FR Doc. 2025–16340 Filed 8–25–25; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1005; FR ID 309662]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before September 25, 2025.

ADDRESSES: Comments should be sent to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. Your comment must be submitted into www.reginfo.gov per the above instructions for it to be considered. In addition to submitting in www.reginfo.gov also send a copy of your comment on the proposed

information collection to Nicole Ongele, FCC, via email to PRA@fcc.gov and to Nicole.Ongele@fcc.gov. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

OMB Control Number: 3060–1005.

Title: Numbering Resource Optimization-Phase 3.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and State, Local, or Tribal Government.

Number of Respondents and Responses: 31 respondents; 211 responses.

Estimated Time per Response: 25–40 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 153, 154, 201–205, 207–209, 218, 225–227, 251–252, 271, and 332.

Total Annual Burden: 5,290 hours.

Total Annual Cost: No cost.

Needs and Uses: The Commission established a safety valve to ensure that carriers experiencing rapid growth in a given market will be able to meet customer demand. States may use this safety valve to grant requests from carriers that demonstrate the following:

- (1) The carrier will exhaust its numbering resources in a market or rate area within three months (in lieu of six months-to-exhaust requirement); and
- (2) Projected growth is based on the carrier's actual growth in the market or rate area, or in the carrier's actual growth in a reasonably comparable market, but only if that projected growth varies no more than 15 percent from historical growth in the relevant market.

The Commission lifted the ban on service-specific and technology-specific overlays (collectively, specialized overlays or SOs), allowing state commissions seeking to implement SOs to request delegated authority to do so on a case-by-case basis. To provide further guidance to state commissions, the Commission set forth the criteria that each request for delegated authority to implement a SO should address. This will enable us to examine the feasibility of SOs in a particular area, and to determine whether the Commission's stated goals are likely to be met if the SO is implemented. Specifically, state commissions should also specifically address the following:

- (1) The technologies or services to be included in the SO;
- (2) The geographic area to be covered;
- (3) Whether the SO will be transitional;
- (4) When the SO will be implemented and, if a transitional SO is proposed, when the SO will become an all-services overlay;
- (5) Whether the SO will include take-backs;
- (6) Whether there will be 10-digit dialing in the SO and the underlying area code(s);
- (7) Whether the SO and underlying area code(s) will be subject to rationing; and

(8) Whether the SO will cover an area in which pooling is taking place.

The Commission uses the information it collects to assist the state commissions in carrying out their delegated authority over numbering resources.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2025–16287 Filed 8–25–25; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 25–663; FR ID 309931]

Consumer Protection and Accessibility Advisory Committee; Announcement of Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission announces the first meeting of the current term of its Consumer Protection and Accessibility Advisory Committee (CPAAC or Committee).

DATES: Wednesday, September 10, 2025. The meeting will come to order at 9:00 a.m. Eastern Time.

ADDRESSES: The CPAAC meeting will be held in the Commission Meeting Room at Federal Communications Commission (FCC) Headquarters, located at 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David M. Pérez or Joshua Mendelsohn, Designated Federal Officers, Federal Communications Commission, via email: CPAAC@fcc.gov.

SUPPLEMENTARY INFORMATION: This meeting is open to members of the general public. The in-person meeting will have sign language interpreters and open captioning. The meeting will be webcast with sign language interpreters and open captioning at: www.fcc.gov/live. In addition, a reserved amount of time will be available on the agenda for comments and inquiries from the public. Members of the public will be able to provide comments either in person if they are attending the meeting or by sending their questions or comments to livequestions@fcc.gov. These comments or questions may be addressed during the public comment period.

Requests for other reasonable accommodations or for materials in accessible formats for people with disabilities should be submitted via email to: fcc504@fcc.gov or by calling

the Consumer and Governmental Affairs Bureau at (202) 418–0530. Such requests should include a detailed description of the accommodation needed and a way for the FCC to contact the requester if more information is needed to fill the request. Requests should be made as early as possible; last minute requests will be accepted but may not be possible to accommodate.

Proposed Agenda: The Committee members will discuss (i) the roles and responsibilities of the Committee and its members; (ii) issues that the Committee will address; (iii) meeting schedules; and (iv) any other topics relevant to the CPAAC's work. The meeting agenda will be available at www.fcc.gov/cpaac and may be modified at the discretion of the CPAAC Co-Chairs and Designated Federal Officers.

Federal Communications Commission.

Suzanne Singleton,

Chief, Disability Rights Office, Consumer and Governmental Affairs Bureau.

[FR Doc. 2025–16342 Filed 8–25–25; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Docket No. FMC–2025–0010]

Notice of Revocation of Exemptions Granted to Certain Controlled Carriers

AGENCY: Federal Maritime Commission.

ACTION: Notice and notice of availability.

SUMMARY: The Federal Maritime Commission (“Commission”) is revoking certain exemptions that allow for rates, charges, classifications, rules or regulations to become effective with less than thirty (30) days’ notice. These exemptions have been granted to some controlled carriers. This revocation will apply to exemptions that were granted to entities that have since been removed from the Commission’s list of controlled carriers. Exemptions that have been granted to controlled carriers that remain on this list will continue to be valid but may be reviewed in the future. No comments were received from the notice of intent to revoke, and no changes have been made in this final notice. Commission Orders to the individual carriers whose exemptions are revoked are available in the Commission’s electronic Reading Room at <https://www2.fmc.gov/readingroom/> under Docket Numbers 25–17 through 25–23.

DATES: This notice of availability is published in the **Federal Register** on August 26, 2025.

ADDRESSES: To view background documents, you may use the Federal

eRulemaking Portal at www.regulations.gov under Docket No. FMC–2025–0010.

FOR FURTHER INFORMATION CONTACT:
David Eng, Secretary; Phone: (202) 523–5725; Email: Secretary@fmc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A controlled carrier is a vessel-operating common carrier that is owned or controlled by a foreign government.¹ Controlled carriers are subject to enhanced regulatory oversight to ensure that they do not abuse their subsidized position in the marketplace.² One of the provisions of 46 U.S.C. chapter 407 stipulates that the tariff rates or charges of controlled carriers cannot become effective until the 30th day after their publication.³

The Commission has previously granted exemptions to certain controlled carriers from the requirements of 46 U.S.C. 40703, pursuant to the administrative exemption authority found at 46 U.S.C. 40103. Such exemptions allowed these controlled carriers' rates, charges, classifications, rules and regulations to become effective less than 30 days after publication. These exemptions did not change the status of any of these carriers as controlled carriers; they were limited to allowing the carrier's rates, charges, classifications, rules or regulations to become effective in less than 30 days' notice.⁴ The Commission also has the authority to revoke previously granted administrative exemptions.⁵ In granting exemptions from section 40703, the Commission has declined to grant permanent exemptions because doing so would impinge on the Commission's authority to revoke them.⁶

In 2004, sections of the Shipping Act of 1984 were rearranged and renumbered. Exemptions under section 9(c) of the Shipping Act that had been codified at 46 U.S.C. app. 1708, allowing changes to controlled carriers' rates, charges, classifications, rules or

regulations to become effective more quickly than 30 days after publication with Commission permission, were moved to 46 U.S.C. 40703. The statutory language of the two sections is nearly identical. In addition, Commission explanations suggest that the Commission did not view exemptions from section 40703 differently than exemptions from section 1708. For example, in granting section 40703 exemptions to United Arab Shipping Company (S.A.G.) and Hainan P O Shipping Co., Ltd., the Commission stated that it “has previously granted exemptions from [section] 40703,” and cited to some exemptions that were granted from section 40703 and to others that were granted from section 1708.⁷ As such, it is the Commission's position that historically, it has viewed the exemptions granted from section 1708 to be equivalent to the exemptions granted from section 40703.

On May 30, 2025, the Commission published a Notice of Intent to Revoke Exemptions Granted to Certain Controlled Carriers that were no longer on the Commission's list of controlled carriers.⁸ No comments were received in response to this notice.

II. Revocation of Certain Exemptions From 46 U.S.C. 40703

Many of the entities to which the Commission granted exemptions from 46 U.S.C. 40703 have since been removed from the Commission's list of controlled carriers for various reasons, such as no longer offering carriage in the U.S. trades or having been bought by private companies. Because the Commission has declined to grant permanent exemptions,⁹ there should not be any expectations that these exemptions are permanent. However, until now, the Commission has not revoked any exemptions, even when an entity's circumstances have changed, such as having been removed from the list of controlled carriers. Rather than allowing that to create an expectation that an exemption remains valid through such changes in circumstances, the Commission is taking this action to give notice that these exemptions are, in fact, terminated.

The revocation of these exemptions does not prevent an entity from petitioning for an exemption again, if its status changes such that it again becomes classified as a controlled carrier. The Commission is hereby revoking the section 40703 exemptions of the following entities:

1. Sinotrans Container Lines Co., Ltd., Docket No. 25–17;
2. Hainan P O Shipping Co., Ltd., Docket No. 25–18;
3. United Arab Shipping Company (S.A.G.), Docket No. 25–19;
4. China Shipping (Hong Kong) Container Lines Co., Ltd., Docket No. 25–20;
5. China Shipping Container Lines Co., Ltd., Docket No. 25–21;
6. American President Lines, Ltd. and APL Co., Pte. Ltd., Docket No. 25–22; and
7. COSCO Container Lines Europe GmbH, Docket No. 25–23.

These entities were removed from the list of controlled carriers over the years. As such, they are no longer controlled carriers under 46 U.S.C. 40102(9), 46 U.S.C. chapter 407, and 46 CFR part 565. As a result, the Commission finds that there is good cause to revoke their exemptions. Therefore, the Commission issues this final notice of revocation. The Commission Orders to each of these carriers, effectuating this revocation, are available on the Commission's electronic Reading Room at <https://www2.fmc.gov/readingroom/> under Docket Numbers 25–17 through 25–23.

The exemptions that the Commission has granted to Orient Overseas Container Line Limited,¹⁰ OOCL (Europe) Limited,¹¹ and COSCO SHIPPING Lines Co., Ltd.,¹² and the Chinese-Polish Joint Stock Shipping Company (“Chipolbrok”)¹³ remain in place because these companies are still on the Commission's list of controlled carriers. However, the Commission may review these exemptions in the future.

By the Commission.

David Eng,
Secretary.

[FR Doc. 2025–16283 Filed 8–25–25; 8:45 am]

BILLING CODE 6730–02–P

¹ 46 U.S.C. 40102(9).

² See 46 U.S.C. chapter 407.

³ 46 U.S.C. 40703.

⁴ *Id.*

⁵ 46 U.S.C. 40103(a).

⁶ See, e.g., *Petition of China Ocean Shipping (Group) Company for a Partial Exemption from the Controlled Carrier Act*, Docket No. P3–99, *Order Granting Petition in Part* (April 1, 2004) (“The Commission declines to make this exemption permanent, as the Petition requests . . . a specific provision for ‘permanence’ of this Order would abrogate the Commission's authority under section 16 and its obligations under section 9 [of the Shipping Act of 1984] . . . The Commission retains its full authority to revoke the instant exemption subject to the requirements of section 16 of the Shipping Act of 1984, 46 U.S.C. app. [sec.] 1715.”)

⁷ See *Petition of United Arab Shipping Company (S.A.G.) for an Exemption from the Controlled Carrier Act*, Docket No. P1–14, *Order Granting Petition* (July 16, 2015); *Petition of Hainan P O Shipping Co., Ltd. for an Exemption from the Controlled Carrier Act*, Docket No. P1–10, *Order Granting Petition* (December 9, 2010).

⁸ 90 FR 23052.

⁹ See, e.g., *Petition of China Ocean Shipping (Group) Company for a Partial Exemption from the Controlled Carrier Act*, Docket No. P3–99, *Order Granting Petition in Part* (April 1, 2004).

¹⁰ Docket No. P2–18.

¹¹ *Id.*

¹² Docket No. P3–99.

¹³ Docket No. P1–25.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–25–0156; Docket No. CDC–2025–0288]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Data Management Plan (DMP) Template. The proposed data collection will allow CDC to have a consistent and unified approach for CDC Programs to develop their own Data Management Plans (DMPs).

DATES: CDC must receive written comments on or before October 27, 2025.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2025–0288 by either of the following methods:

- **Federal eRulemaking Portal:** www.regulations.gov. Follow the instructions for submitting comments.
- **Mail:** Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to www.regulations.gov. Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and

Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: omb@cdc.gov.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

Data Management Plan (DMP) Template—New—Office of Science (OS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC), Office of Science (OS) is requesting approval of a New Information Collection Request (ICR) for a period of three years under the project titled, Data Management Plan (DMP) Template. OS operates within CDC, and works to collaborate with the agency's

Centers, Institutes, and Offices (CIOs). Multiple CIOs have their own DMPs, and a deep dive into these DMPs showed some common elements. There is a need to have a consistent and unified approach whereby CDC could meet obligations of calls to action.

The White House Office of Science Technology and Policy (OSTP) released a memo in 2013 titled, "Increasing Access to the Results of Federally Funded Scientific Research" [https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/ostp_public_access_memo_2013.pdf]. This memo emphasized DMPs and stated the following instructions.

"(b) Ensure that all extramural researchers receiving Federal grants and contracts for scientific research and intramural researchers develop data management plans, as appropriate, describing how they will provide for long-term preservation of, and access to, scientific data in digital formats resulting from federally funded research, or explaining why long-term preservation and access cannot be justified;

(c) Allow the inclusion of appropriate costs for data management and access in proposals for Federal funding for scientific research;

(d) Ensure appropriate evaluation of the merits of submitted data management plans;

(e) Include mechanisms to ensure that intramural and extramural researchers comply with data management plans and policies;"

In response, CDC developed a data plan, produced a public access policy, and updated its data policy.

In 2022, OSTP released a follow-up memo titled, "Ensuring Free, Immediate, and Equitable Access to Federally Funded Research" [<https://bidenwhitehouse.archives.gov/wp-content/uploads/2022/08/08-2022-OSTP-Public-Access-Memo.pdf>]. This memo emphasized the scientific data underlying peer-reviewed publications. It included the following language.

"(b) Scientific Data

i. Scientific data underlying peer-reviewed scholarly publications resulting from federally funded research should be made freely available and publicly accessible by default at the time of publication, unless subject to limitations as described in Section 3(c)(i) and should be subject to federal agency guidelines for researcher responsibilities regarding data management and sharing plans, consistent with Section 3(c) of this memorandum.

(c) Public access plans should outline the policies that federal agencies will use to establish researcher responsibilities on how federally funded scientific data will be managed and shared, including:

(i) Details describing any potential legal, privacy, ethical, technical, intellectual property, or security limitations, and/or any other potential restrictions or limitations on data access, use, and disclosure, including those defined in terms and conditions of funding agreement or award or that convey from a data use agreement or stipulations of an Institutional Review Board;

(ii) Plans to maximize appropriate sharing of the federally funded scientific data identified in Section 3(a) of this memorandum, such as providing risk-mitigated opportunities for limited data access; and,

(iii) The specific online digital repository or repositories where the researcher expects to deposit their relevant data, consistent with the federal agency's guidelines."

OSTP released an additional memo in 2025 titled, "Agency Guidance for Implementing Gold Standard Science in the Conduct & Management of Scientific Activities" [<https://www.whitehouse.gov/wp-content/uploads/2025/03/OSTP-Guidance-for-GSS-June-2025.pdf>]. As defined in the E.O., Gold Standard Science refers to science conducted in a manner that

abides by nine key tenets: (i) reproducible; (ii) transparent; (iii) communicative of error and uncertainty; (iv) collaborative and interdisciplinary; (v) skeptical of its findings and assumptions; (vi) structured for falsifiability of hypotheses; (vii) subject to unbiased peer review; (viii) accepting of negative results as positive outcomes; and (ix) without conflicts of interest.

The Executive Order (E.O.), "Establishing the President's Make America Healthy Again Commission" [<https://www.whitehouse.gov/>]

presidential-actions/2025/02/establishing-the-presidents-make-america-healthy-again-commission/], emphasizes transparency and open-source data in section 2 (a).

Sec. 2. Policy. It shall be the policy of the Federal Government to aggressively combat the critical health challenges facing our citizens, including the rising rates of mental health disorders, obesity, diabetes, and other chronic diseases. To do so, executive departments and agencies (agencies) that address health or healthcare must focus on reversing chronic disease. Under this policy:

(a) all federally funded health research should empower Americans through transparency and open-source data, and should avoid or eliminate conflicts of interest that skew outcomes and perpetuate distrust;

(b) the National Institutes of Health and other health-related research funded by the Federal Government should prioritize gold-standard research on the root causes of why Americans are getting sick;

(c) agencies shall work with farmers to ensure that United States food is the healthiest, most abundant, and most affordable in the world; and

(d) agencies shall ensure the availability of expanded treatment options and the flexibility for health insurance coverage to provide benefits that support beneficial lifestyle changes and disease prevention.

This project addresses and responds to these memos and Executive Orders by collecting data using a unified DMP.

The DMP Template was created to capture information consistent with CDC Grants Notice of Funding Opportunity (NOFO) Additional Requirement 25: Data Management and Access [<https://www.cdc.gov/grants/additional-requirements/ar-25.html>],

and is meant to be broadly applicable across CDC. The implementation of a unified DMP is expected to reduce researcher burden when applying for funding and when updating DMPs. This project will also reduce CDC staff burden, reduce cognitive load on DMP reviewers, and make it explicit which DMP elements have no responses. The project will reduce CDC staff time spent on DMP reviews by making each DMP element atomic and specific.

Use of the DMP Template will allow CDC to understand the number and types of datasets that are being released and shared alongside publications. The proposed new metadata elements for a unified DMP will also help guide CDC-funded researchers towards greater collaborations through fostering data reuse; improve reproducibility by encouraging greater data documentation; and improve accessibility by making CDC data more open and reusable to researchers and the public.

Respondents are expected to complete the DMP Template with as much information as known at the time. The document is a living document and may be updated when additional information is known and during reporting periods. Expected respondents include any researcher responding to Notice of Funding Opportunity (NOFO) announcements. CDC requests OMB approval for an estimated 2,877 total burden hours with an estimated annual burden of 959 hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Notice of Funding Opportunity (NOFO) Applicants.	Data Management Plan (DMP) Template.	548	1	1.5	822
Notice of Funding Opportunity (NOFO) Applicants (Update).	Data Management Plan (DMP) Template.	548	1	15/60	137
Total					959

Jeffrey M. Zirger,

Lead, Information Collection Review Office,
Office of Public Health Ethics and
Regulations, Office of Science, Centers for
Disease Control and Prevention.

[FR Doc. 2025-16331 Filed 8-25-25; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10398 #59, #64, and #94]

Medicaid and Children's Health Insurance Program (CHIP) Generic Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: On May 28, 2010, the Office of Management and Budget (OMB) issued Paperwork Reduction Act (PRA) guidance related to the “generic” clearance process. Generally, this is an expedited process by which agencies may obtain OMB’s approval of collection of information requests that are “usually voluntary, low-burden, and uncontroversial collections,” do not raise any substantive or policy issues, and do not require policy or methodological review. The process requires the submission of an overarching plan that defines the scope of the individual collections that would fall under its umbrella. This **Federal Register** notice seeks public comment on one or more of our collection of information requests that we believe are generic and fall within the scope of the umbrella. Interested persons are invited to submit comments regarding our burden estimates or any other aspect of this collection of information, including: the necessity and utility of the proposed information collection for the proper performance of the agency’s functions, the accuracy of the estimated burden, ways to enhance the quality, utility and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by September 9, 2025.

ADDRESSES: When commenting, please reference the applicable form number (CMS–10398 #) and the OMB control number (0938–1148). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for “Comment or Submission” or “More Search Options” to find the information collection

document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: CMS–10398 # __/OMB control number: 0938–1148, Room C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/medicare/regulations-guidance/legislation/paperwork-reduction-act-1995/pralisting>.

FOR FURTHER INFORMATION CONTACT: William N. Parham at 410–786–4669.

SUPPLEMENTARY INFORMATION: Following is a summary of the use and burden associated with the subject information collection(s). More detailed information can be found in the collection’s supporting statement and associated materials (see **ADDRESSES**).

Generic Information Collection

1. *Title of Information Collection:* Medicaid Section 1115 Severe Mental Illness (SMI) and Children with Serious Emotional Disturbance (SED) Demonstrations; *Type of Information Collection Request:* Revision of an existing generic information collection request; *Use:* In November 2018, CMS announced the opportunity for section 1115(a) demonstration projects, mandated under section 1203 of the 21st Century Cures Act, aimed at improving care for adult Medicaid beneficiaries with serious mental illness (SMI) and children with a serious emotional disturbance (SED). Participating states are eligible to receive federal financial participation for institutions of mental disease (IMD) stays subject to requirements that include ensuring quality of care in IMDs, improving connections to community-based care following stays in acute care settings, ensuring a continuum of care is available to address more chronic mental health care needs of beneficiaries with SMI/SED, providing a full array of crisis stabilization services, and engaging beneficiaries with SMI or SED treatment as soon as possible.

Primary data collection includes virtual interviews with (1) the state Medicaid Agency and/or the single state agency for behavioral health and (2) providers in the states that have

approved section 1115 SMI/SED demonstrations. We will conduct three rounds of interviews: Initial Implementation Interviews will be conducted with state Medicaid directors and directors of the single state agency for mental health, or their designees; Provider Interviews will expand our understanding of SMI/SED demonstration implementation experience; and Follow-up Implementation Interviews.

As of April 2025, 15 states and the District of Columbia have an approved SMI/SED demonstration, and 3 states have a pending application. Since it is possible that all 50 states and the District of Columbia could submit SMI/SED demonstration applications, this 2025 revision proposes to: (1) increase the number of possible initial implementation interviews with state officials from 20 states to 50 states and the District of Columbia (N=51); (2) increase the number of provider interviews from 80 (in 20 states) to 100 (in 25 states) or up to 4 interviewees per state; and (3) add follow-up implementation interviews for up to 50 states and the District of Columbia. No follow-up interviews are planned with providers because that data collection was intended to learn providers’ experiences and organizational changes after the demonstration was implemented.

Form Number: CMS–10398 #59 (OMB control number: 0938–1148); *Frequency:* Once; *Affected Public:* Private Sector and State, Local, or Tribal Governments; *Number of Respondents:* 151; *Total Annual Responses:* 329; *Total Annual Hours:* 481. (For policy questions regarding this collection contact Raven Smith at 410–786–3731.)

2. *Title of Information Collection:* Section 1115 Federal Meta Analysis Substance Use Disorder (SUD) Demonstrations; *Type of Information Collection Request:* Revision of an existing generic information collection request; *Use:* Starting in 2015, in response to the opioid epidemic, CMS offered states the flexibility to test Medicaid coverage of a full SUD treatment service array in the context of overall SUD service delivery transformation through the authority of section 1115 demonstrations, provided states met specific requirements. A key component of the section 1115 demonstration is that states could apply to receive federal financial participation (FFP) for the continuum of services to treat addiction to opioids or other substances, including institutions for mental diseases (IMDs), which are normally ineligible for FFP if the facility has more than 16 beds.

This 2025 revision increases the “MCO and Behavioral Health Provider Stakeholder Interviews” from 80 interviews (in 10 states) to 160 interviews (in 20 states) and seeks approval for a follow-up round of interviews (referred to as Follow-up Implementation Interviews) with SUD state Medicaid directors, single state agency representatives, or other state officials who are involved in SUD demonstration implementation. These interviews will occur only with state officials; no providers will be included in the “Follow-up Implementation Interviews.” This revision also adds a thank you letter template for the initial Demonstration Characteristics and Implementation Interviews as well as templates for the email correspondence and interview protocol for the Follow-up Implementation Interviews.

Form Number: CMS–10398 #64 (OMB control number: 0938–1148); *Frequency:* Once; *Affected Public:* Private Sector and State, Local, or Tribal Governments; *Number of Respondents:* 211; *Total Annual Responses:* 384; *Total Annual Hours:* 668. (For policy questions regarding this collection contact Raven Smith at 410–786–3731.)

3. *Title of Information Collection:* Streamlining Medicaid Enterprise Systems (MES) Advance Planning Documents (APD) Templates; *Type of Information Collection Request:* New generic information collection request; *Use:* This collection of information request proposes to move an active collection (CMS–10536, OMB 0938–1268) entitled, “Medicaid Eligibility and Enrollment (E&E) Implementation Advance Planning Document (IAPD) Template” under OMB control number 0938–1148 (CMS–10398 #94). We also propose to revise the collection’s title as indicated above. The revised title better encapsulates the efforts to streamline and create efficiencies across MES instead of limiting it only to E&E implementations.

While the MES APD Template is currently approved by OMB under 0938–1268, we also propose to revise that template and add six new templates that have not been approved by OMB under any control number. The templates aim to streamline the process and ensure consistency across state submissions. We intend to discontinue 0938–1268 sometime after this new collection of information request (CMS–10398 #94) is approved by OMB under 0938–1148.

Form Number: CMS–10398 #94 (OMB control number: 0938–1148); *Frequency:* Monthly, once, and occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:*

56; *Total Annual Responses:* 3,314; *Total Annual Hours:* 86,096. (For policy questions regarding this collection contact: Loren Palestino at 410–786–8842.)

Evell Barco Holland,

Senior Technical Advisor, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2025–16343 Filed 8–25–25; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–E–5010]

Determination of Regulatory Review Period for Purposes of Patent Extension; LUMISIGHT

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 LUMISIGHT and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by October 27, 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 February 23, 2026. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 27, 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–5010 for “Determination of Regulatory Review Period for Purposes of Patent Extension; LUMISIGHT.” 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: Jack Dan, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 240-402-6940.

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, LUMISIGHT (pegulicanine) as an optical imaging agent indicated for fluorescence imaging in adults with breast cancer as an adjunct for the intraoperative detection of cancerous tissue within the resection cavity following removal of the primary specimen during lumpectomy surgery. Subsequent to this approval, the USPTO received a patent term restoration application for LUMISIGHT (U.S. Patent No. 9,763,577) from Lumicell, Inc. and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated March 17, 2025, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of LUMISIGHT 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 LUMISIGHT is 4,355 days. Of this time, 3,957 days occurred during the testing phase of the regulatory review period, while 398 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:* May 17, 2012. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on May 17, 2012.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* March 17, 2023. FDA has verified the applicant's claim that the new drug application (NDA) for LUMISIGHT (NDA 214511) was initially submitted on March 17, 2023.

3. *The date the application was approved:* April 17, 2024. FDA has verified the applicant's claim that NDA 214511 was approved on April 17, 2024.

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(s) for patent extension, this applicant seeks 1,311 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.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2025-16266 Filed 8-25-25; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration**

[Docket Nos. FDA–2024–E–5091 and FDA–2024–E–5094]

Determination of Regulatory Review Period for Purposes of Patent Extension; IQIRVO

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 IQIRVO 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 October 27, 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 February 23, 2026. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 27, 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–5091 and FDA–2024–E–5094 for “Determination of Regulatory Review Period for Purposes of Patent Extension; IQIRVO.” 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: Jack Dan, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 240–402–6940.

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, IQIRVO (elafibranor) is a peroxisome proliferator-activated receptor (PPAR) agonist indicated for the treatment of primary biliary cholangitis (PBC) in combination with ursodeoxycholic acid (UDCA) in adults who have an inadequate response to UDCA, or as monotherapy in patients unable to tolerate UDCA. Subsequent to this approval, the USPTO received patent term restoration applications for IQIRVO (U.S. Patent Nos. 11,185,519; 11,331,292) from Genfit and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated March 17, 2025, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of IQIRVO 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 IQIRVO is 4,358 days. Of this time, 4,093 days occurred during the testing phase of the regulatory review period, while 245 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 27, 2012. The applicant claims October 28, 2016, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was July 27, 2012, which was 30 days after FDA receipt of an earlier IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* October 10, 2023. FDA has verified the applicant's claim that the new drug application (NDA) for IQIRVO (NDA 218860) was initially submitted on October 10, 2023.

3. *The date the application was approved:* June 10, 2024. FDA has verified the applicant's claim that NDA 218860 was approved on June 10, 2024.

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(s) for patent extension, this applicant seeks 437 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.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2025–16265 Filed 8–25–25; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2024–E–5011; FDA–2024–E–5012; and FDA–2024–E–5013]

Determination of Regulatory Review Period for Purposes of Patent Extension; OHTUVAYRE

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 OHTUVAYRE 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 patents which claim that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by October 27, 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 February 23, 2026. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 27, 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-5011; FDA-2024-E-5012; and FDA-2024-E-5013 for "Determination of Regulatory Review Period for Purposes of Patent Extension; OHTUVAYRE." 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: Jack Dan, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 240-402-6940.

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, OHTUVAYRE (ensifentrine) indicated for the maintenance treatment of chronic obstructive pulmonary disease in adult patients. Subsequent to this approval, the USPTO received patent term

restoration applications for OHTUVAYRE (U.S. Patent Nos. 9,062,047; 9,956,171; and 10,945,950) from Verona Pharma PLC and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated March 17, 2025, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of OHTUVAYRE 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 OHTUVAYRE is 2,638 days. Of this time, 2,271 days occurred during the testing phase of the regulatory review period, while 367 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 8, 2017. The applicant claims April 11, 2017, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was April 8, 2017, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* June 26, 2023. FDA has verified the applicant's claim that the new drug application (NDA) for OHTUVAYRE (NDA 217389) was initially submitted on June 26, 2023.

3. *The date the application was approved:* June 26, 2024. FDA has verified the applicant's claim that NDA 217389 was approved on June 26, 2024.

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 782 days, 1,307 days or 1,500 days of patent term extensions.

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.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2025–16272 Filed 8–25–25; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–P–0060]

Determination That Four Heparin Sodium In Sodium Chloride In Plastic Container (Heparin Sodium) Drug Products Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that HEPARIN SODIUM 12,500 UNITS IN SODIUM CHLORIDE 0.45% IN PLASTIC CONTAINER (heparin sodium) injectable, 5,000 units/100 milliliters (mL); HEPARIN SODIUM 25,000 UNITS IN SODIUM CHLORIDE 0.45% IN PLASTIC CONTAINER (heparin sodium) injectable, 5,000 units/100 mL; HEPARIN SODIUM 25,000 UNITS IN SODIUM CHLORIDE 0.45% IN PLASTIC CONTAINER (heparin sodium) injectable, 10,000 units/100 mL; and HEPARIN SODIUM 25,000 UNITS IN SODIUM CHLORIDE 0.9% IN

PLASTIC CONTAINER (heparin sodium) injectable, 5,000 units/100 mL under new drug application (NDA) 019802 were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) that refer to these products if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT:

Madeleine Giaquinto, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6219, Silver Spring, MD 20993–0002, 240–863–8976, madeleine.giaquinto@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a version of the drug that was previously approved, and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the “Approved Drug Products With Therapeutic Equivalence Evaluations,” which is known generally as the “Orange Book.” Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug’s NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (21 CFR 314.161). FDA may not approve an ANDA that does not refer to a listed drug.

HEPARIN SODIUM 12,500 UNITS IN SODIUM CHLORIDE 0.45% IN PLASTIC CONTAINER (heparin

sodium) injectable, 5,000 units/100 mL; HEPARIN SODIUM 25,000 UNITS IN SODIUM CHLORIDE 0.45% IN PLASTIC CONTAINER (heparin sodium) injectable, 5,000 units/100 mL; HEPARIN SODIUM 25,000 UNITS IN SODIUM CHLORIDE 0.45% IN PLASTIC CONTAINER (heparin sodium) injectable, 10,000 units/100 mL; and HEPARIN SODIUM 25,000 UNITS IN SODIUM CHLORIDE 0.9% IN PLASTIC CONTAINER (heparin sodium) injectable, 5,000 units/100 mL are the subject of NDA 019802, held by B. Braun Medical Inc., and initially approved on July 20, 1992. These drug products are indicated for anticoagulant therapy in prophylaxis and treatment of venous thrombosis and its extension; for prophylaxis and treatment of pulmonary embolism; in atrial fibrillation with embolization; for diagnosis and treatment of acute and chronic consumptive coagulopathies (disseminated intravascular coagulation); for prevention of clotting in arterial and heart surgery; and in prophylaxis and treatment of peripheral arterial embolism.

The HEPARIN SODIUM IN SODIUM CHLORIDE IN PLASTIC CONTAINER (heparin sodium) drug products listed in this document are currently listed in the “Discontinued Drug Product List” section of the Orange Book. In the **Federal Register** of June 21, 2017 (82 FR 28322), FDA announced that it was withdrawing approval of NDA 019802, effective July 21, 2017.

B. Braun Medical Inc. submitted a citizen petition dated January 10, 2022 (Docket No. FDA–2022–P–0060), under 21 CFR 10.30, requesting that the Agency determine whether the following drug products were withdrawn from sale for reasons of safety or effectiveness:

- HEPARIN SODIUM 12,500 UNITS IN SODIUM CHLORIDE 0.45% IN PLASTIC CONTAINER (heparin sodium) injectable, 5,000 units/100 mL;
- HEPARIN SODIUM 25,000 UNITS IN SODIUM CHLORIDE 0.45% IN PLASTIC CONTAINER (heparin sodium) injectable, 5,000 units/100 mL;
- HEPARIN SODIUM 25,000 UNITS IN SODIUM CHLORIDE 0.45% IN PLASTIC CONTAINER (heparin sodium) injectable, 10,000 units/100 mL; and
- HEPARIN SODIUM 25,000 UNITS IN SODIUM CHLORIDE 0.9% IN PLASTIC CONTAINER (heparin sodium) injectable, 5,000 units/100 mL.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that the four HEPARIN

SODIUM IN SODIUM CHLORIDE IN PLASTIC CONTAINER (heparin sodium) drug products listed in this document were not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that these drug products were withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal from sale of the four HEPARIN SODIUM IN SODIUM CHLORIDE IN PLASTIC CONTAINER (heparin sodium) drug products listed in this document. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this drug product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list the four HEPARIN SODIUM IN SODIUM CHLORIDE IN PLASTIC CONTAINER (heparin sodium) drug products listed in this document in the “Discontinued Drug Product List” section of the Orange Book. The “Discontinued Drug Product List” delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to these drug products may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation,
and International Affairs.

[FR Doc. 2025–16349 Filed 8–25–25; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2024–E–5017; FDA–2024–E–5018; FDA–2024–E–5019; FDA–2024–E–5020; FDA–2024–E–5021; FDA–2024–E–5022]

Determination of Regulatory Review Period for Purposes of Patent Extension; SOFDRA

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 SOFDRA 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 claim that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by October 27, 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 February 23, 2026. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 27, 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–5017; FDA–2024–E–5018; FDA–2024–E–5019; FDA–2024–E–5020; FDA–2024–E–5021; FDA–2024–E–5022 for “Determination of Regulatory Review Period for Purposes of Patent Extension; SOFDRA.” 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: Jack Dan, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 240-402-6940.

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, SOFDRA (sofipironium bromide) indicated for the treatment of primary axillary

hyperhidrosis in adults and pediatric patients 9 years of age and older. Subsequent to this approval, the USPTO received patent term restoration applications for SOFDRA (U.S. Patent Nos. 8,147,809; 8,628,759; 9,220,707; 9,492,429; 11,026,919; and 11,034,652) from Bodor Laboratories, Inc. and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated March 17, 2025, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of SOFDRA 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 SOFDRA is 3,436 days. Of this time, 2,801 days occurred during the testing phase of the regulatory review period, while 635 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:* January 23, 2015. The applicant claims January 22, 2014, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was January 23, 2015, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* September 23, 2022. FDA has verified the applicant's claim that the new drug application (NDA) for SOFDRA (NDA 217347) was initially submitted on September 23, 2022.

3. *The date the application was approved:* June 18, 2024. FDA has verified the applicant's claim that NDA 217347 was approved on June 18, 2024. 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 863 days, 871 days, 1,557 days, 1,826 days, or 1,827 days of patent term extensions.

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.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2025-16275 Filed 8-25-25; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2024-E-5026]

Determination of Regulatory Review Period for Purposes of Patent Extension; ZUNVEYL

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 ZUNVEYL and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a

redetermination by October 27, 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 February 23, 2026. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 27, 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>.

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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-5026 for “Determination of Regulatory Review Period for Purposes of Patent Extension; ZUNVEYL.” 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: Jack Dan, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 240-402-6940.

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, ZUNVEYL (benzgalantamine gluconate) indicated for the treatment of mild to moderate dementia of the Alzheimer’s type in adults. Subsequent to this approval, the USPTO received a patent term restoration application for ZUNVEYL (U.S. Patent No. 9,763,953) from Neurodyn Life Science, Inc. and the USPTO requested FDA’s assistance in determining the patent’s eligibility for patent term restoration. In a letter dated March 17, 2025, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of ZUNVEYL 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 ZUNVEYL is 1,060 days. Of this time, 756 days occurred during the testing phase of the regulatory review period, while 304 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:* September 2, 2021. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on September 2, 2021.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* September 27, 2023. FDA has verified the applicant's claim that the new drug application (NDA) for ZUNVEYL (NDA 218549) was initially submitted on September 27, 2023.

3. *The date the application was approved:* July 26, 2024. FDA has verified the applicant's claim that NDA 218549 was approved on July 26, 2024.

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.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2025–16270 Filed 8–25–25; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2024–E–5014; FDA–2024–E–5015; FDA–2024–E–5016]

Determination of Regulatory Review Period for Purposes of Patent Extension; PIASKY

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 PIASKY 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 October 27, 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 February 23, 2026. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 27, 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

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Written/Paper Submissions

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- 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–5014; FDA–2024–E–5015; and FDA–2024–E–5016 for “Determination of Regulatory Review Period for Purposes of Patent Extension; PIASKY.” 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: Jack Dan, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 240–402–6940.

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 PIASKY (crovalimab-akkz). PIASKY is a complement C5 inhibitor indicated for the treatment of adult and pediatric patients 13 years and older with paroxysmal nocturnal hemoglobinuria (PNH) and body weight of at least 40 kg. Subsequent to this approval, the USPTO received patent term restoration applications for PIASKY (U.S. Patent Nos. 9,765,135; 10,023,630; and 10,385,122) from Chugai Seiyaku Kabushiki Kaisha, and the USPTO requested FDA’s assistance in determining the patents’ eligibility for patent term restoration. In a letter dated March 17, 2025, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of PIASKY 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 PIASKY is 1,544 days. Of this time, 1,176 days occurred during the testing phase of the regulatory review period, while 367 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:* April 1, 2020. FDA has verified the applicant’s claim that the date the investigational new drug

application became effective was on April 1, 2020.

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 20, 2023. FDA has verified the applicant’s claim that the biologics license application (BLA) for PIASKY (BLA 761388) was initially submitted on June 20, 2023.

3. *The date the application was approved:* June 20, 2024. The applicant claims June 21, 2024, as the date the biologics license application (BLA) for PIASKY (BLA 761388) was approved. However, FDA records indicate that BLA 761388 was approved on June 20, 2024.

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 916 or 956 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.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2025–16274 Filed 8–25–25; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration**

[Docket Nos. FDA-2024-E-5098; FDA-2024-E-5100; FDA-2024-E-5101]

Determination of Regulatory Review Period for Purposes of Patent Extension; YORVIPATH

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 YORVIPATH 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 claim that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by October 27, 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 February 23, 2026. See "Petitions" in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 27, 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

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- *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>.

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- 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-5098; FDA-2024-E-5100; FDA-2024-E-5101 for "Determination of Regulatory Review Period for Purposes of Patent Extension; YORVIPATH." 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: Jack Dan, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 240-402-6940.

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, YORVIPATH (palopecteriparatide) indicated for the treatment of hypoparathyroidism in adults. Subsequent to this approval, the USPTO received patent term restoration applications for YORVIPATH (U.S. Patent Nos. 11,857,603; 11,890,326; and 11,918,628) from Ascendis Pharma Bone Diseases A/S and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated March 17, 2025, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of YORVIPATH 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 YORVIPATH is 1,978 days. Of this time, 1,268 days occurred during the testing phase of the regulatory review period, while 710 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:* March 13, 2019. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on March 13, 2019.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* August 31, 2022. FDA has verified the applicant's claim that the new drug application (NDA) for YORVIPATH (NDA 216490) was initially submitted on August 31, 2022.

3. *The date the application was approved:* August 9, 2024. FDA has verified the applicant's claim that NDA 216490 was approved on August 9, 2024. 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 158 days, 186 days, or 221 days of patent term extensions.

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.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2025-16269 Filed 8-25-25; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA-2023-E-1548; FDA-2023-E-1550]

Determination of Regulatory Review Period for Purposes of Patent Extension; CAMZYOS

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA or the Agency) published a notice in the **Federal Register** of February 29, 2024. After review of the calculation of the applicable regulatory review period of the biologic product CAMZYOS (U.S. patent numbers 9,181,200; 9,585,883) in that notice, FDA has determined that a

revision of the **SUPPLEMENTARY INFORMATION** section is warranted. This notice corrects the applicable regulatory review period language.

FOR FURTHER INFORMATION CONTACT: Jack Dan, 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:

Correction

In the **Federal Register** of February 29, 2024 (89 FR 14880), on page 14881, second column, under II. Determination of Regulatory Review Period, the first two sentences of the section should be corrected to read as follows:

FDA has determined that the applicable regulatory review period for CAMZYOS is 2,722 days. Of this time, 2,266 days occurred during the testing phase of the regulatory review period, while 456 days occurred during the approval phase.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2025-16273 Filed 8-25-25; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2025-N-0123]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Substances Generally Recognized as Safe (GRAS): Notifications and Convening Panels

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 September 25, 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 0910–0342. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, 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.

Substances Generally Recognized as Safe (GRAS): Notifications and Convening Panels—21 CFR 170, Subpart E and 21 CFR 570, Subpart E

OMB Control Number 0910–0342—Revision

The Federal Food, Drug, and Cosmetic Act (FD&C Act) requires that all food additives (as defined by section 201(s) (21 U.S.C. 321(s)) be approved by FDA before they are marketed. Section 409 of the FD&C Act (21 U.S.C. 348) establishes a premarket approval requirement for “food additives.” Section 201(s) of the FD&C Act provides an exclusion to the definition of food additive, and thus from the premarket approval requirement, for uses of substances that are GRAS by qualified experts. The GRAS provision of section 201(s) of the FD&C Act is implemented in 21 CFR part 170 (part 170) and 21 CFR part 570 (part 570) for human food

and animal food, respectively. Part 170, subpart E, and part 570, subpart E, establish a standard format for the submission of a notice. Information submitted to FDA in a GRAS notice by respondents is necessary to allow us to administer efficiently the various FD&C Act provisions that apply to the use of substances added to food, specifically with regard to whether a substance is GRAS under the conditions of its intended use or is a food additive subject to premarket review. We use the information collected through the GRAS notification procedures to complete our evaluation within specific timelines.

Form FDA 3667, entitled “Generally Recognized as Safe Notice” (<https://www.fda.gov/media/85886/download>), provides a standardized format for the submission of information and is intended to assist respondents with the submission of GRAS notices. Form FDA 3667 and any attachments may be submitted in electronic format via the Centralized Online Submission Module (<https://www.fda.gov/food/registration-food-facilities-and-other-submissions/centralized-online-submission-module-cosm>), or may be submitted in paper format, or as electronic files on physical media with paper signature page. For submissions to the Center for Veterinary Medicine, respondents may continue to send GRAS notices in paper format, or as electronic files on physical media with paper signature page to the Agency.

For efficiency of Agency operations, we are revising the information collection to account for burden that may be attributable to the guidance document entitled “Best Practices for Convening a Generally Recognized as Safe Panel” (December 2022) ([https://](https://www.fda.gov/media/109006/download)

www.fda.gov/media/109006/download), currently approved in OMB control number 0910–0911. The guidance document was developed to assist persons who choose to convene a panel of experts in support of a conclusion that the use of a substance in food is GRAS. Specifically, the guidance document includes recordkeeping recommendations and disclosure recommendations pertaining to the administration of GRAS panel and GRAS panel membership.

Description of Respondents: The respondents to this collection of information are manufacturers of substances used in human food and animal food and feed. Respondents also include persons (“proponents”) who are responsible for a conclusion that a substance may be used in food on the basis of the GRAS provision of the FD&C Act when such persons convene a GRAS panel to evaluate whether the available scientific data, information, and methods establish that the substance is safe under the conditions of its intended use in human food or animal food. Respondents also include members and prospective members of GRAS panels. The term “GRAS panel” is defined as a panel of individuals convened for the purpose of evaluating whether the available scientific data, information, and methods establish that a substance is safe under the conditions of its intended use in food.

In the **Federal Register** of June 27, 2025 (90 FR 27642), we published a 60-day notice soliciting comment on the proposed collection of information. No comments were received.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

Activity; 21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
GRAS notification procedure for human food; 170.210–170.280 (part 170, subpart E)	100	1	100	170	17,000
GRAS notification procedure for animal food and animal feed; 570.210–570.280 (part 570, subpart E)	12	1	12	170	2,040
Total			125		19,040

¹There are no capital costs or operating and maintenance costs associated with this collection of information.

In row 2 of table 1, we are decreasing our estimate for the number of respondents submitting GRAS notices for animal food and animal feed from 25

to 12, which results in a decrease of 2,210 burden hours (4,250 hours minus 2,040 hours). This estimate is based on

the number of submissions we received over the last 3 years.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN ¹

Activity; guidance document section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Maintaining written GRAS panel policy; V. Recommendations	696	1	696	2	1,392
Application of written GRAS panel policy to GRAS panel members; V. Recommendations	94	6	564	16	9,024
Total			1,260		10,416

¹There are no capital costs or operating and maintenance costs associated with this collection of information.

Row 1 of table 2 reflects a decrease in our estimate of the average burden per recordkeeping from 40 hours to 2 hours annually. We believe that respondents

will have realized burden associated with the initial documentation of written GRAS panel policies and have modified our estimate to reflect burden

associated with maintaining the applicable records.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN ¹

Activity; guidance document section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Potential GRAS panel members provide information to the proponents of GRAS conclusions; V. Recommendations	564	1	564	4	2,256

¹There are no capital costs or operating and maintenance costs associated with this collection of information.

We have made no change in our estimate associated with the disclosure recommendations discussed in the guidance document.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2025–16268 Filed 8–25–25; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2024–E–5278; FDA–2024–E–5279; FDA–2024–E–5280; FDA–2024–E–5281]

Determination of Regulatory Review Period for Purposes of Patent Extension; NEMLUVIO

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 NEMLUVIO 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 October 27, 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 February 23, 2026. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 27, 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–5278; FDA–2024–E–5279; FDA–2024–E–5280; and FDA–2024–E–5281 for “Determination of Regulatory Review Period for Purposes of Patent Extension; NEMLUVIO.” 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: Jack Dan, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200,

Silver Spring, MD 20993, 240–402–6940.

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 NEMLUVIO (nemolizumab-ilto). NEMLUVIO is an interleukin-31 receptor antagonist indicated for the treatment of adults with prurigo nodularis. Subsequent to this approval, the USPTO received patent term restoration applications for NEMLUVIO (U.S. Patent Nos. 8,575,317; 10,544,227; 10,654,933; 11,773,173) from Chugai Pharmaceutical Co. Ltd., and the USPTO requested FDA’s assistance in determining the patents’ eligibility for patent term restoration. In a letter dated March 17, 2025, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of NEMLUVIO 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 NEMLUVIO is 3,960 days. Of this time, 3,715 days occurred during the testing phase of the regulatory review period, while 245 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 11, 2013. FDA has verified the applicant’s claim that the date the investigational new drug application became effective was on October 11, 2013.

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 12, 2023. FDA has verified the applicant’s claim that the biologics license application (BLA) for NEMLUVIO (BLA 761390) was initially submitted on December 12, 2023.

3. *The date the application was approved:* August 12, 2024. FDA has verified the applicant’s claim that BLA 761390 was approved on August 12, 2024.

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 279, 851, 886, or 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.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2025–16267 Filed 8–25–25; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–E–5025]

Determination of Regulatory Review Period for Purposes of Patent Extension; VORANIGO

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 VORANIGO and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by October 27, 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 February 23, 2026. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 27, 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.

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- **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>.

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- 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–5025 for “Determination of Regulatory Review Period for Purposes of Patent Extension; VORANIGO.” 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: Jack Dan, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 240–402–6940.

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, VORANIGO (vorasidenib) indicated for the treatment of adult and pediatric patients 12 years and older with Grade 2 astrocytoma or oligodendroglioma with a susceptible isocitrate dehydrogenase-1 or isocitrate dehydrogenase-2 mutation following surgery including biopsy, sub-total resection, or gross total resection. Subsequent to this approval, the USPTO received a patent term restoration application for VORANIGO (U.S. Patent No. 9,579,324) from Servier Pharmaceuticals LLC and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated March 17, 2025, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of VORANIGO 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 VORANIGO is 3,388 days. Of this time, 3,157 days occurred during the testing phase of the regulatory review period, while 231 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 30, 2015.

FDA has verified the applicant's claim that the date the investigational new drug application became effective was on April 30, 2015.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* December 20, 2023. FDA has verified the applicant's claim that the new drug application (NDA) for VORANIGO (NDA 218784) was initially submitted on December 20, 2023.

3. *The date the application was approved:* August 6, 2024. FDA has verified the applicant's claim that NDA 218784 was approved on August 6, 2024.

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(s) for patent extension, this applicant seeks 1,474 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.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2025–16271 Filed 8–25–25; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New–30D]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Assistant Secretary for Technology Policy/Office of the National Coordinator for Health IT, Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before September 25, 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: Meghan Gabriel, Meghan.Gabriel@hhs.gov, or (202) 465–0597, or ASTP_Data@HHS.GOV. When submitting comments or requesting information, please include the document identifier 0990–New–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: National Survey of Digital Health Companies.

Type of Collection: New.

Document Identifier 0990–New–30D.

Abstract

The 21st Century Cures Act (Cures Act) aimed to advance the exchange of electronic health information by promoting patient access through

standardized application programming interfaces (APIs). Digital health companies develop apps and health IT tools that enable human interaction with APIs to exchange electronic health information. Prior studies indicate widespread adoption of standardized APIs for interoperability with electronic health records (EHRs). Ongoing assessment of these technologies is crucial to examining the impacts of the Cures Act's health IT provisions and is critical to informing the Assistant

Secretary for Technology Policy/Office of the National Coordinator for Health IT's (ASTP/ONC's) policy efforts. With ASTP/ONC's support, the University of California, San Francisco (UCSF) conducted a 2022 survey of digital health companies assessing implementation of and experiences with healthcare APIs; findings from this survey work are published in the Journal of the American Medical Informatics Association. ASTP/ONC finds it essential to continue efforts to

survey digital health companies to assess ASTP/ONC's implementation of statutorily mandated information blocking (42 U.S.C. 300jj–52) and APIs “without special effort” policies (42 U.S.C. 300jj–11) under the Cures Act. Information gathered from this effort will help inform ongoing ASTP/ONC efforts to help nurture an ecosystem of innovation and transparency in health care.

This is a 3-year request for OMB approval.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Digital Health Companies	282	1	.5	141
Total	282	1	.5	141

Catherine Howard,

Paperwork Reduction Act Reports Clearance Officer (Acting), Office of the Secretary.

[FR Doc. 2025–16295 Filed 8–25–25; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 60-Day Proposed Information Collection: Addendum to Declaration for Federal Employment (OF 306), Indian Health Service, Child Care and Indian Child Care Worker Positions

AGENCY: Indian Health Service, HHS.

ACTION: Notice and request for comments. Request for reinstatement without revision.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Indian Health Service (IHS) invites the public to take this opportunity to comment on the information collection titled, “Addendum to Declaration for Federal Employment (OF 306), Indian Health Service, Childcare and Indian Child Care Worker Positions,” Office of Management and Budget (OMB) Control Number 0917–0028.

DATES: October 27, 2025. Your comments regarding this information collection are best assured of having full effect if received within 60 days of the date of this publication.

ADDRESSES: Submit comments to Randolph Beasley III by email at Randolph.Beasley@ihs.gov.

Comments submitted in response to this notice will be made available to the public by publishing them in the 30-day **Federal Register** notice for this information collection. For this reason, please do not include information of a confidential nature, such as sensitive personal information or proprietary information. If comments are submitted via email, the 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 comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact Thomas Hamby at Thomas.hamby@ihs.gov or 240–252–0331.

SUPPLEMENTARY INFORMATION: This previously approved information collection project was last published in the **Federal Register** on February 23, 2022 (87 FR 10218) and allowed 30 days for public comment. No public comment was received in response to the notice. This notice announces our intent to submit this collection to OMB for approval of reinstatement without revision, and to solicit comments on specific aspects for the proposed information collection.

Title: Addendum to Declaration for Federal Employment (OF 306), Indian Health Service, Child Care and Indian Child Care Worker Positions (OMB No.

0917–0028). **Type of Information Collection Request:** Reinstatement without revision, of previously-approved information collection, 0917–0028, Addendum to Declaration for Federal Employment (OF 306), Indian Health Service, Child Care and Indian Child Care Worker Positions. There are no program changes or adjustments in burden hours. **Form(s):** Addendum to Declaration for Federal Employment (OF 306), Indian Health Service, Child Care and Indian Child Care Worker Positions. **Need and Use of Information Collection:** This is a request for approval of the collection of information as required by section 408 of the Indian Child Protection and Family Violence Prevention Act, Public Law (Pub. L.) 101–630, 104 Stat. 4544, 4551 codified as amended at 25 United States Code (U.S.C.) Section 3207; the Crime Control Act of 1990, Public Law 101–647, title II, subtitle E, section 231, 104 Stat. 4789, 4808, codified as amended at 34 U.S.C. 20351 (formerly codified at 42 U.S.C. 13041, which was transferred to 34 U.S.C. 20351); and 42 CFR part 136, subpart K.

The IHS is required to compile a list of all authorized positions within the IHS where the duties and responsibilities involve regular contact with, or control over, Indian children; and to conduct an investigation of the character of each individual who is employed, or is being considered for employment, in a position having regular contact with, or control over, Indian children. 25 U.S.C. 3207(a)(1) and (2). Section 3207(a)(3) of Title 25 requires regulations prescribing the minimum standards of character for

individuals appointed to positions involving regular contact with, or control over, Indian children, and section 3207(b) provides that such standards shall ensure that no such individuals have been found guilty of, or entered a plea of nolo contendere or guilty to, any felonious offense, or any two or more misdemeanor offenses, under Federal, State, or Tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; crimes against persons; or offenses committed against children.

In addition, 34 U.S.C. 20351 requires each agency of the Federal Government, and every facility operated by the

Federal Government (or operated under contract with the Federal Government), that hires (or contracts for hire) individuals involved with the provision of child care services to children under the age of 18 to assure that all existing and newly hired employees undergo a criminal history background check. The background investigation is to be initiated through the personnel program of the applicable Federal agency. 34 U.S.C. 20351(b)(1)(C). The statute requires employment applications for individuals who are seeking work for an agency of the Federal Government, or for a facility or program operated by (or through contract with) the Federal

Government, in positions involved with the provision of child care services to children under the age of 18, to contain a question asking whether the individual has ever been arrested for or charged with a crime involving a child, and if so, requiring a description of the disposition of the arrest or charge. 34 U.S.C. 20351(d)(1).

Affected Public: Individuals and households.

The table below provides: types of data collection instruments, estimated number of respondents, number of responses per respondent, average burden hour per response, and total annual burden hour(s).

ESTIMATED ANNUAL BURDEN HOURS

Data collection instrument(s)	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden responses (in hours)
Addendum to Declaration for Federal Employment (OF 306), Indian Health Service, Child Care and Indian Child Care Worker Positions (OMB 0917–0028)	3,000	1	12/60	600
Total	3,000			600

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Requests for Comments: Your written comments and/or suggestions are invited on one or more of the following points:

(a) whether the information collection activity is necessary to carry out an agency function;

(b) whether the agency processes the information collected in a useful and timely fashion;

(c) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information);

(d) whether the methodology and assumptions used to determine the estimates are logical;

(e) ways to enhance the quality, utility, and clarity of the information being collected; and

(f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

P. Benjamin Smith,
Acting Director, Indian Health Service.
[FR Doc. 2025–16341 Filed 8–25–25; 8:45 am]

BILLING CODE 4166–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting.

The meeting will be open to the public as indicated below. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (<http://videocast.nih.gov/>).

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for review, discussion, and evaluation of individual intramural programs and projects conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Board of Scientific Counselors.
Date: October 15–16, 2025.

Open: October 15, 2025, 9:00 a.m. to 10:20 a.m.

Agenda: Program Discussion and Investigator Report.

Closed: October 15, 2025, 10:20 a.m. to 11:35 a.m.

Agenda: To review and evaluate personal qualifications, performance, and competence of individual investigators.

Open: October 15, 2025, 11:50 a.m. to 12:25 p.m.

Agenda: Program Discussion and Investigator Report.

Closed: October 15, 2025, 12:35 p.m. to 1:50 p.m.

Agenda: To review and evaluate personal qualifications, performance, and competence of individual investigators.

Open: October 15, 2025, 2:10 p.m. to 2:55 p.m.

Agenda: Program Discussion and Investigator Report.

Closed: October 15, 2025, 2:40 p.m. to 4:10 p.m.

Agenda: To review and evaluate personal qualifications, performance, and competence of individual investigators.

Open: October 16, 2025, 9:00 a.m. to 9:45 a.m.

Agenda: Program Discussion and Investigator Report.

Closed: October 16, 2025, 9:45 a.m. to 12:00 p.m.

Place: National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20892 (In-person Meeting).

Contact Person: Michelle Krever, Extramural Programs, National Library of Medicine, National Institutes of Health, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, 301–496–6132, krevert1@mail.nih.gov.

Any member of the public may submit written comments no later than 15 days in advance of the meeting. 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.

Open sessions will be videocast and can be accessed from the NIH Videocasting and Podcasting website (<http://videocast.nih.gov/>) on April 30, 2025. Please direct any questions to the Contact Person listed on this notice.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 21, 2025.

Bruce A. George,
Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2025-16279 Filed 8-25-25; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed collection; 30-Day Comment Request; Generic Clearance for National Cancer Institute (NCI) Resources, Software and Data Sharing Forms

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide an opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured

of having their full effect if received within 30 days of the date of this publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Melissa Park, Office of Management Policy and Compliance, National Cancer Institute, 9609 Medical Center Drive, Rockville, Maryland, 20850 or call non-toll-free number (240) 276-5717 or Email your request, including your address to: melissa.park@nih.gov. Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on April 30, 2025 (Vol. 90 FR 17941) and allowed 60 days for public comment. One public comment was received. The purpose of this notice is to allow an additional 30 days for public comment. The National Cancer Institute (NCI), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection Title Generic Clearance for National Cancer Institute (NCI) NCI Resources, Software and Data Sharing Forms, 0925-0775, Expiration Date 06/30/2025, REINSTATEMENT WITH CHANGE, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: This is a request for OMB to approve the revision of the collection titled “Generic Clearance for National Cancer Institute (NCI) NCI Resources, Software and Data Sharing Forms” for an additional three years of data collection. In preparation for dissemination and sharing of data sets, forms requesting or applying for access, upload, share, and store data will be needed. The purpose of data sharing allows data generated from one research study to be used to answer questions beyond the original study. It reinforces open scientific inquiry, encourages diversity of analysis, supports studies on data collection methods and measurement, facilitates the education of new researchers, and enables the exploration of topics not envisioned by the initial investigators. Biomedical researchers and data scientists can use the NCI cloud resources, web interface, and computational workspaces to query, submit data, analyze, and visualize data. The forms would be used to register a scientist’s research data, apply for data storage, and submit a request to access and use the data. In addition to these forms, forms related to metadata information (*i.e.*, related to the collection of the research data; how the data was collected) would be collected for some research. This revision is updated to include a newer version of one of the Data Submission Request Forms.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden is 5,775 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Request Data Access/Use					
Data Access Request-Submitter	Individuals	1,500	1	45/60	1,125
Institutional Certification	Individuals	1,500	1	30/60	750
Data Submission/Storage					
Data Submission/Storage Request	Individuals	1,500	1	30/60	750
Institutional Certification	Individuals	1,500	1	30/60	750

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Request Access to/Use NCI Resources/Software					
Data Resources	Individuals	1,500	1	30/60	750
Project Renewal or Project Close-out					
Project Renewal or Project Close-out form.	Individuals	1,500	2	15/60	750
Institutional Certification	Individuals	1,500	2	18/60	900
Totals		10,500	13,500		5,775

Dated: August 21, 2025.

Melissa M. Park,

Project Clearance Liaison, National Cancer Institute, National Institutes of Health.

[FR Doc. 2025–16280 Filed 8–25–25; 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 Meetings**

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Research Education Programs (R25).

Date: September 25, 2025.

Time: 10:00 a.m. to 2:00 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: Anna Ghambaryan, Ph.D., MD, Scientific Review Officer, National Institutes of Health, 6700B Rockledge Drive, Room 2120, MSC 6902, Bethesda, MD 20892, (301) 443–4032, anna.ghambaryan@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Immune Oncology Research (R21).

Date: October 8, 2025.

Time: 9:00 a.m. to 5:30 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: Shree Ram Singh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Bethesda, MD 20892, (240) 672–6175, singhshr@mail.nih.gov.

Name of Committee: Infectious Diseases and Immunology A Integrated Review Group; Molecular and Cellular Biology of Virus Infection Study Section.

Date: October 14–15, 2025.

Time: 9:30 a.m. to 6:00 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: Syed Mohammad Moin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–7593, syed.moin@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Cancer Etiology, Diagnosis, Prevention and Treatment.

Date: October 15, 2025.

Time: 10:00 a.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: Hasan Siddiqui, Ph.D., Scientific Review Officer, National Institutes of Health, 9609 Medical Center Drive, Room 7W240, Rockville, MD 20850, 240–276–5122, hasan.siddiqui@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 21, 2025.

Bruce A. George,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2025–16281 Filed 8–25–25; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****National Human Genome Research Institute; Amended Notice of Meeting**

Notice is hereby given of a change in the meeting of the National Advisory Council for Human Genome Research, September 16, 2025, 09:00 a.m. to September 16, 2025, 01:00 p.m., National Institutes of Health, 6700 Rockledge Drive, Rockledge, MD 20892 which was published in the **Federal Register** on July 24, 2025, 90 FR 34873.

The meeting is being amended to change the start and end times from 09:00 a.m. to 01:00 p.m. to 09:30 a.m. to 02:30 p.m. The meeting is open to the public.

Dated: August 20, 2025.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2025–16226 Filed 8–25–25; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard**

[Docket No. USCG–2025–0246]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0126

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0126, Requirements for Vessels that Perform Certain Aquaculture Support Operations; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before October 27, 2025.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2025–0246] to the Coast Guard using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public participation and request for comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at <https://www.regulations.gov>. Additionally, copies are available from: Commandant (CG–C5I–P), ATTN: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, STOP 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone (571) 607–4058, or email hqs-dg-m-cg-61-pii@uscg.mil for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.*, chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection’s purpose, the Collection’s likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of

Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, USCG–2025–0246, and must be received by October 27, 2025.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. 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. Documents mentioned in this notice, and all public comments, are in our online docket at <https://www.regulations.gov> and can be viewed by following that website’s instructions. We review all comments received, but we may choose not to post off-topic, inappropriate, or duplicate comments that we receive. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

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 in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Information Collection Request

Title: Requirements for Vessels that Perform Certain Aquaculture Support Operations.

OMB Control Number: 1625–0126.

Summary: This information is required to ensure that a vessel engaged in certain aquaculture operations has applied for and received a waiver. A vessel owner or operator must notify the

Coast Guard and provide a copy of the waiver.

Need: The Coast Guard regulations are prescribed 46 CFR 106. The Coast Guard uses the information in this collection to ensure compliance with the requirements.

Forms: None.

Respondents: Owners and operators of aquaculture operations.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden remains 3 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: August 6, 2025.

Bradley E. White,

(Acting) Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2025–16315 Filed 8–25–25; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of determination.

SUMMARY: The Secretary of Homeland Security has determined, pursuant to law, that it is necessary to waive certain laws, regulations, and other legal requirements in order to ensure the expeditious construction of barriers and roads in the vicinity of the international land border in the state of Texas.

DATES: This determination takes effect on August 26, 2025.

SUPPLEMENTARY INFORMATION: Important mission requirements of the Department of Homeland Security (“DHS”) include border security and the detection and prevention of illegal entry into the United States. Border security is critical to the nation’s national security. Recognizing the critical importance of border security, Congress has mandated DHS to achieve and maintain operational control of the international land border. Secure Fence Act of 2006, Public Law 109–367, section 2, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1701 note). Congress defined “operational control” as the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband. *Id.* Consistent with that

mandate, the President's Executive Order on Securing Our Borders directs that I take all appropriate action to deploy and construct physical barriers to ensure complete operational control of the southern border of the United States. Executive Order 14165, section 3 (Jan. 20, 2025).

Congress has provided to the Secretary of Homeland Security a number of authorities necessary to carry out DHS's border security mission. One of those authorities is found at section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended ("IIRIRA"). Public Law 104–208, Div. C, 110 Stat. 3009–546, 3009–554 (Sept. 30, 1996) (8 U.S.C. 1103 note), as amended by the REAL ID Act of 2005, Public Law 109–13, Div. B, 119 Stat. 231, 302, 306 (May 11, 2005) (8 U.S.C. 1103 note), as amended by the Secure Fence Act of 2006, Public Law 109–367, section 3, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1103 note), as amended by the Department of Homeland Security Appropriations Act, 2008, Public Law 110–161, Div. E, Title V, section 564, 121 Stat. 2090 (Dec. 26, 2007). In section 102(a) of IIRIRA, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. In section 102(b) of IIRIRA, Congress mandated that in carrying out the authority of section 102(a), I provide for the installation of additional fencing, barriers, roads, lighting, cameras, and sensors to achieve and maintain operational control of the border. Finally, in section 102(c) of IIRIRA, Congress granted to the Secretary of Homeland Security the authority to waive all legal requirements that I, in my sole discretion, determine necessary to ensure the expeditious construction of barriers and roads authorized by section 102 of IIRIRA.

Determination and Waiver

Section 1

The United States Border Patrol Rio Grande Valley Sector is an area of high illegal entry. From fiscal year 2021 through July 2025, the United States Border Patrol ("Border Patrol") apprehended over 1,523,672 illegal aliens attempting to enter the United States between border crossings in the Rio Grande Valley Sector. In that same time period, Border Patrol seized over 166,198 pounds of marijuana, over

7,068 pounds of cocaine, over 5,885 pounds of methamphetamine, over 87 pounds of heroin, and over 118 pounds of fentanyl.

Since the President took office, DHS has delivered the most secure border in history. More can and must be done, however. As the statistics cited above demonstrate, the Rio Grande Valley Sector is an area of high illegal entry where illegal aliens regularly attempt to enter the United States and smuggle illicit drugs. Given my mandate to achieve and maintain operational control of the border, I must use my authority under section 102 of IIRIRA to install additional barriers and roads in the Rio Grande Valley Sector. Therefore, DHS will take immediate action to construct additional barriers and roads in segments of the border in the Rio Grande Valley Sector. The segments where such construction will occur are referred to herein as the "project area," which is more specifically described in Section 2 below.

Section 2

I determine that the following area in the vicinity of the United States border, located in the State of Texas within the U.S. Border Patrol Rio Grande Valley Sector, is an area of high illegal entry (the "project area"):

- Starting at the westernmost boundary of the Arroyo Morteros Tract of the Lower Rio Grande Valley National Wildlife Refuge and extending to the easternmost boundary of the Arroyo Morteros Tract of the Lower Rio Grande Valley National Wildlife Refuge;
- Starting at the northernmost boundary of the Las Ruinas Tract of the Lower Rio Grande Valley National Wildlife Refuge and extending to the southernmost boundary of the Las Ruinas Tract of the Lower Rio Grande Valley National Wildlife Refuge;
- Starting at the westernmost boundary of the Arroyo Ramirez Tract of the Lower Rio Grande Valley National Wildlife Refuge and extending to the easternmost boundary of the Arroyo Ramirez Tract of the Lower Rio Grande Valley National Wildlife Refuge;
- Starting at the westernmost boundary of the Los Negros Creek Tract of the Lower Rio Grande Valley National Wildlife Refuge and extending to the easternmost boundary of the Lower Rio Grande Valley National Wildlife Refuge;
- Starting at the westernmost boundary of the Los Velas West Tract of the Lower Rio Grande Valley National Wildlife Refuge and extending to the easternmost most boundary of the Los Velas West Tract of the Lower Rio Grande Valley National Wildlife Refuge;
- Starting at the westernmost boundary of the Los Velas East Tract of the Lower Rio Grande Valley National Wildlife Refuge and extending to the easternmost boundary of the Los Velas East Tract of the Lower Rio Grande Valley National Wildlife Refuge;
- Starting at the westernmost boundary of the La Casita East Tract of the Lower Rio Grande Valley National Wildlife Refuge and extending to the easternmost boundary of the La Casita East Tract of the Lower Rio Grande Valley National Wildlife Refuge;
- Starting at the westernmost boundary of the San Francisco Banco Tract of the Lower Rio Grande Valley National Wildlife Refuge and extending to the easternmost boundary of the San Francisco Banco Tract of the Lower Rio Grande Valley National Wildlife Refuge;
- Starting approximately one mile southwest of the intersection of Mission Street and Old Military Highway and extending southeast for approximately one-half (0.5) of a mile;
- Starting at the northeastern most boundary of the Guerra Tract of the Lower Rio Grande Valley National Wildlife Refuge and extending to the southeasternmost boundary of the Guerra Tract of the Lower Rio Grande Valley National Wildlife Refuge;
- Starting at the northernmost boundary of the Zambrano Tract of the Lower Rio Grande Valley National Wildlife Refuge and extending to the southeasternmost boundary of the Zambrano Tract of the Lower Rio Grande Valley National Wildlife Refuge;
- Starting at the easternmost boundary of the Villareales Banco Tract of the Lower Rio Grande Valley National Wildlife Refuge and extending to the westernmost boundary of the Villareales Banco Tract of the Lower Rio Grande Valley National Wildlife Refuge;
- Starting at the westernmost boundary of the Chicarra Banco Tract of the Lower Rio Grande Valley National Wildlife Refuge and extending to the easternmost boundary of the Chicarra Banco Tract of the Lower Rio Grande Valley National Wildlife Refuge; and
- Starting at the westernmost boundary of the Cuevitas Tract of the Lower Rio Grande Valley National Wildlife Refuge and extending to the easternmost boundary of the Cuevitas Tract of the Lower Rio Grande Valley National Wildlife Refuge.

There is presently an acute and immediate need to construct additional physical barriers and roads in the vicinity of the border of the United States in order to prevent unlawful entries into the United States in the project area pursuant to section 102(a) of IIRIRA. In order to ensure the

expeditious construction of additional physical barriers and roads in the project area, I have determined that it is necessary that I exercise the authority that is vested in me by section 102(c) of IIRIRA.

Accordingly, pursuant to section 102(c) of IIRIRA, I hereby waive in their entirety, with respect to the construction of physical barriers and roads (including, but not limited to, accessing the project areas, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of physical barriers and roads) in the project area, all of the following statutes, including all federal, state, or other laws, regulations, and legal requirements of, deriving from, or related to the subject of, the following statutes, as amended: The National Environmental Policy Act (Pub. L. 91–190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*)); the Endangered Species Act (Pub. L. 93–205, 87 Stat. 884 (Dec. 28, 1973) (16 U.S.C. 1531 *et seq.*)); the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act (33 U.S.C. 1251 *et seq.*)); the National Historic Preservation Act (Pub. L. 89–665, 80 Stat. 915 (Oct. 15, 1966), as amended, repealed, or replaced by Public Law 113–287 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 470 *et seq.*, now codified at 54 U.S.C. 100101 note and 54 U.S.C. 300101 *et seq.*)); the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*); the Migratory Bird Conservation Act (16 U.S.C. 715 *et seq.*); the Clean Air Act (42 U.S.C. 7401 *et seq.*); the Archeological Resources Protection Act (Pub. L. 96–95 (16 U.S.C. 470aa *et seq.*)); the Paleontological Resources Preservation Act (16 U.S.C. 470aaa *et seq.*); the Federal Cave Resources Protection Act of 1988 (16 U.S.C. 4301 *et seq.*); the National Trails System Act (16 U.S.C. 1241 *et seq.*), the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*); the Noise Control Act (42 U.S.C. 4901 *et seq.*); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*); the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*); the Archaeological and Historic Preservation Act (Pub. L. 86–523, as amended, repealed, or replaced by Public Law 113–287 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 469 *et seq.*, now codified at 54 U.S.C. 312502 *et seq.*)); the Antiquities Act (formerly codified at 16 U.S.C. 431 *et seq.* and 16 U.S.C. 431a *et seq.*, now codified 54 U.S.C. 320301 *et seq.*); the Historic Sites, Buildings, and

Antiquities Act (formerly codified at 16 U.S.C. 461 *et seq.*, now codified at 54 U.S.C. 320301–320303 & 320101–320106); the Eagle Protection Act (16 U.S.C. 668 *et seq.*); the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 *et seq.*); the Administrative Procedure Act (5 U.S.C. 551 *et seq.*); Section 438 of the Energy Independence and Security Act (42 U.S.C. 17094); the National Fish and Wildlife Act of 1956 (Pub. L. 84–1024 (16 U.S.C. 742a, *et seq.*)); the Fish and Wildlife Coordination Act (Pub. L. 73–121 (16 U.S.C. 661 *et seq.*)); the Wild and Scenic Rivers Act (Pub. L. 90–542 (16 U.S.C. 1281 *et seq.*)); the Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*); the National Wildlife Refuge System Administration Act (Pub. L. 89–669 (16 U.S.C. 668dd–668ee)); the National Wildlife Refuge System Improvement Act of 1997 (Pub. L. 105–57); the Wild Horse and Burro Act (16 U.S.C. 1331 *et seq.*); the Rivers and Harbors Act of 1899 (33 U.S.C. 403 *et seq.*); and the Coastal Zone Management Act (Pub. L. 92–583 (16 U.S.C. 1451 *et seq.*)).

This waiver does not revoke or supersede any other waiver determination made pursuant to section 102(c) of IIRIRA. Such waivers shall remain in full force and effect in accordance with their terms. I reserve the authority to execute further waivers from time to time as I may determine to be necessary under section 102 of IIRIRA.

Kristi Noem,

Secretary of Homeland Security.

[FR Doc. 2025–16307 Filed 8–25–25; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[Docket Number USGS–2025–0039; GX25GB00PAMR000]

2025 Draft List of Critical Minerals

AGENCY: Geological Survey, Department of the Interior.

ACTION: Notice of opportunity for public comment.

SUMMARY: The United States remains heavily dependent on imports of certain mineral commodities that are vital to the Nation's economic and national security interests. This dependency has the potential to create strategic vulnerabilities arising from adverse foreign actions, pandemics, natural disasters, or other events that can disrupt the supply of critical minerals.

The Department of the Interior (DOI) published Lists of Critical Minerals in 2018¹ and 2022.² Section 7002 of the Energy Act of 2020 requires the U.S. Geological Survey (USGS) on behalf of the Secretary of the Interior (Secretary) to update the List of Critical Minerals every three years. This is a Notice of an opportunity to comment on the 2025 draft List of Critical Minerals.

DATES: To ensure consideration, written comments must be submitted before September 25, 2025.

ADDRESSES: You may submit written comments online at <http://www.regulations.gov> by entering “USGS–2025–0039” in the Search bar and clicking “Search,” or by mail to 2025 draft List of Critical Minerals, MS–913, U.S. Geological Survey, 12201 Sunrise Valley Dr., Reston, VA 20192.

FOR FURTHER INFORMATION CONTACT: By email at minerals@usgs.gov or Jennifer Bracewell by telephone at (703) 648–5276. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. The Federal Relay Services (FRS) is available 24 hours a day, 7 days a week, to leave a message or question with this individual. You will receive a reply during normal business hours. Normal business hours are 9:00 a.m. to 5:30 p.m., Monday through Friday, except for Federal holidays.

SUPPLEMENTARY INFORMATION: Pursuant to Section 7002 (“Mineral Security”) of Title VII (“Critical Minerals”) of the Energy Act of 2020 (The Energy Act) (Pub. L. 116–260, December 27, 2020, 116th Cong.),³ the Secretary, acting through the Director of the U.S. Geological Survey, and in consultation with the Secretaries of Defense, Commerce, Agriculture, and Energy and the United States Trade Representative, is required to “publish in the **Federal Register** for public comment—(A) a description of the draft methodology used to identify a draft list of critical minerals; (B) a draft list of minerals, elements, substances, and materials that qualify as critical minerals; and (C) a draft list of critical minerals recovered as byproducts and their host minerals.” Under the Energy Act, Section 7002 (c)(5)(A), the U.S. Geological Survey reviews the methodology and list at least every three years.

On behalf of the Secretary, the Acting Director of the USGS presents here a

table with the draft list of 54 mineral commodities proposed for inclusion on the 2025 List of Critical Minerals.

Mineral commodities for inclusion on the 2025 List of Critical Minerals	Predominately produced as a byproduct	Main host commodities
Aluminum	No.	Lead, gold, other base and precious metals.
Antimony	Yes	
Barite	No.	
Beryllium	No.	Lead, tungsten, copper, tin, molybdenum, fluorspar, zinc.
Bismuth	Yes	
Cerium	Yes	
Cesium	No.	Other rare earths, iron ore, heavy mineral sands (titanium, zirconium).
Chromium	No.	
Cobalt	Yes	
Copper	No.	Nickel, copper.
Dysprosium	Yes	
Erbium	Yes	
Europium	Yes	Other rare earths, iron ore, heavy mineral sands (titanium, zirconium).
Fluorspar	No.	
Gadolinium	Yes	
Gallium	Yes	Other rare earths, iron ore, heavy mineral sands (titanium, zirconium).
Germanium	Yes	
Graphite	Yes (for synthetic graphite but not for natural graphite).	
Hafnium	Yes	Zirconium.
Holmium	Yes	
Indium	Yes	
Iridium	Yes	Zinc.
Lanthanum	Yes	
Lead	No.	
Lithium	No.	Platinum, nickel.
Lutetium	Yes	
Magnesium	No.	
Manganese	No.	Other rare earths, iron ore, heavy mineral sands (titanium, zirconium).
Neodymium	Yes	
Nickel	No.	
Niobium	No.	Other rare earths, iron ore, heavy mineral sands (titanium, zirconium).
Palladium	Yes	
Platinum	No.	
Potash	No.	Nickel, platinum.
Praseodymium	Yes	
Rhenium	Yes	
Rhodium	Yes	Other rare earths, iron ore, heavy mineral sands (titanium, zirconium).
Rubidium	Yes	
Ruthenium	Yes	
Samarium	Yes	Cobalt, nickel, titanium, zirconium.
Scandium	Yes	
Silicon	No.	
Silver	Yes	Zinc, lead, copper, gold.
Tantalum	No.	
Terbium	Yes	
Thulium	Yes	Other rare earths, iron ore, heavy mineral sands (titanium, zirconium).
Tin	No.	
Titanium	No.	
Tungsten	No.	Steel slag from vanadiferous iron ore, spent catalysts.
Vanadium	Yes	
Ytterbium	Yes	
Yttrium	Yes	Other rare earths, iron ore, heavy mineral sands (titanium, zirconium).
Zinc	No.	
Zirconium	Yes	

Mineral commodities were included on the 2025 draft List of Critical Minerals based on a methodology presented in a (USGS) report⁴ that can be found at the following link: <https://doi.org/10.3133/ofr20251047>.

The analysis involved an examination of numerous supply chain disruption scenarios and an estimation of their potential effect on U.S. Gross Domestic Product (GDP) using a probabilistic economic impacts model. Consistent with the Department's commitment to Gold Standard Science under Executive Order (E.O.) 14303, the methodology publication is transparent, reproducible, and went through an unbiased peer review process. The Energy Act of 2020, Section 7002(c)(4)(A), defined critical minerals as those which:

(i) are essential to the economic or national security of the United States;

(ii) the supply chain of which is vulnerable to disruption (including restrictions associated with foreign political risk, abrupt demand growth, military conflict, violent unrest, anti-competitive or protectionist behaviors, and other risks through-out the supply chain); and

(iii) serve an essential function in the manufacturing of a product (including energy technology-, defense-, currency-, agriculture-, consumer electronics-, and healthcare-related applications), the absence of which would have significant consequences for the economic or national security of the United States.

Section 7002(a)(3)(B) further defined the term by stating “The term “critical mineral” does not include—(i) fuel minerals; (ii) water, ice, or snow; (iii) common varieties of sand, gravel, stone, pumice, cinders, and clay.”

The 2025 draft List of Critical Minerals reflects those minerals identified through the USGS's methodology and analysis. The 2025 final List of Critical Minerals will be determined after review of public comments and may determine previous critical minerals are no longer critical or include additional minerals designated by the Secretary, beyond those identified in the 2025 draft List of Critical Minerals, consistent with the Secretary's statutory authority. Public comment is specifically welcomed on whether other minerals should be added to this list, with a justification for including any such mineral.

The 2025 E.O. 14154, *Unleashing American Energy*, directed the Secretary in section 9(c) to “instruct the Director of the U.S. Geological Survey to consider updating the Survey's List of Critical Minerals, including for the potential of including uranium.”

Additionally, E.O. 14261 *Reinvigorating America's Beautiful Clean Coal Industry and Amending Executive Order 14241* directed the Secretary in section 8(b) to “determine whether metallurgical coal used in the production of steel meets the criteria to be designated as a ‘critical mineral’ under the Act and, if so, shall take steps to place coal on the Department of the Interior Critical Minerals List.” Accordingly, although not required by the Energy Act of 2020, the USGS intends to analyze and provide information to the Secretary on the potential for including uranium and metallurgical coal on the 2025 List of Critical Minerals. This effort will assess the production, processing, trade, and end-use characteristics of these materials, consistent with E.O. 14154 and E.O. 14261 and in support of national energy and industrial policy objectives.

Public comment is specifically welcomed on:

(a) inclusion of metallurgical coal and uranium on the final List of Critical Minerals,

(b) whether other minerals should be added to this list, with a justification for including any such mineral,

(c) merit of moving to an annual update for the USGS technical input to List of Critical Minerals.

The U.S. Government and other organizations may also use other definitions and rely on other criteria to identify a material or mineral as “critical” or otherwise important. The draft list we are publishing today is not intended to replace related terms and definitions of materials that are also deemed strategic, critical, or otherwise important through other assessments (such as definitions related to the National Defense Stockpile, Specialty Materials, and Militarily Critical Materials). In addition, there are many minerals not listed on the 2025 List of Critical Minerals that are important to the U.S. economy. These materials are not considered critical as defined by the Energy Act for a variety of reasons, including that the U.S. meets its needs for these materials largely through domestic mining and processing and thus a supply disruption is considered unlikely. The USGS analyzed the following mineral commodities but is not proposing them for inclusion on the 2025 List of Critical Minerals: arsenic, cadmium, feldspar, gold, helium, iron ore, mica, molybdenum, phosphates, selenium, strontium, and tellurium. Again, the Secretary, consistent with statutory authority, can include these listed mineral commodities and others on the 2025 final List of Critical Minerals.

Mineral criticality is not static, but changes over time. This analysis represents the most recent available data for non-fuel mineral commodities and the current state of the methodology for evaluation of criticality.

Please submit written comments on this draft list by September 25, 2025 to facilitate consideration. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment, including your PII, may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Authority: The Energy Act of 2020, Section 7002 of Title VII (December 27, 2020).

Endnotes

¹ Final List of Critical Minerals 2018 <https://www.federalregister.gov/documents/2018/05/18/2018-10667/final-list-of-critical-minerals-2018>.

² 2022 Final List of Critical Minerals <https://www.federalregister.gov/documents/2022/02/24/2022-04027/2022-final-list-of-critical-minerals>.

³ Energy Act of 2020 (Division Z of the Consolidated Appropriations Act, 2021): <https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-116HR133SA-RCP-116-68.pdf>.

⁴ Nassar, N.T., Pineault, D., Allen, S.M., McCaffrey, D.M., Padilla, A.J., Brainard, J.L., Bayani, M., Shojaeddini, E., Ryter, J.W., Lincoln, S., and Alonso, E., 2025, Methodology and technical input for the 2025 U.S. List of Critical Minerals—Assessing the potential effects of mineral commodity supply chain disruptions on the U.S. economy: U.S. Geological Survey Open-File Report 2025–1047, 32 p., <https://doi.org/10.3133/ofr20251047>.

Sarah J. Ryker,

Acting Director, U.S. Geological Survey.

[FR Doc. 2025–16311 Filed 8–25–25; 11:15 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[Docket No. DOI–2025–0005; 256D0102DM; DS6CS00000; DLSN00000.000000; DX6CS25]

Regulatory Reform—Request for Information

AGENCY: Office of the Secretary, Interior.

ACTION: Request for information; reopening of comment period.

SUMMARY: On May 20, 2025, the United States Department of the Interior (DOI), Office of the Secretary, published in the

Federal Register a document entitled “DOI Regulatory Reform RFI” and invited public comments to assist in identifying existing regulations, guidance, reporting requirements, and other regulatory obligations that can be modified or repealed, consistent with applicable law, to ensure that DOI administrative actions do not undermine the national interest and that DOI achieves a meaningful reduction in regulatory and administrative burdens while continuing to meet statutory obligations, advance American energy independence, and ensure the responsible stewardship of the nation’s public lands and resources. In order to provide additional opportunity for the public to further consider the RFI and submit comments, DOI has determined that reopening the comment period to have it open indefinitely is appropriate. Interior will continually review written input to determine whether additional regulations, guidance, or reporting requirements should be targeted for review and considered for suspension, revision, or rescission.

DATES: The comment period for the document entitled “DOI Regulatory Reform RFI” published on May 20, 2025 (90 FR 21504), is reopened and will remain opened indefinitely. No deadline for the receipt of comments on this effort has been established at this time; Interior will review comments on an ongoing basis.

ADDRESSES: Interested persons should submit ideas for cutting existing regulations within the jurisdiction of DOI via <https://www.regulations.gov/deregulation> and are also encouraged to submit comments, identified by “DOI Regulatory Reform RFI,” by any of the following methods:

Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitted comments to DOI–2025–0005, which is the docket established for this RFI.

Email: Interior.RegulatoryInfo@doi.gov. Include “DOI Regulatory Reform RFI” in the subject line of the message.

Mail: U.S. Department of the Interior, Office of the Solicitor, 1849 C Street NW, Washington, DC 20240.

All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Jacob Tyner, U.S. Department of the Interior, Office of the Solicitor, 1849 C Street NW, Washington, DC 20240. Telephone: (202) 208–3100. Email: Interior.RegulatoryInfo@doi.gov.

SUPPLEMENTARY INFORMATION: The purpose of the May 20, 2025 RFI (90 FR 21504) is to inform the public and gather feedback on potential regulatory reform efforts associated with Executive Order 14154, “Unleashing American Energy” (90 FR 8353; Jan. 29, 2025), Executive Order 14192, “Unleashing Prosperity through Deregulation” (90 FR 9065; Feb. 6, 2025), and Executive Order 14219, “Ensuring Lawful Regulation and Implementing the President’s ‘Department of Government Efficiency’ Deregulatory Agenda” (90 FR 10583; Feb. 25, 2025). The information received through the RFI will help inform the response of the DOI to Administration directives, specifically those which call on Federal agencies to identify and review existing regulations, guidance, and reporting requirements that impose undue burdens on energy development, exceed statutory authority, or are otherwise inconsistent with the Administration’s policy goals. The information received will also inform the development of action plans by DOI to suspend, revise, or rescind such requirements as expeditiously as possible and consistent with applicable law. A reopening of the comment period will provide additional opportunity for the public to consider the RFI and prepare comments to address the questions posed therein. Therefore, DOI is reopening the comment period for the RFI for an indefinite period. No deadline is established at this time and comments will be reviewed on an ongoing basis.

Whitney N. Leets,
Counselor, Office of Policy Management and Budget.

[FR Doc. 2025–16327 Filed 8–25–25; 8:45 am]

BILLING CODE 4334–CC–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1398]

Certain Smart Wearable Devices, Systems, and Components Thereof; Notice of the Commission’s Final Determination Finding a Violation of Section 337; Issuance of a Limited Exclusion Order and Cease and Desist Orders; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 in the above-captioned

investigation. The Commission has determined to issue: (1) a limited exclusion (“LEO”) prohibiting the unlicensed entry of infringing smart wearable devices, systems, and components thereof that are manufactured by or on behalf of, or imported by or on behalf of, the respondents; and (2) cease and desist orders (“CDOs”) against five respondents. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT:

Joelle P. Justus, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2593. 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: The Commission instituted this investigation on April 17, 2024, based on a complaint filed on behalf of Ouraring, Inc. of San Francisco, California, and Ōura Health Oy of Oulu, Finland (collectively, “Ōura”). 89 FR 27452–53 (Apr. 17, 2024). The complaint, as amended, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain smart wearable devices, systems, and components thereof by reason of the infringement of certain claims of U.S. Patent Nos. 11,868,178 (“the ‘178 patent”); 10,842,429 (“the ‘429 patent”); and 11,868,179 (“the ‘179 patent”). The Commission’s notice of investigation named as respondents (collectively, “Respondents”): (1) Ultrahuman Healthcare Pvt. Ltd. of Bengaluru, India; Ultrahuman Healthcare SP LLC of Abu Dhabi, UAE; and Ultrahuman Healthcare Ltd. of London, United Kingdom (collectively, “Ultrahuman”); (2) Guangdong Jiu Zhi Technology Co. Ltd. of Guangdong, China; RingConn LLC of Wilmington, Delaware (collectively, “RingConn”); and (3) Circular SAS of Paris, France. The Office of Unfair Import Investigations (“OUII”) is also a party in this investigation.

The complaint and notice of investigation were later amended to change the name of Respondent Guangdong Jiu Zhi Technology Co. Ltd. to Shenzhen Ninenovo Technology Limited because of a corporate name change, and to amend the address for RingConn LLC. Order No. 8 (May 3, 2024), *unreviewed by* Comm'n Notice, 89 FR 48686–87 (June 7, 2024).

The Commission terminated the investigation as to respondent Circular SAS based on settlement. Order No. 12 (July 9, 2024), *unreviewed by* Comm'n Notice (Aug. 6, 2024).

The Commission further terminated the investigation as to all claims of the '429 and '179 patents, and all but claims 1, 2, and 12–14 of the '178 patent. Order No. 13 (July 30, 2024), *unreviewed by* Comm'n Notice (Aug. 22, 2024); Order No. 15 (Sept. 16, 2024), *unreviewed by* Comm'n Notice (Oct. 7, 2024); Order No. 21 (Dec. 9, 2024), *unreviewed by* Comm'n Notice (Dec. 23, 2024).

On April 18, 2025, the presiding ALJ issued the Final Initial Determination ("Final ID"), finding that there has been a violation of section 337 in the importation into the United States, the sale for importation, and/or the sale in the United States after importation of certain smart wearable devices, systems, and components thereof with respect to the asserted claims of the '178 patent. Specifically, the Final ID finds that: (1) the importation requirement was satisfied for the accused products; (2) claims 1, 2, and 12–14 of the '178 patent were shown to be infringed; (3) the technical prong of the domestic industry requirement was satisfied with respect to the '178 patent; (4) claims 1, 2, and 12–14 of the '178 patent were not shown to be invalid; and (5) the economic prong of the domestic industry requirement was satisfied with respect to the '178 patent. Final ID at 130.

The ALJ also issued a Recommended Determination on Remedy and Bonding ("RD"). The RD recommends that, if the Commission finds a violation, it should issue a limited exclusion order and cease and desist orders and impose a bond of zero percent (0%) during the period of Presidential review. RD at 136–41. Pursuant to the Notice of Investigation, the ALJ also took evidence with respect to the public interest. The RD finds that the issuance of remedial orders in this investigation would not adversely affect the public interest factors enumerated in 19 U.S.C. 1337(d)(1) and (f)(1). *Id.* at 131–36.

On May 2, 2025, Respondents filed a joint petition for review of the Final ID. On May 12, 2025, Oura and OUII each filed responses to Respondents' petition.

On May 22, 2025, Ultrahuman submitted public interest comments pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)). Eight submissions were filed on behalf of third parties in response to the Commission's **Federal Register** notice seeking submissions on the public interest. *See* 90 FR 17449–50 (Apr. 25, 2025).

On June 20, 2025, the Commission determined to review the Final ID's analysis of the economic prong of the domestic industry requirement. 90 FR 27055–57 (June 25, 2025). The Commission determined not to review the remainder of the Final ID's findings. *Id.* at 27055. The Commission requested briefing from the parties on certain issues relating to potential remedial orders, and from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding. *Id.* at 27055–56.

On July 7, 2025, the parties filed their respective written submissions on remedy, public interest, and bonding. On July 14, 2025, the parties filed their reply submissions. The Commission received fifteen submissions from third parties regarding the public interest. The Commission also received a letter from Representatives Vern Buchanan and Troy Balderson of the United States House of Representatives, dated August 6, 2025. Respondents filed a response to the letter from Reps. Buchanan and Balderson on August 15, 2025.

Having examined the record in this investigation, including the Final ID, Respondents' petition for review, the responses thereto, and the submissions to the Commission, the Commission has determined to find a violation of section 337 as to the '178 patent. As set forth in the simultaneously-issued Commission opinion, the Commission takes no position regarding the Final ID's domestic industry findings under subsection 337(a)(3)(A) and Oura's claimed capital investments under subsection 337(a)(3)(B). The Commission otherwise affirms, as modified, the Final ID's economic prong analysis.

The Commission has determined that the appropriate form of relief is an LEO prohibiting the unlicensed entry of infringing smart wearable devices, systems, and components thereof manufactured by or on behalf of Respondents or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns. The Commission has also determined to issue CDOs to Ultrahuman and RingConn.

The Commission has further determined that the public interest factors enumerated in subsections (d)(1) and (f)(1) (19 U.S.C. 1337(d)(1), (f)(1)) do not preclude issuance of the above-referenced remedial orders. Additionally, the Commission has determined to impose a bond in the amount of zero percent (*i.e.*, no bond) as to as to the infringing products imported during the period of Presidential review (19 U.S.C. 1337(j)). The investigation is terminated.

The Commission vote for this determination took place on August 21, 2025.

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: August 21, 2025.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2025–16316 Filed 8–25–25; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–757 and 731–TA–1737–1738 (Final)]

Polypropylene Corrugated Boxes From China and Vietnam; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigation

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation No. 701–TA–757 (Final) pursuant to the Tariff Act of 1930 to determine whether 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 polypropylene corrugated boxes ("PC boxes") from China, provided for in subheadings 3923.10.90 and 3923.50.00 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce ("Commerce") to be subsidized by the Government of China. Commerce's preliminary determinations with respect to PC boxes from China and Vietnam, alleged to be sold in the United States at less than fair value, are pending.

DATES: August 20, 2025.

FOR FURTHER INFORMATION CONTACT:

Camille Bryan ((202) 205–2811), Office of Investigation, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Scope.—For purposes of this investigation, Commerce has defined the subject merchandise as polypropylene corrugated boxes. Polypropylene corrugated boxes are boxes, bins, totes, or other load-bearing containers made for holding goods, that are made of corrugated polypropylene sheets, also known as polypropylene hollow core sheets, polypropylene fluted sheets, polypropylene twin wall sheets, or multi wall sheets. Such polypropylene sheets are “corrugated,” “fluted,” or “hollow core,” meaning the inside of the sheet contains channels or pockets of air which make the sheets lightweight, while retaining strength and durability. Polypropylene corrugated boxes are typically produced from a plastic resin consisting of 50 percent or more polypropylene. Polypropylene corrugated boxes are covered by the scope irrespective of the particular mix of polypropylene homopolymer, polypropylene co-polymer, recycled or virgin polypropylene, or ancillary chemicals such as electrostatic agents or flame retardants. Polypropylene corrugated boxes are formed by corrugated polypropylene sheets cut to length, die-cut into specific box shapes, and may be cut or scored to allow each side of the box to be folded into shape. Polypropylene corrugated boxes may include a tab or attached portion of polypropylene corrugated sheet (commonly referred to as a “manufacturer's joint”) that has been cut, slotted, or scored to facilitate the formation of the box by stapling, gluing, welding, or taping the sides together to form a tight seal. One-piece polypropylene corrugated boxes are die-cut or otherwise formed so that the top, bottom, and sides form a single, contiguous unit. Two-piece polypropylene corrugated boxes are

those with a folded bottom and a folded top as separate pieces. Multi-piece polypropylene corrugated boxes are those with separate bottoms and tops that are fitted to a single folded piece comprising the sides of the box. Polypropylene corrugated boxes may be printed with ink or digital designs.

The subject merchandise includes polypropylene corrugated boxes with or without handles, with or without lids or tops, with or without reinforcing wire, whether in a one-piece, two-piece, or multi-piece configuration, and whether folded into shape or in an unfolded form. The subject merchandise includes all polypropylene corrugated boxes regardless of size, shape, or dimension. The subject merchandise also includes polypropylene corrugated box lids or tops when imported separately from polypropylene corrugated boxes.

Background.—The final phase of this investigation is being scheduled pursuant to sections 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)), as a result of an affirmative preliminary determination by Commerce that certain benefits which constitute subsidies within the meaning of § 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of PC boxes. Commerce's preliminary determinations with respect to PC boxes from China and Vietnam, alleged to be sold in the United States at less than fair value, are pending. These investigations were requested in petitions filed on March 18, 2025, by CoolSeal USA Inc., Perrysburg, Ohio; Intoplast Group Corporation, Livingston, New Jersey; SeaCa Plastic Packaging, Kent, Washington; and Technology Container Corp., Desoto, Texas.

For further information concerning the conduct of this phase of the investigation, hearing procedures, 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 C (19 CFR part 207).

Participation in the investigation and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final

phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

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.

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 the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on October 22, 2025, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on November 5, 2025. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before, October 29, 2025. Any requests to appear as a witness via videoconference must be included with your request to appear. Requests to appear via videoconference must include a statement explaining why the witness cannot appear in person; the Chairman, or other person designated to conduct the investigation, may in their discretion for good cause shown, grant such a request. Requests to appear as remote witness due to illness or a positive COVID–19 test result may be submitted by 3:00 p.m. the business day prior to the hearing. Further information about participation in the hearing will be posted on the Commission's website at <https://www.usitc.gov/calendarpad/calendar.html>.

A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference, if deemed necessary, to be held at 9:30 a.m. on November 4, 2025. Parties shall file and serve written testimony and presentation slides in connection with their presentation at the hearing by no later than noon on November 4, 2025. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is October 28, 2025. Parties shall also file written testimony in connection with their presentation at the hearing, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is November 12, 2025. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation, including statements of support or opposition to the petition, on or before November 12, 2025. On November 25, 2025, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before December 1, 2025, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. 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.

Additional written submissions to the Commission, including requests

pursuant to § 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (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.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: August 22, 2025.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2025–16339 Filed 8–25–25; 8:45 am]

BILLING CODE 7020–02–P

MERIT SYSTEMS PROTECTION BOARD

Privacy Act of 1974; System of Records

AGENCY: Merit Systems Protection Board.

ACTION: Rescindment of a system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the U.S. Merit Systems Protection Board (MSPB) proposes to rescind a government-wide system of records titled “MSPB/GOVT—1, Appeals and Case Records.” This system of records includes information that MSPB collects, maintains, and uses to perform MSPB's statutory functions. MSPB is separately and simultaneously proposing a new system of records titled “MSPB—1, Appeals and Case Records” that will cover this information.

DATES: Please submit comments on or before September 25, 2025. This rescindment of government-wide system “MSPB/GOVT—1, Appeals and Case Records” is effective November 24, 2025.

ADDRESSES: You may submit written comments to the Office of the Clerk of the Board by email to privacy@mspb.gov or by mail to Clerk of the Board, U.S. Merit Systems Protection Board, 1615 M Street NW, Washington, DC 20419. All comments must reference “MSPB/GOVT—1, Appeals and Case Records

SORN.” Regardless of the method used for submitting comments or material, all submissions will be posted publicly, without change, to MSPB's website (<https://www.mspb.gov>) and will include any personal information you provide, such as your name, address, phone number, email address, or any other personally identifying information in your comment or materials.

FOR FURTHER INFORMATION CONTACT: Gina K. Grippando, Clerk of the Board, Office of the Clerk of the Board, 1615 M Street NW, Washington, DC 20419; (202) 653–7200; privacy@mspb.gov. Please include “MSPB/GOVT—1, Appeals and Case Records SORN” with your question(s).

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, (Privacy Act), MSPB proposes to rescind the government-wide system of records titled “MSPB/GOVT—1, Appeals and Case Records.” This system of records includes information that MSPB collects, maintains, and uses to perform MSPB's statutory functions to adjudicate appeals and other matters arising under MSPB's appellate and original jurisdiction pursuant to 5 U.S.C. 7701(a) and 5 U.S.C. 1204 (*e.g.*, requests for disciplinary action or stays filed by the Special Counsel), and to support other statutory functions of MSPB, such as studies of the civil service under 5 U.S.C. 1204(a)(3), review of regulations of the Office of Personnel Management (OPM) under 5 U.S.C. 1204(f), and reporting under 5 U.S.C. 1206. MSPB is issuing this notice of its intent to rescind the current government-wide system of records. A separate notice proposing to establish a new internal system of records that will cover the same information, “MSPB—1, Appeals and Case Records,” is published elsewhere in this issue of the **Federal Register**. During the previous amendment process of the current government-wide system of records, it was determined that MSPB/GOVT—1 does not strictly meet the definition of a government-wide system because no agency keeps these records under the direction of MSPB. As such, MSPB/GOVT—1 is rescinded and removed from the government-wide category of record systems.

Once MSPB/GOVT—1 is removed from its present grouping among government-wide systems and is replaced with the new internal system, MSPB—1, agencies previously relying on MSPB/GOVT—1 will have to publish any new or revised systems notices because of this rescindment. MSPB's e-Appeal System exists for the purpose of facilitating the adjudication process

while an appeal is before MSPB and as a location for the new internal system, MSPB—1; agencies should not rely on the e-Appeal System as the location for any new or revised system established for the agency's own use.

The Privacy Act embodies fair information practice principles in a statutory framework governing how Federal agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to records about individuals that are maintained in a "system of records." A system of records is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act defines an individual as a United States citizen or lawful permanent resident.

Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of MSPB by complying with MSPB's Privacy Act regulations at 5 CFR part 1205, and following the procedures outlined in the Records Access, Contesting Record, and Notification Procedures sections of this notice. The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the existence and character of each system of records that the agency maintains and the routine uses of each system. In accordance with the Privacy Act, 5 U.S.C. 552a(r), and Office of Management and Budget (OMB) Circular A-108, "Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act" (Dec. 2016), MSPB has submitted a report of this rescindment of a system of records to OMB and Congress.

SYSTEM NAME AND NUMBER:

MSPB/GOVT—1, Appeals and Case Records.

HISTORY:

MSPB/GOVT—1, Appeals and Case Records, 77 FR 65206 (October 25, 2012).

Gina K. Grippando,
Clerk of the Board.

[FR Doc. 2025-16313 Filed 8-25-25; 8:45 am]

BILLING CODE 7400-01-P

MERIT SYSTEMS PROTECTION BOARD

Privacy Act of 1974; System of Records

AGENCY: Merit Systems Protection Board

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the U.S. Merit Systems Protection Board (MSPB) proposes to establish a new MSPB system of records titled "MSPB—1, Appeals and Case Records," and is separately and simultaneously proposing rescindment of the current government-wide system of records titled "MSPB/GOVT—1, Appeals and Case Records." Both the new system of records and the system of records to be rescinded include information that MSPB collects, maintains, and uses to perform MSPB's statutory functions.

DATES: Please submit comments on or before September 25, 2025. This new system is effective immediately, with the exception of the routine uses, which are effective September 25, 2025.

ADDRESSES: You may submit written comments to the Office of the Clerk of the Board by email to privacy@mspb.gov or by mail to Clerk of the Board, U.S. Merit Systems Protection Board, 1615 M Street NW, Washington, DC 20419. All comments must reference "MSPB—1, Appeals and Case Records SORN." Regardless of the method used for submitting comments or material, all submissions will be posted publicly, without change, to MSPB's website (<https://www.mspb.gov>) and will include any personal information you provide, such as your name, address, phone number, email address, or any other personally identifying information in your comment or materials.

FOR FURTHER INFORMATION CONTACT: Gina K. Grippando, Clerk of the Board, Office of the Clerk of the Board, 1615 M Street NW, Washington, DC 20419; (202) 653-7200; privacy@mspb.gov. Please include "MSPB—1, Appeals and Case Records SORN" with your question(s).

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, (Privacy Act), MSPB proposes to establish a new MSPB system of records titled "MSPB—1, Appeals and Case Records" to replace the current government-wide system of records titled "MSPB/GOVT 1, Appeals and Case Records," which it is separately and simultaneously proposing to rescind. Both the new system of records and the system of records to be rescinded include information that MSPB collects, maintains, and uses to perform MSPB's statutory functions to adjudicate appeals and other matters arising under MSPB's appellate and original jurisdiction pursuant to 5 U.S.C. 7701(a) and 5 U.S.C. 1204 (e.g., requests for

disciplinary action or stays filed by the Special Counsel), and to support other statutory functions of MSPB, such as studies of the civil service under 5 U.S.C. 1204(a)(3), review of regulations of the Office of Personnel Management (OPM) under 5 U.S.C. 1204(f), and reporting under 5 U.S.C. 1206. MSPB is issuing this notice of its intent to establish a new internal system of records that will cover the same information as the government-wide system of records. A separate notice proposing to rescind "MSPB/GOVT—1, Appeals and Case Records" is published elsewhere in this issue of the **Federal Register**. During the previous amendment process of the current government-wide system of records, it was determined that MSPB/GOVT—1 does not strictly meet the definition of a government-wide system because no agency keeps these records under the direction of MSPB.

Once MSPB/GOVT—1 is removed from its present grouping among government-wide systems and is replaced with the new internal system, MSPB 1, agencies previously relying on MSPB/GOVT—1 will have to publish any new or revised systems notices as a result of this rescindment. MSPB's e-Appeal System exists for the purpose of facilitating the adjudication process while an appeal is before MSPB and as a location for the new internal system, MSPB—1; agencies should not rely on the e-Appeal System as the location for any new or revised system established for the agency's own use.

The Privacy Act embodies fair information practice principles in a statutory framework governing how Federal agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to records about individuals that are maintained in a "system of records." A system of records is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act defines an individual as a United States citizen or lawful permanent resident. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of MSPB by complying with MSPB's Privacy Act regulations at 5 CFR part 1205, and following the procedures outlined in the Records Access, Contesting Record, and Notification Procedures sections of this notice. The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the existence and

character of each system of records that the agency maintains and the routine uses of each system. “MSPB—1, Appeals and Case Records” System of Records Notice is published in its entirety below. In accordance with the Privacy Act, 5 U.S.C. 552a(r), and Office of Management and Budget (OMB) Circular A–108, “Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act” (Dec. 2016), MSPB has submitted a report of a new system of records to OMB and Congress.

Gina K. Grippando,
Clerk of the Board.

SYSTEM NAME AND NUMBER:

MSPB–1, Appeals and Case Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained by the Office of the Clerk of the Board, U.S. Merit Systems Protection Board (MSPB), Suite 500, 1615 M Street NW, Washington, DC 20419, and MSPB regional and field offices. Records are maintained in designated U.S. data centers for cloud service providers authorized by the Federal Risk and Authorization Management Program (FedRAMP) (Seattle, WA; Redmond, WA; and Ashburn, VA), in MSPB’s local area network, in locked cabinets and offices, and at the Federal Records Centers maintained by the National Archives and Records Administration (NARA).

SYSTEM MANAGER(S):

The Office of the Clerk of the Board, U.S. Merit Systems Protection Board, Suite 500, 1615 M Street NW, Washington, DC 20419, and MSPB regional and field offices (see the list of office addresses at <https://www.mspb.gov> and <https://www.ecfr.gov/current/title-5/chapter-II/subchapter-A/part-1201>).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7701(a), 5 U.S.C. 1204, and 5 U.S.C. 1206.

PURPOSE(S) OF THE SYSTEM:

These records may be used to:

- a. Document and adjudicate appeals and other matters arising under MSPB’s appellate and original jurisdiction;
- b. Locate appeal records and files, whether physical or electronic;
- c. Provide statistical data for reports, staff productivity, and other management functions; and
- d. Provide information to support other statutory functions of MSPB, such as studies of the civil service under 5

U.S.C. 1204(a)(3), review of regulations of OPM under 5 U.S.C. 1204(f), and reporting under 5 U.S.C. 1206.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

- a. Current and former Federal employees, applicants for employment, annuitants, and other individuals who have filed appeals with MSPB or its predecessor agency, or with respect to whom the Office of Special Counsel (OSC) or another Federal agency has petitioned MSPB concerning any matter over which MSPB has jurisdiction.
- b. Current and former employees of State and local governments where OSC has petitioned MSPB concerning a possible violation of the Hatch Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case-related records, such as the initial appeal or complaint, briefs, pleadings, motions, exhibits, hearing transcripts, and MSPB decisions, which comprise the official administrative records of appeals and other matters arising under the adjudicatory authority of MSPB, and information derived from those records maintained in MSPB’s electronic case management system.

RECORD SOURCE CATEGORIES:

The sources of these records are:

- a. The individual to whom the record pertains and/or their designated representative(s);
- b. The Federal agency participating in the MSPB appeal or adjudicatory matter;
- c. MSPB, OPM, Equal Employment Opportunity Commission (EEOC), and OSC, including records and documents compiled by Federal agencies in processing adverse actions and actions based on unacceptable performance, covered by OPM/GOVT–3, when such actions are appealed to MSPB; and
- d. Other individuals or organizations from whom MSPB has received testimony, affidavits, or other documents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside MSPB as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

- a. To officials of EEOC or a Special Panel convened under the authority of 5 U.S.C. 7702 when requested in connection with the performance of their authorized duties.
- b. To officials of OPM, the Federal Labor Relations Authority, EEOC, and

OSC in connection with the performance of their authorized duties.

- c. To officials of the Defense Counterintelligence and Security Agency, the Federal Bureau of Investigation, or any other agency or subagency in connection with the performance of their authorized duties related to background and suitability investigations.

- d. To a member of Congress in response to an inquiry made at the request of the individual to whom the record pertains.

- e. To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order when a record, either on its face or in conjunction with other information, indicates or is relevant to a violation or potential violation of civil or criminal law or regulation.

- f. To OMB at any stage in the legislative process in connection with MSPB recommendations on proposed, pending, and enrolled legislation as set forth in OMB Circular No. A–19.

- g. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys; another Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body; another party or potential party or the party’s or potential party’s authorized representative in litigation before a court, adjudicative, or administrative body; or a court, adjudicative, or administrative body. Such disclosure is permitted only when it is relevant or necessary to the litigation or proceeding, and one of the following is a party to the litigation or has an interest in such litigation:

- (1) MSPB, or any component thereof;
- (2) Any employee or former employee of MSPB in their official capacity;
- (3) Any employee or former employee of MSPB in their individual capacity where DOJ or MSPB has agreed to represent the employee;
- (4) The United States or a Federal agency in litigation before a court, adjudicative, or administrative body; or

- (5) A party, other than the United States or a Federal agency, in litigation before a court, adjudicative, or administrative body, upon the MSPB General Counsel’s approval, pursuant to 5 CFR part 1216 or otherwise.

- h. In any proceeding before a court or adjudicative body before which MSPB is authorized to appear when:

- (1) MSPB, or any component thereof; or
- (2) Any employee of MSPB in the employee’s official capacity; or
- (3) Any employee of MSPB in the employee’s individual capacity where

DOJ has agreed to represent the employee; or

(4) the United States is a party to the litigation or has an interest in such litigation and the use of such records is deemed to be relevant and necessary to the litigation, providing that the disclosure of the records is a use of information contained in the records that is compatible with the purpose for which the records were collected, or approval or consultation is required.

i. To the Transportation Security Administration where consultation is required under 49 CFR parts 15 and 1520.

j. To any person making a status inquiry regarding a proceeding before MSPB, the following information may be disclosed: name of the appellant or respondent, name of the agency, MSPB docket number, and the status of the proceeding (*e.g.*, open, closed).

k. To authorized Federal agency representatives who handle MSPB matters and request a list of appeals involving their agency, the following information may be disclosed: name of the appellant or respondent, name of the agency, MSPB docket number, and the status of the proceeding (*e.g.*, open, closed).

l. To NARA in records-management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

m. In response to a request for discovery or for appearance of a witness, if the requested information is relevant to the subject matter involved in a pending judicial or administrative proceeding.

n. To Federal and State agencies for the purpose of requesting that they provide MSPB with information concerning MSPB appellants. Such information will be used, absent personal identifiers, in MSPB research projects mandated by 5 U.S.C. 1204(a)(3).

o. To officials of Federal Courts in connection with the performance of their judicial functions.

p. To officials of State or local bar associations or disciplinary boards or committees when they are investigating complaints against attorneys in connection with their representation of a party before MSPB.

q. To the public, including MSPB's website, legal publishers, and public search engines, or to individuals acting in their official capacity on behalf of any Federal, State, or local agency, in response to a request for a decision following issuance of that decision.

r. To appropriate agencies, entities, and persons when: (1) MSPB suspects or has confirmed that there has been a breach of the system of records; (2)

MSPB has determined that, as a result of the suspected or confirmed breach, there is a risk of harm to individuals, MSPB (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with MSPB's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

s. To another Federal agency or Federal entity when MSPB determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in: (1) responding to a suspected or confirmed breach; or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

t. To recognized pro bono legal service providers or representatives considering and/or agreeing to represent an appellant. The following information may be disclosed: name of the appellant or respondent, appellant or respondent telephone number, physical address, or email address, and MSPB docket number.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained by the Office of the Clerk of the Board, U.S. Merit Systems Protection Board, Suite 500, 1615 M Street NW, Washington, DC 20419, and MSPB regional and field offices (see the list of office addresses at <https://www.mspb.gov>). Records are maintained in designated U.S. data centers for cloud service providers authorized by FedRAMP, MSPB's local area network, locked cabinets and offices, and at the Federal Records Centers maintained by NARA.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

These records are retrieved by the names of the individuals on whom they are maintained and by MSPB docket numbers.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of in accordance with the applicable records schedule for the systems from which they were collected. Any unscheduled records will be retained indefinitely, until they have been scheduled with NARA and have become

eligible for disposition under those schedules.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

MSPB limits access to these records to persons whose official duties require such access. MSPB protects records in the system from unauthorized access and misuse through various administrative, technical, and physical security measures, such as access controls, mandatory security and privacy training, encryption, multi-factor authentication, security guards, and locked offices. **RECORD ACCESS PROCEDURES:** Individuals seeking notification of and access to their records in this system of records may submit a request in writing to the Office of the Clerk of the Board, U.S. Merit Systems Protection Board, 1615 M Street NW, Washington, DC 20419, or by email to privacy@mspb.gov. Individuals requesting access must comply with MSPB's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 1205).

CONTESTING RECORD PROCEDURES:

Individuals may request that records about them be amended by writing to the Office of the Clerk of the Board, U.S. Merit Systems Protection Board, 1615 M Street NW, Washington, DC 20419. Individuals requesting amendment must follow MSPB's Privacy Act regulations regarding verification of identity and amendment to records (5 CFR part 1205). These provisions for amendment of the record do not permit the alteration of evidence presented in the course of an MSPB adjudication, either before or after MSPB has rendered a decision on the appeal.

NOTIFICATION PROCEDURES:

See Record Access Procedures above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

For rescindment, MSPB/GOVT—1, Appeals and Case Records, 77 FR 65206 (October 25, 2012).

[FR Doc. 2025–16314 Filed 8–25–25; 8:45 am]

BILLING CODE 7400–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2025–033]

Freedom of Information Act (FOIA) Advisory Committee Meeting

AGENCY: Office of Government Information Services (OGIS), National

Archives and Records Administration (NARA).

ACTION: Notice of meeting.

SUMMARY: We are announcing an upcoming Freedom of Information Act (FOIA) Advisory Committee meeting in accordance with the Federal Advisory Committee Act and the second United States Open Government National Action Plan.

DATES: The meeting will be on September 11, 2025, from 10 a.m. to 1 p.m. EDT. You must register to attend. (See registration information below.)

ADDRESSES: This meeting will be a virtual meeting. We will send access instructions for the meeting to those who register according to the instructions below.

FOR FURTHER INFORMATION CONTACT:

Kirsten Mitchell, Designated Federal Officer for this committee, by email at foia-advisory-committee@nara.gov, or by telephone at 202.741.5770.

SUPPLEMENTARY INFORMATION:

Agenda and meeting materials: We will post all meeting materials, including the agenda, at <https://www.archives.gov/ogis/foia-advisory-committee/2024-2026-term>.

This meeting will be the sixth of the 2024–2026 committee term. The purpose of the meeting will be to hear from professors who will discuss their research on vexatious requests and to hear reports from and discuss any recommendations from each of the three subcommittees: Statutory Reform, Volume and Frequency, and Implementation.

Procedures: This virtual meeting is open to the public in accordance with the Federal Advisory Committee Act (5 U.S.C. 1001–1014). If you wish to offer oral public comments during the public comments periods of the meeting, you must register in advance at https://www.zoomgov.com/webinar/register/WN_G1_LfLcRBCLGpETxhiVog. You will be provided with information to access the meeting online. Public comments will be limited to three minutes per individual. Written public comments may be submitted at any time to <https://www.archives.gov/ogis/public-comments> and will be posted if they meet OGIS's posting policy. We will also live-stream the meeting on the National Archives YouTube channel, <https://www.youtube.com/live/HPHGBV0Yb8Q>, and include a captioning option. To request additional accommodations, email foia-advisory-committee@nara.gov or call 202.741.5770. Those who are unable to register online, and those who require special accommodations, should contact

Kirsten Mitchell (contact information listed above).

Merrily Harris,

Committee Management Officer.

[FR Doc. 2025–16297 Filed 8–25–25; 8:45 am]

BILLING CODE 7515–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2024–592; K2025–162; MC2025–1635 and K2025–1626]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 29, 2025.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <https://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

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

SUPPLEMENTARY INFORMATION:

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- I. Introduction
- II. Public Proceeding(s)
- III. Summary Proceeding(s)

I. Introduction

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to Competitive negotiated service agreement(s). The request(s) may propose the addition of a negotiated service agreement from the Competitive product list or the modification of an existing product currently appearing on the Competitive product list.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

¹ See Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information,

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). The Public Representative does not represent any individual person, entity or particular point of view, and, when Commission attorneys are appointed, no attorney-client relationship is established. 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).*: CP2024–592; *Filing Title:* USPS Request Concerning Amendment One to Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 272, with Materials Filed Under Seal; *Filing Acceptance Date:* August 21, 2025; *Filing Authority:*

39 CFR 3035.105 and 39 CFR 3041.505; *Public Representative*: Jennaca Upperman; *Comments Due*: August 29, 2025.

2. *Docket No(s)*: K2025–162; *Filing Title*: USPS Request Concerning Amendment One to Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 541, with Materials Filed Under Seal; *Filing Acceptance Date*: August 21, 2025; *Filing Authority*: 39 CFR 3035.105 and 39 CFR 3041.505; *Public Representative*: Elsie Lee-Robbins; *Comments Due*: August 29, 2025.

3. *Docket No(s)*: MC2025–1635 and K2025–1626; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 825 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: August 21, 2025; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Christopher Mohr; *Comments Due*: August 29, 2025.

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. 2025–16335 Filed 8–25–25; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. PI2023–3]

Public Inquiry on Classification of First-Class Package Service Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is issuing a Notice of Inquiry seeking comments and supporting analysis from interested parties regarding whether certain Postal Service products, or segments thereof, are properly classified as Competitive products. This notice informs the public of the inquiry, invites public comment, and takes other administrative steps.

DATES: *Comments are due* by October 27, 2025.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <https://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: On April 7, 2023, the Commission established Docket No. PI2023–3 to explore commenters' claims that the First-Class Package Service (FCPS) product may not be correctly classified as a Competitive product.¹ Although the FCPS product has since been subsumed into the USPS Ground Advantage product, the Commission continues to receive comments in other dockets questioning whether certain Competitive parcel-shaped products, or segments thereof, should be classified as Market Dominant products.² In this docket, the Commission issues a Notice of Inquiry to afford all interested persons an opportunity to provide additional material on relevant classification issues.

The Commission concludes that commenters' claims regarding the proper classification of certain parcel-shaped products, or segments thereof, have not been fully developed in this docket or in other pertinent dockets. Moreover, the Commission finds it appropriate to expand this inquiry regarding the classification of the now-defunct FCPS product to encompass other Competitive parcel-shaped products. FCPS has been subsumed into the expanded USPS Ground Advantage product, and commenters have also expressed concerns about the classification of other products or product segments since this docket was opened. Moreover, the comments received in response to Order No. 6479 identified originating and destinating addresses in which the former FCPS product may not face effective competition,³ but those concerns could extend to other Competitive parcel products sent between those locations.

To ensure that the Commission has complete information to decide whether the transfer of some or all of a parcel product from the Competitive to the Market Dominant product list may be warranted,⁴ the Commission invites

¹ Notice and Order Initiating Public Inquiry on the Classification of the First-Class Package Service Product, April 7, 2023, at 1 (Order No. 6479).

² A product is Market Dominant if the Postal Service "exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products." 39 U.S.C. 3642(b)(1). The Competitive category of products consists of all other products. *Id.*

³ See Comments of Package Shippers Association, August 9, 2023, at 1–2; Comments of Association for Postal Commerce, August 9, 2023, at 2–3.

⁴ See 39 U.S.C. 3642(a), (c).

interested parties to provide comments and supporting material on relevant issues, particularly addressing the questions set forth in the Notice. The Notice also includes questions directed only to the Postal Service. Respondents are urged to fully support their respective positions with quantitative information. Responses may be filed under seal as applicable.⁵

Comments are due 60 days from publication of this Notice in the **Federal Register**. Material filed in this docket will be available for review on the Commission's website, <https://www.prc.gov>. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller will continue to serve as designated officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

It is ordered:

1. Pursuant to 39 U.S.C. 505, Kenneth R. Moeller will continue to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

2. Comments on the topics set forth in this Notice are due 60 days from the date of publication of this Notice in the **Federal Register**.

3. The Secretary shall arrange for publication of this Notice, or abstract thereof, in the **Federal Register**.

By the Commission.

Erica A. Barker,
Secretary.

[FR Doc. 2025–16322 Filed 8–25–25; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. K2025–629; MC2025–1630 and K2025–1622; MC2025–1631 and K2025–1623; MC2025–1632 and K2025–1624; MC2025–1634 and K2025–1625]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due*: August 28, 2025.

ADDRESSES: Submit comments electronically via the Commission's

⁵ Participants are reminded to file an accompanying Application for Non-Public Treatment of Materials Filed Under Seal. See 39 CFR 3011.200(a).

Filing Online system at <https://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

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

SUPPLEMENTARY INFORMATION:

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I. Introduction

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). The Public Representative does not represent any individual person, entity or particular point of view, and, when Commission attorneys are appointed, no attorney-client relationship is established. 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)*: K2025–629; *Filing Title*: USPS Request Concerning Amendment One to Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 904, with Materials Filed Under Seal; *Filing Acceptance Date*: August 20, 2025; *Filing Authority*: 39 CFR 3035.105 and 39 CFR 3041.505; *Public Representative*: Maxine Bradley; *Comments Due*: August 28, 2025.

2. *Docket No(s)*: MC2025–1630 and K2025–1622; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 822 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: August 20, 2025; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Evan Wise; *Comments Due*: August 28, 2025.

3. *Docket No(s)*: MC2025–1631 and K2025–1623; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 823 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: August 20, 2025; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Maxine Bradley; *Comments Due*: August 28, 2025.

4. *Docket No(s)*: MC2025–1632 and K2025–1624; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 824 to the Competitive Product List and Notice of

Filing Materials Under Seal; *Filing Acceptance Date*: August 20, 2025; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Maxine Bradley; *Comments Due*: August 28, 2025.

5. *Docket No(s)*: MC2025–1634 and K2025–1625; *Filing Title*: USPS Request to Add Priority Mail Contract 920 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: August 20, 2025; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Jennaca Upperman; *Comments Due*: August 28, 2025.

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. 2025–16323 Filed 8–25–25; 8:45 am]

BILLING CODE 7710-FW-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–103755; File No. SR–FINRA–2024–021]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Amend the Codes of Arbitration Procedure To Adopt FINRA Rules 12808 and 13808 (Accelerated Processing) To Accelerate the Processing of Arbitration Proceedings for Parties Who Qualify Based on Their Age or Health Condition

August 21, 2025.

I. Introduction

On December 11, 2024, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “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 (SR–FINRA–2024–021) 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 add new FINRA Rules 12808 and 13808 (Accelerated

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).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

Processing).³ The proposed rule change would accelerate the processing of arbitration proceedings for parties who qualify based on their age or health condition.⁴

The proposed rule change was published for public comment in the **Federal Register** on December 26, 2024.⁵ The public comment period closed on January 16, 2025. The Commission received comment letters in response to the Notice.⁶ On January 21, 2025, FINRA consented to an extension of the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to March 26, 2025.⁷ On March 12, 2025, FINRA responded to the comment letters received in response to the Notice.⁸ On March 12, 2025, the Commission published an order instituting proceedings (“OIP”) to determine whether to approve or disapprove the proposed rule change.⁹ The OIP public comment period closed on April 8, 2025. The Commission received one additional comment letter in response to the OIP.¹⁰ On June 11, 2025, FINRA consented to extend until August 22, 2025, the time period in which the Commission must approve or disapprove the proposed rule change.¹¹ This order approves the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

FINRA’s Dispute Resolution Services (“DRS”) provides a forum for disputes between customers, member firms, and

associated persons of member firms.¹² FINRA currently offers a program to expedite arbitration proceedings in its DRS forum for parties who have a serious health condition or are at least 65 years old (“the current program”). FINRA stated that when an eligible party makes a request to expedite arbitration proceedings under the current program, “DRS staff will expedite the case-related tasks that they can control, such as completing the arbitrator selection process, scheduling the initial prehearing conference, and serving the final award.”¹³ However, the current program does not provide for shortened, rules-based deadlines for parties or provide arbitrators with guidance on how quickly the arbitration should be completed. As a result, FINRA stated that cases that qualify for the current program “close only marginally more quickly than cases that are not in the current program.”¹⁴

FINRA’s proposed rule change would accelerate case processing by codifying shortened case-processing deadlines for eligible parties and providing guidance to arbitrators regarding how quickly they should endeavor to complete an arbitration proceeding.¹⁵ The proposed rule change would also establish eligibility requirements, based on a party’s age or eligible health condition, for parties to request accelerated processing. FINRA stated that by accelerating case processing, the proposed rule change would shorten the length of proceedings subject to the proposed rule change by approximately six months, which would make a meaningful difference for older parties or those with a serious health condition.¹⁶

B. Proposed Rule Change

1. Requesting Accelerated Case Processing

FINRA’s proposed rule change would allow parties to request accelerated processing of a case when initiating an arbitration pursuant to FINRA Rules 12302 or 13302 or filing an answer pursuant to FINRA Rules 12303 or 13303 if they meet one of two eligibility requirements based on their age or

health condition.¹⁷ The proposed rule change would also continue to allow parties who do not meet an eligibility requirement to request that the panel consider other factors, including their age and health, when scheduling hearings and discovery, briefing, and motions deadlines.¹⁸

a. Eligibility Based on Age

Proposed Rules 12808(a)(1)(A) and 13808(a)(1)(A) would allow a party to request accelerated processing of a case when initiating an arbitration or filing an answer if the requesting party is at least 70 years of age at the time of the request.

FINRA stated that parties who are 70 years of age and older are more likely than younger individuals to become seriously ill or die before the outcome of their arbitration proceeding. As such, they are less likely to be able to meaningfully participate throughout the course of a lengthy arbitration proceeding, which could affect the outcome of their claim.¹⁹ FINRA stated that because the proposed rule change would make it more likely that these parties are able to meaningfully participate for the duration of an arbitration proceeding, the proposed rule change would help ensure that the outcomes of their cases accurately reflect the underlying merits.²⁰

b. Eligibility Based on Health

Proposed Rules 12808(a)(1)(B) and 13808(a)(1)(B) would allow a party to request accelerated processing of a case when initiating an arbitration or filing an answer if the party making the request certifies, in the manner and form required by the DRS Director (“Director”), that: (i) the party has received a medical diagnosis and prognosis, and (ii) based on that medical diagnosis and prognosis, the party has a reasonable belief that accelerated processing of the case is necessary to prevent prejudicing the party’s interest in the arbitration (“eligible health condition”). Under the proposed rule change, the party would not be required to disclose the details of their medical diagnosis or prognosis with the certification.²¹ Additionally, a party’s certification would not alone be sufficient grounds to compel the production of information concerning, or allow questioning at any hearing

³ See Exchange Act Release No. 101957 (Dec. 18, 2024), 89 FR 105128 (Dec. 26, 2024) (File No. SR-FINRA-2024-021) (“Notice”).

⁴ *Id.*

⁵ *Id.*

⁶ The comment letters are available at <https://www.sec.gov/comments/sr-finra-2024-021/srfinra2024021.htm>.

⁷ See letter from Kristen Vo, Assistant General Counsel, Office of General Counsel, FINRA, dated January 21, 2025, <https://www.finra.org/sites/default/files/2025-01/FINRA-2024-021-Extension1.pdf>.

⁸ See letter from Kristine Vo, Assistant General Counsel, Office of General Counsel, FINRA, dated March 12, 2025, <https://www.sec.gov/comments/sr-finra-2024-021/srfinra2024021.htm> (“FINRA Response Letter”).

⁹ See Exchange Act Release No. 102641 (Mar. 12, 2025), 90 FR 12616 (Mar. 18, 2025) (File No. SR-FINRA-2024-021).

¹⁰ See *supra* note 6.

¹¹ See letter from Kristen Vo, Assistant General Counsel, Office of General Counsel, FINRA, dated June 11, 2025, <https://www.finra.org/sites/default/files/2025-06/2024-021x2.pdf>.

¹² See FINRA Rules 12101(a) (Applicability of [Customer] Code), 13101(a) (Applicability of [Industry] Code). FINRA also provides a mediation forum that is not the subject of this proposed rule change. See FINRA Rule 14101 (Applicability of [Mediation] Code).

¹³ See Notice at 105128.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* (stating that the median time for customer arbitrations that are not in the current program is approximately 15.7 months).

¹⁷ Proposed Rules 12808(a) and 13808(a).

¹⁸ Proposed Rules 12808(a)(3) and 13808(a)(3).

¹⁹ See Notice at 105129.

²⁰ *Id.*

²¹ Proposed Rules 12808(a)(1)(B) and 13808(a)(1)(B).

about, the party's health condition, diagnosis or prognosis.²²

FINRA stated that it is appropriate to allow parties, regardless of age, to qualify for accelerated processing based on an eligible health condition because they may be unable to meaningfully participate in a lengthy arbitration proceeding, which, in turn, could affect the outcome of the proceeding.²³ FINRA further stated that the proposed certification requirement is the most appropriate method to identify those individuals with an eligible health condition because it would minimize unnecessary intrusions into a party's private health information.²⁴ Moreover, FINRA stated that by prohibiting a party from using an opponent's request for accelerated processing as the sole basis to seek discovery into their health condition, the proposed rule change would further address privacy concerns.²⁵

c. Requests by Parties Ineligible for Accelerated Processing

Proposed Rules 12808(a)(3) and 13808(a)(3) would allow parties who may benefit from shortened proceedings, but do not qualify for accelerated processing under the age or health eligibility requirements of proposed Rules 12808(a)(1) or 13808(1), to request that the panel consider other factors, including a party's age and health, when scheduling hearings and discovery, briefing, and motions deadlines.

FINRA stated that some parties who would not be eligible to request accelerated processing based on either their age or their health condition, might still benefit if their arbitrations were completed more quickly.²⁶ FINRA further stated that although these proceedings would not be subject to the shortened, rules-based deadlines of the proposed rule change, the panel may determine, at a party's request, to expedite the proceedings based on the party's particular circumstances.²⁷

2. Determination of Eligibility

Proposed Rules 12808(b)(1) and 13808(b)(1) would require the Director to determine if a party's request for accelerated processing complies with the requirements of proposed Rules 12808(a)(1) or 13808(a)(1). FINRA stated

that, under the proposed rules, the Director would make an objective determination as to whether the requesting party is at least 70 years of age or has submitted the required certification regarding an eligible health condition.²⁸ FINRA further stated that the proposed rule change would not require any assessment by the Director regarding the reasonableness of the requesting party's belief that accelerated processing is necessary.²⁹

3. Accelerated Proceedings

If the Director determines that a request complies with the requirements of proposed Rules 12808(a)(1) or 13808(a)(1), the proposed rule change would accelerate the proceedings in three ways. First, the arbitrator selection process would be accelerated by shortening the deadlines for the Director to send the list of potential arbitrators to the parties.³⁰ Second, the arbitrators would receive guidance on how quickly they should endeavor to complete arbitrations.³¹ Third, certain of the default deadlines that apply to the parties under the Codes would be shortened.³²

a. Accelerated Arbitrator Selection

The first way that the proposed rule change would accelerate the proceedings would be by requiring that the Director send out the lists of potential arbitrators to the parties more quickly than under the current program. Currently, the Director must send the lists of potential arbitrators to the parties "within approximately 30 days after the last answer is due," regardless of the parties' agreement to extend any answer due date.³³ The proposed rule change would amend the timeframe that the Director must send the list out to all parties in an accelerated proceeding. Specifically, proposed Rules 12808(b)(2)(A) and 13808(b)(2)(A) would require the Director to send the arbitrator lists "as soon as practicable after the last answer is due, notwithstanding any agreement of the parties to extend any answer due date."

FINRA stated that by requiring that the Director send the arbitrator lists "as soon as practicable" after the last answer is due, it would signal that the lists must be sent shortly after the last

answer due date but would retain some flexibility for the Director in sending the lists.³⁴

b. Arbitrator Guidance Regarding Arbitration Completion Timeframe

The second way that the proposed rule change would accelerate proceedings would be to provide arbitrators with guidance as to how quickly they should endeavor to complete arbitrations. Specifically, under proposed Rules 12808(b)(2)(B) and 13808(b)(2)(B), the panel would be required to endeavor to render an award within 10 months of the date the Director determines that a case is subject to accelerated processing. In addition, proposed Rules 12808(b)(2)(C) and 13808(b)(2)(C) would require the panel to hold a prehearing conference to set discovery, briefing, and motions deadlines, and schedule hearing sessions, that are consistent with rendering an award within 10 months or less.

FINRA stated that by providing arbitrators with specific guidance regarding how quickly they should endeavor to complete an arbitration, the proposed rule change would be more likely to significantly reduce the overall length of the proceedings in cases that qualify for accelerated processing.³⁵ However, FINRA also stated that by establishing a benchmark but not mandating that all cases be completed within 10 months, the proposed rule change would provide the arbitrators with sufficient flexibility to accommodate the particular circumstances of each case.³⁶

c. Shortened Party Deadlines

Finally, the proposed rule change would accelerate proceedings by shortening the following default deadlines that apply to parties under the Codes:

- *Serving an Answer*: Under the Codes, a respondent must serve the signed and dated Submission Agreement³⁷ and answer on each party within 45 days of receipt of the statement of claim.³⁸ In an accelerated proceeding, proposed Rules 12808(b)(2)(D)(i) and 13808(b)(2)(D)(i) would shorten this deadline to within 30 days.

²² Proposed Rules 12808(a)(2) and 13808(a)(2).

²³ See Notice at 105130.

²⁴ *Id.*

²⁵ FINRA also stated, however, that the proposed rule change would not address a party's ability to request medical information for other appropriate reasons that are unrelated to the certification. *Id.*

²⁶ See Notice at 105130.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ See Proposed Rules 12808(b)(2)(A) and 13808(b)(2)(A).

³¹ See Proposed Rules 12808(b)(2)(B), 12808(b)(2)(C), 13808(b)(2)(B), and 13808(b)(2)(C).

³² See Proposed Rules 12808(b)(2)(D) and 13808(b)(2)(D).

³³ See FINRA Rules 12402(c)(1), 12403(b)(1), and 13403(c)(1).

³⁴ See Notice at 105131.

³⁵ *Id.*

³⁶ *Id.*

³⁷ See FINRA Rules 12100(dd) and 13100(ee). The FINRA Submission Agreement is a document that parties must sign at the outset of an arbitration in which they agree to submit to arbitration under the Codes.

³⁸ See FINRA Rules 12303 and 13303.

• *Responding to a Third Party Claim:* Under the Codes, a party responding to a third party claim must serve all other parties with the signed and dated Submission Agreement and answer within 45 days of receipt of the third party claim.³⁹ In an accelerated proceeding, proposed Rules 12808(b)(2)(D)(ii) and 13808(b)(2)(D)(ii) would shorten this deadline to within 30 days.

• *Completing Arbitrator Lists:* Under the Codes, parties must return the ranked arbitrator lists of each separately represented party to the Director no more than 20 days after the date upon which the Director sends the arbitrator lists to the parties.⁴⁰ In an accelerated proceeding, proposed Rules 12808(b)(2)(D)(iii) and 13808(b)(2)(D)(iii) would shorten this deadline to no more than 10 days.

• *Discovery in Customer Cases:* Under the Customer Code, parties in customer cases are required to produce to all other parties documents that are described in the Document Production Lists on FINRA's website,⁴¹ explain why specific documents cannot be produced, or object and file an objection with the Director within 60 days of the date that the answer to the statement of claim is due, or, for parties added by amendment or third party claim, within 60 days of the date that their answer is due, unless the parties agree otherwise.⁴² In an accelerated proceeding, proposed Rule 12808(b)(2)(D)(iv) would shorten these deadlines to within 35 days unless the parties agree otherwise.

• *Other Discovery Requests:* Under the Codes, the party receiving the request must respond within 60 days from the date a discovery request other than the Document Production Lists is received, unless the parties agree otherwise.⁴³ In an accelerated proceeding, proposed Rules 12808(b)(2)(D)(v) and 13808(b)(2)(D)(iv) would shorten this deadline to within 30 days unless the parties agree otherwise.

Based on FINRA's experience, FINRA believes these proposed shortened deadlines are reasonable and would not compromise the fairness of the arbitration proceedings because they would be manageable in most cases.⁴⁴ FINRA stated, however, that there may

be some accelerated processing cases in which the complexity of the case, the volume of discovery, or other factors may justify extending these proposed deadlines.⁴⁵ FINRA stated that in these circumstances, the existing provisions of the Codes would provide the parties and arbitrators with the flexibility to address the unique facts and circumstances of each case, for example:⁴⁶

• FINRA Rules 12207(a) and 13207(a) allow parties to agree to extend or modify any deadline for serving an answer, returning the ranked arbitrator or chairperson lists, responding to motions, or exchanging documents or witness lists;

• FINRA Rules 12207(b) and 13207(b) allow the panel to extend or modify any deadline for serving an answer, responding to motions, exchanging documents or witness lists, or any other deadline set by the panel, either on its own initiative or upon motion of a party; and

• FINRA Rules 12508(b) and 13508(b) allow the panel to extend the time for a party to object to discovery requests if the party has "substantial justification for failing to make the objection within the required time."

While these provisions provide the panel and the parties with flexibility to modify the shortened deadlines in the proposed rule change, FINRA stated that it expects the extensions to be the exception and not the rule.⁴⁷ FINRA also stated that if the Commission approves the proposed rule change, it would provide training and guidance to arbitrators on accelerated processing, which would include training on evaluating requests to extend the proposed shortened deadlines.⁴⁸

III. Discussion and Commission Findings

After careful review of the proposed rule change, the comment letters, and FINRA's response to comments, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.⁴⁹ Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act, which requires, among other things, that

FINRA rules 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.⁵⁰

A. Requesting Accelerated Case Processing

1. Discussion

The proposed rule change would allow parties to request accelerated processing of a case when initiating an arbitration pursuant to FINRA Rules 12302 or 13302, or when filing an answer pursuant to FINRA Rules 12303 or 13303, if they meet an eligibility requirement based on their age or health condition. The proposed rule change would also continue to allow parties who do not meet an eligibility requirement to request that the panel consider other factors, including their age and health, when scheduling hearings and discovery, briefing, and motions deadlines.⁵¹ The Commission addresses the proposed rule change's specific provisions, and any related comments, in turn.

a. Eligibility Based on Age

As stated above, the proposed rule change would allow a party to request accelerated processing of a case when initiating an arbitration or filing an answer if the requesting party is at least 70 years of age at the time of the request.⁵²

One commenter supported the proposed rule change, stating that the proposed eligibility age of 70 or older supports FINRA's goal of increasing the likelihood that the participant can meaningfully participate through the resolution of a proceeding, leading to "outcomes more accurately reflective of the underlying merits, while balancing the number of expedited proceedings and the impact on other individuals seeking timely arbitration of their cases."⁵³ This commenter also stated, however, that increasing the qualifying age to 70 or older could incentivize parties to improperly seek accelerated processing such as by misrepresenting their age. This commenter

³⁹ 15 U.S.C. 78o-3(b)(6).

⁴⁰ See Proposed Rules 12808(a)(3) and 13808(a)(3).

⁴¹ See Proposed Rules 12808(a)(1)(A) and 13808(a)(1)(A).

⁴² See Letter from David T. Bellaire, Executive Vice President & General Counsel, Financial Services Institute, dated January 16, 2025, at 2, <https://www.sec.gov/comments/sr-finra-2024-021/srfinra2024021-557555-1598982.pdf> ("FSI") (basing its support, in part, on the proposed rule change permitting those under 70 to request accelerated processing of their arbitration case based on a certified medical condition).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³⁹ FINRA Rules 12306 and 13306.

⁴⁰ FINRA Rules 12403 and 13404.

⁴¹ FINRA Rule 12506 (Document Production Lists) describes the documents that are presumed to be discoverable in all arbitrations between a customer and a member firm or associated person.

⁴² See *Id.*

⁴³ FINRA Rules 12507 and 13507.

⁴⁴ See Notice at 105132.

recommended that arbitrators sanction such parties by removing their cases from accelerated processing, stating that “removal of participants who wrongfully were granted an accelerated arbitration process is a natural consequence and fitting deterrent to ensure people do not try to ‘cut the line.’”⁵⁴

Four other commenters generally supported the proposed rule change but suggested lowering the eligibility age from 70 or older, as FINRA proposed, to 65 or older for various reasons.⁵⁵ One of these commenters stated that lowering the eligibility age to 65 or older would be unlikely to increase the administrative burden on FINRA but would have a “significant impact on the individuals who would be covered.”⁵⁶ A second commenter suggested lowering the eligibility age to 65 or older, in part, because parties who are at least 65 years of age are very likely to be retirees on fixed incomes for whom “time is of the essence.”⁵⁷ This second commenter also stated that such parties are more likely to be in proceedings where the party is represented by one of the ten law school securities arbitration clinics, and that reducing the length of arbitration would allow for “continuity of representation and enhanced learning opportunities for

students.”⁵⁸ A third commenter opposed the proposed eligibility age of 70 or older, in favor of an eligibility age of 65 or older, stating that “while life expectancy has increased in the United States, so have age-related health issues . . . making it more difficult for individuals over 65 to endure prolonged arbitration.”⁵⁹ This commenter also stated that 65 is the traditional retirement age and “is commonly used as a benchmark for senior benefits and legal protections.”⁶⁰ The fourth commenter also recommended lowering the eligibility age to 65 years or older, stating that “FINRA [failed] to offer any viable explanation for the proposed increase or the selection of 70 years of age as being the proper cut-off . . .”⁶¹

Another commenter, on the other hand, questioned the need for parties who are otherwise healthy to qualify for accelerated processing based solely on age.⁶² This commenter stated that the “use of age as a criterion is speculative, arbitrary, and untenable, and without more insufficient to justify the changes contemplated” by the proposed rule change.⁶³ In the alternative, the commenter recommended an eligibility age of at least 75 years old as “the most reasonable compromise,” because “the eventualities presumed by the current Proposal become less speculative” as the “litigant’s age increases.”⁶⁴

In response, FINRA stated that an eligibility age is warranted to account for elderly parties who may be otherwise healthy at the outset of the arbitration but may become more likely to become seriously ill (or potentially deceased) during the arbitration proceeding because of their age.⁶⁵ More specifically, FINRA supported maintaining the proposed age eligibility requirement at 70 or older for multiple reasons.⁶⁶ First, FINRA stated that while lowering the proposed age eligibility requirement from 70 or older to 65 or older would affect only approximately six percent of claimants, the resulting increase in the number of accelerated cases could overburden arbitrators, making it difficult for them to comply

with their obligations to endeavor to hold hearings and render an award within 10 months or less.⁶⁷ As such, FINRA suggested that reducing the age eligibility to 65 or older could undermine the proposed rule change’s stated objective—to materially shorten the length of the proceedings.⁶⁸ Similarly, FINRA stated that arbitrators are often involved in more than one arbitration at the same time; as such, further increasing the number of accelerated cases could cause arbitrators to extend the case processing times of their concurrent, non-accelerated arbitrations to meet the shortened deadlines that would apply to their accelerated arbitrations.⁶⁹ In addition, FINRA stated that, under the proposed rule change, parties who are younger than 70 would still have an opportunity to request accelerated processing if they have a serious health condition, or other factor that could be considered by a panel.⁷⁰ Specifically, FINRA stated that “parties who would not qualify for accelerated processing based on either their age or health condition would be able to request, once the panel is appointed, that the panel consider other factors, including their age or a change in their health condition during the arbitration proceeding, when scheduling hearings and discovery, briefing, and motion deadlines.”⁷¹ Finally, FINRA stated that raising the proposed age eligibility requirement above 70 would deny accelerated processing to many parties who are at higher risk of becoming seriously ill, experiencing an adverse health condition, or not living to see the outcome of an arbitration.⁷²

For these reasons, FINRA declined to adopt the commenters’ suggested alternatives.⁷³ FINRA, however, stated that it would monitor the new program to determine if adjustments to the eligibility age for qualification are warranted.⁷⁴ FINRA also stated that it would update its guidance to arbitrators to clarify that potential sanctions may include the ability to remove a matter from accelerated processing if parties are found to have either misrepresented their age or health condition to qualify for accelerated processing.⁷⁵

b. Eligibility Based on Health Condition

As stated above, the proposed rule change would allow a party to request

⁵⁴ FSI at 2–3 (citing the sanctioning authority in FINRA Rules 12212(a) and 13212(a)).

⁵⁵ See Letters from Jaclyn Rommeney, Legal Intern, Chris O’Connor, Legal Intern, Joseph Alfonzetti, Legal Intern, Professor Elissa Germaine, Esq., Supervising Attorney, and Professor Christine Lazaro, Esq., Supervising Attorney, Securities Arbitration Clinic, St. Vincent De Paul Legal Program, Inc., St. John’s University School of Law, dated January 16, 2025, at 2, <https://www.sec.gov/comments/sr-finra-2024-021/srfinra2024021-557715-1599282.pdf> (“St. John’s”) (supporting the proposed eligibility age of 70 or older, but suggesting FINRA consider lowering the eligibility age to 65 or older); Alice L. Stewart, Associate Professor of Law, Director of Legal Clinics, Rachael T. Shaw, Staff Attorney/Adjunct Law Professor, Minu Nagashunmugam, Certified Student Attorney, and Danny O’Byrne, Certified Student Attorney, Securities Arbitration Clinic, University of Pittsburgh School of Law, dated January 16, 2025, at 5–6, <https://www.sec.gov/comments/sr-finra-2024-021/srfinra2024021-557476-1598962.pdf> (“UPitt”); Adam Gana, President, Public Investors Advocate Bar Association, dated January 16, 2025, at 2, <https://www.sec.gov/comments/sr-finra-2024-021/srfinra2024021-557435-1598903.pdf> (“PIABA”); Steven Caruso, dated January 18, 2025, at 1, <https://www.sec.gov/comments/sr-finra-2024-021/srfinra2024021-558095-1600682.html> (“Caruso”).

⁵⁶ St. John’s at 2 (stating that lowering the triggering age to 65 would increase the number of claimants who would qualify for accelerated processing from 20 percent to 26 percent).

⁵⁷ UPitt at 10; see also PIABA at 2 (stating that “investors over 65 are often living on fixed incomes, making prolonged arbitration particularly burdensome”).

⁵⁸ UPitt at 6 (accelerated proceedings would allow the same student attorney to represent a claimant during the entire proceeding).

⁵⁹ See PIABA at 2.

⁶⁰ *Id.*

⁶¹ See Caruso at 1.

⁶² See Letter from Seth A. Miller, General Counsel, President, Advocacy & Administration, Cambridge Investment Research, Inc., dated January 15, 2025, at 2, <https://www.sec.gov/comments/sr-finra-2024-021/srfinra2024021-557055-1597802.pdf> (“Cambridge”).

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ See FINRA Response Letter at 2.

⁶⁶ *Id.* at 2–4.

⁶⁷ *Id.* at 3.

⁶⁸ *Id.*

⁶⁹ *Id.* at 3–4.

⁷⁰ *Id.* at 4.

⁷¹ *Id.*

⁷² *Id.* at 2 n. 5.

⁷³ *Id.* at 2–4.

⁷⁴ *Id.* at 4.

⁷⁵ *Id.* at 6.

accelerated processing of a case when initiating an arbitration or filing an answer if the party making the request certifies, in the manner and form required by the DRS Director, that: (i) the party has received a medical diagnosis and prognosis, and (ii) based on that medical diagnosis and prognosis, the party has a reasonable belief that accelerated processing of the case is necessary to prevent prejudicing the party's interest in the arbitration.⁷⁶ An eligible party would not be required to disclose the details of their medical diagnosis or prognosis with the certification, nor would a party's certification alone be sufficient grounds to compel the production of information concerning, or allow questioning at any hearing about, the party's health condition.⁷⁷

Six commenters supported the proposed rule change permitting a party with an eligible health condition to request accelerated processing of a case.⁷⁸ One of these commenters stated that shortening case-processing deadlines for parties with a serious health condition would be "meritorious and beneficial to the arbitration process."⁷⁹ Another one of these commenters stated that it appreciated the proposed rule change's inclusion of safeguards that would protect parties' private health information.⁸⁰

Two otherwise supportive commenters, however, expressed concerns about the medical certification requirement.⁸¹ One of these commenters stated that requiring claimants to produce medical records to qualify for expedited proceedings would be "invasive, unnecessary, and contrary to the spirit of the proposed rule."⁸² The other commenter stated that the proposed rule change "lacks any meaningful controls to preclude misuse" and suggested that parties be required to provide proof of their health condition before it can trigger accelerated processing.⁸³

One supportive commenter recommended sanctioning participants found to have misrepresented either their age or medical condition.⁸⁴

In response to the commenter's privacy concerns, FINRA stated that the proposed certification requirement is the most appropriate way to minimize unnecessary intrusions into a party's private health information, while allowing FINRA to identify those individuals who could benefit most from accelerated processing because they have an eligible health condition.⁸⁵ Moreover, FINRA noted that a party's certification would not alone be "sufficient grounds to compel production of information concerning, or to allow questioning at any hearing about, the party's medical condition."⁸⁶

In response to commenters' concerns about potential misrepresentations, FINRA stated that it has no evidence that parties have falsely claimed to have a serious health condition under the current program nor any reason to believe that this kind of misconduct would be more likely under the proposed rule change.⁸⁷ FINRA further stated that the threat of potential sanctions under existing FINRA Rules 12212 and 13212 (such as assessing monetary penalties payable to one or more parties; precluding a party from presenting evidence; making an adverse inference against a party; assessing postponement and forum fees; and assessing attorneys' fees, costs and expenses) should help deter parties from falsely certifying that they have been diagnosed with an eligible health condition.⁸⁸

For these reasons, FINRA declined to amend the proposed rule change.⁸⁹ In response to the commenter's recommendation to sanction participants found to have misrepresented their age or medical condition, FINRA stated that it would update its guidance to arbitrators to clarify that potential sanctions may include the ability to remove a matter from accelerated processing if parties are found to have either misrepresented their age or health condition to qualify for accelerated processing.⁹⁰ FINRA also stated that it would monitor the new

program for indications that misrepresentations are occurring, as well as to determine if adjustments to the criteria for qualification based on an eligible health condition are warranted.⁹¹

c. Requests by Parties Ineligible for Accelerated Processing

As stated above, the proposed rule change would allow parties who do not meet the age or health condition eligibility requirements to request that the panel consider other factors, including a party's age and health condition, when scheduling hearings and discovery, briefing, and motions deadlines.⁹² If such a request is approved, the party's proceeding would not be subject to the shortened, rules-based deadlines of the proposed rule change; rather, the panel may instead determine to expedite the proceedings based on the party's particular circumstances.⁹³

One commenter supported accelerated processing for parties based on their age or health condition but suggested FINRA adopt eligibility requirements that account for the "disparities in life expectancies" associated with ethnicity and geography.⁹⁴ This commenter also recommended that FINRA consider additional options for *pro se* parties who may not be equipped to request accelerated processing if they do not meet the proposed eligibility requirements.⁹⁵

Another commenter supported this proposed rule change but stated that without set deadlines, participants who do not qualify for accelerated processing based on either their age or health condition would continue to experience "waits longer than thirteen months."⁹⁶ This commenter therefore suggested that at a minimum, FINRA provide training and guidance to arbitrators on setting deadlines so that parties facing age or health-related difficulties but who do not meet the proposed eligibility requirements do not face unreasonably long wait times.⁹⁷

In response to the commenter's recommendation that FINRA adopt eligibility requirements that account for

⁷⁶ See Proposed Rules 12808(a)(1)(B) and 13808(a)(1)(B).

⁷⁷ *Id.*; see also proposed Rules 12808(a)(2) and 13808(a)(2).

⁷⁸ See Caruso; St John's; UPitt; PIABA; Cambridge; FSI.

⁷⁹ Caruso at 1.

⁸⁰ St. John's at 3 (referencing the provision making clear that a party does not open the door to discovery into their health condition merely by requesting accelerated processing); see also UPitt at 7 (stating that the proposed rule change would provide "the proper amount of flexibility and disclosure while protecting a party's privacy").

⁸¹ See PIABA at 1–2; Cambridge at 2–3.

⁸² PIABA at 1–2.

⁸³ Cambridge at 2 (suggesting that the "most objective qualification criteria" would be for parties to obtain a "medical certification" in a manner

similar to how one would obtain a Disability Parking Placard).

⁸⁴ FSI at 2–3 (suggesting that FINRA remove their case from expedited arbitration and the required deadlines using FINRA Rules 12212(a) and 13212(a) to impose sanctions addressing improper conduct).

⁸⁵ See FINRA Response Letter at 5.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.* at 4–6.

⁹⁰ *Id.* at 6.

⁹¹ *Id.*

⁹² Proposed Rules 12808(a)(3) and 13808(a)(3).

⁹³ *Id.*; see also Notice at 105130.

⁹⁴ See St. John's at 2.

⁹⁵ *Id.*

⁹⁶ UPitt at 7.

⁹⁷ *Id.*; see also Caruso at 1 (stating that there is "an absence of any discussion of the enhanced arbitrator training that must be associated with the proposed new rules so that arbitrators have the required guidance that will be needed to effectively implement the proposed new rules.").

“disparities in life expectancies,” FINRA acknowledged that there are parties who could benefit if their arbitration cases were accelerated but who would not qualify for accelerated processing under the proposed rule change.⁹⁸ However, FINRA stated that it is concerned that “an approach based on multiple additional factors could become too complex to be workable.”⁹⁹ In addition, FINRA stated that a further increase in the number of parties eligible for accelerated processing could impact arbitrators’ collective ability to hold hearings and render awards within 10 months or less.¹⁰⁰

In response to the commenter’s concerns about *pro se* parties being equipped to make requests for accelerated processing, FINRA stated that it is not aware of any concerns that *pro se* parties have been unable to make requests under the current program.¹⁰¹ Nevertheless, FINRA stated that it would update its website to provide guidance to *pro se* parties “regarding the availability of and process for requesting accelerated processing.”¹⁰² In addition, FINRA stated that it would provide training and guidance to arbitrators on the proposed rule change, including on “various ways that arbitrators can expedite cases.”¹⁰³

2. Commission Findings Regarding the Proposed Rule Changes for Requesting Accelerated Case Processing

The proposed rule change is reasonably designed to enhance qualifying parties’ ability to meaningfully participate for the duration of a proceeding so that case outcomes more accurately reflect the underlying merits. Currently, FINRA offers a program to expedite arbitration proceedings in its DRS arbitration forum for parties who have a serious health condition or are at least 65 years old. Under the current program, DRS staff has discretion to expedite certain case-related tasks (e.g., the arbitrator selection process) to try to shorten the overall length of a proceeding. In practice, however, the current program only marginally shortens the median time for customer arbitrations to close by award after a hearing. By establishing shortened, rules-based deadlines for parties and providing guidance to arbitrators on how quickly they should endeavor to complete a proceeding, the proposed rule change should help

reduce the length of time for completing eligible proceedings, helping ensure that eligible parties can meaningfully participate for the duration of the proceedings so that case outcomes more accurately reflect the underlying merits. Additionally, arbitrators will retain sufficient flexibility to accommodate the particular circumstances of each case.¹⁰⁴

The proposed rule change reasonably sets the eligibility age for parties at 70 years or older. FINRA reasonably determined that individuals who are 70 years of age and older are more likely than younger individuals to become seriously ill or potentially die before the outcome of their arbitration proceeding.¹⁰⁵ As such, they are less likely to be able to meaningfully participate throughout the course of a lengthy arbitration proceeding, which could affect the outcome of their claim regardless of its underlying merits. The data presented by FINRA show that lowering the eligibility age to 65 years or older would likely increase the number of parties eligible for accelerated processing.¹⁰⁶ Since arbitrators preside over multiple cases at a time, any further increase in the number of cases eligible for accelerated processing could unduly impact their ability to comply with their obligations under the proposed rule change to endeavor to render an award within 10 months, as well as their ability to timely render an award in non-accelerated cases, thus affecting the efficiency of the DRS forum. In addition, as discussed more fully below, the proposed rule change would permit parties who are younger than 70 to request accelerated processing. Specifically, parties who would not qualify for accelerated processing based on their age would still be eligible to request that their arbitration panel consider their unique circumstances when scheduling their proceedings.

On the other hand, eliminating eligibility for accelerated processing based on age, or raising the age higher than 70, as one commenter suggested,¹⁰⁷ could frustrate FINRA’s goal of helping ensure that older parties can meaningfully participate for the duration of a proceeding so that case outcomes more accurately reflect the underlying merits. It is reasonable for FINRA to establish the eligibility age at 70 years or older, an approach that reasonably balances the goal of maximizing the pool of parties likely to

benefit from accelerated processing against the potential impact that a larger number of accelerated proceedings would have on the length of non-accelerated proceedings and on the efficiency of the DRS forum. And to the extent adjustments to the criteria for qualification based on age are warranted, FINRA stated that it will monitor the new program to make such a determination.

The proposed rule change also reasonably permits a party experiencing an eligible health condition to request accelerated processing of a case by certifying that: (i) they have received a medical diagnosis and prognosis, and (ii) based on that medical diagnosis and prognosis, they have a reasonable belief that accelerated processing of the case is necessary to prevent prejudicing their interest in the arbitration. Individuals experiencing an eligible health condition are less likely to be able to meaningfully participate in a lengthy arbitration proceeding, which could disadvantage them and affect the outcome of their case. The proposed rule change would help ensure that parties to an arbitration are able to meaningfully participate for the duration of the case, and as a result case outcomes may more accurately reflect the underlying merits.

The proposed rule changes reasonably balance parties’ privacy concerns against the potential for abuse. To request accelerated processing due to an eligible health condition, a party need only certify their eligibility, and is not required to disclose the details of their medical diagnosis or prognosis (e.g., through medical records) with the certification. In addition, the proposed rule change would establish that the party’s certification shall not alone be sufficient grounds for either seeking discovery (e.g., compelling production of information) about the party’s medical condition, diagnosis or prognosis, or allowing questioning at any hearing about the party’s medical condition, diagnosis or prognosis. Moreover, the threat of potential sanctions under existing FINRA Rules 12212 and 13212 (such as assessing monetary penalties; making an adverse inference against a party; assessing forum fees, attorneys’ fees, and costs and expenses) should help deter parties from making false certifications.¹⁰⁸ In addition, FINRA stated that it will monitor the new program for indications that misrepresentations are occurring, as well as to determine if adjustments to the criteria for

⁹⁸ See FINRA Response Letter at 6.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 7.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.* at 4.

¹⁰⁴ See Notice at 105131.

¹⁰⁵ *Id.* at 105134 n.54.

¹⁰⁶ *Id.* at 105129 n.15; see also FINRA Response Letter at 3.

¹⁰⁷ See Cambridge at 2.

¹⁰⁸ See *supra* note 84.

qualification based on an eligible health condition are warranted.

Finally, the proposed rule change reasonably permits parties who do not meet the age or health eligibility requirements to request that the panel consider other factors, including a party's age and health, when scheduling hearings and discovery, briefing, and motions deadlines. As stated above, some ineligible parties may still benefit from accelerated processing. The proposed rule change would provide arbitrators with flexibility to determine whether to expedite a party's proceedings based on the party's particular circumstances. Such parties' proceedings would not be subject to the shortened, rules-based deadlines but the proposed rule change would instead give arbitrators flexibility when scheduling hearings and discovery, briefing, and motions deadlines. While the proposed rule change may increase the number of parties whose claims proceed under a form of expedited proceedings, arbitrators are provided with sufficient flexibility to extend the case processing times of their concurrent, non-accelerated arbitrations to meet the shortened deadlines that would apply to their accelerated arbitrations.¹⁰⁹ Such flexibility should help ensure that arbitrators and, as a consequence, the forum, are not overburdened to such an extent that it undermines FINRA's goal of reducing the length of certain cases and maintaining the efficiency of the DRS Forum. Regarding the commenter's concern about *pro se* parties and arbitrator training, FINRA stated that it will update its website to provide guidance to *pro se* parties regarding the availability of, and process for, requesting accelerated processing. In addition, FINRA stated that it will provide training and guidance to arbitrators on the proposed rule change, including on ways they can help expedite cases. For these reasons, the proposed rule change is reasonably 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.

B. Determination of Eligibility

As stated above, the proposed rule change would require the Director to determine if a party's request for accelerated processing complies with the proposed eligibility requirements.

Specifically, the Director would make an objective determination as to whether the requesting party is at least 70 years of age or has submitted the required certification for an eligible health condition.¹¹⁰ We received no comments on this proposed rule change.

The proposed rule change would reasonably require the Director to make an objective determination as to whether the requesting party has met the eligibility requirements for accelerated processing. As stated above, the health information required to be reported on the certification is restricted to the minimum amount of information necessary to permit the Director to identify those individuals with an eligible health condition. Similarly, the eligibility age requirement is designed to establish a bright line for eligibility for accelerated processing. Given the establishment of such objective criteria, the determination of eligibility should not require any assessment by the Director regarding the reasonableness of the requesting party's belief that accelerated processing is necessary. For these reasons, the proposed rule change is reasonably 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.

C. Accelerating the Proceedings

As stated above, the proposed rule change would accelerate the proceedings by shortening the deadlines for the Director to send the list of potential arbitrators to the parties; providing arbitrators with guidance on how quickly they should endeavor to complete arbitration proceedings; and shortening certain other deadlines that apply to the parties under the Codes.¹¹¹

One commenter supported the proposed rule change, emphasizing that the establishment of shortened case-processing deadlines for older parties or those parties with an eligible health condition would be "meritorious and beneficial to the arbitration process."¹¹²

Another commenter opposed the "pre-determined, shortened schedule" of the accelerated arbitration proceedings because it "appears overly constrictive and could impact diligent legal representation."¹¹³ This

commenter recommended FINRA "encourage parties and arbitrators to work together to determine an appropriate schedule that considers the unique circumstances of their particular case," and, "in the absence of an agreement between the parties, the arbitrators should have the latitude to adjust the deadlines for the arbitration to accommodate the party with the qualifying medical condition."¹¹⁴ Alternatively, if FINRA retains the set schedule, the commenter suggested "at least" modifying the discovery deadlines because the "proposed reduction by approximately half of the discovery deadline unduly burdens the respondents and possibly the claimants as well."¹¹⁵

In response, FINRA stated that establishing rules-based, shortened deadlines is necessary and appropriate to "meaningfully reduce case processing times for those parties who may be unable to fully participate in lengthy arbitration proceedings—a goal that the current program has been unable to fully achieve."¹¹⁶ However, FINRA stated that the existing provisions of the Codes would provide parties and arbitrators with "sufficient flexibility to modify the proposed shortened deadlines when necessary."¹¹⁷

The proposed rule change to accelerate proceedings by shortening deadlines and providing guidance to arbitrators is reasonably designed to enhance qualifying parties' ability to meaningfully participate for the duration of a proceeding so that case outcomes more accurately reflect the underlying merits. Under the current program, DRS staff has discretion to expedite certain case-related tasks (*e.g.*, the arbitrator selection process) to try to shorten the overall length of a proceeding. In practice, however, the current program only marginally shortens the median time for customer arbitrations to close by award after a hearing. By establishing shortened, rules-based deadlines for parties and providing guidance to arbitrators on how quickly they should endeavor to

good faith. Letter from Daniel Kolber, CEO/General Counsel, Intellivest Securities, Inc., dated January 3, 2025, at 1, <https://www.sec.gov/comments/sr-finra-2024-021/srfinra2024021-553435-1585502.html>. In response, FINRA stated that this comment is outside the scope of the proposed rule change but noted that to the extent an attorney is engaging in misconduct in the FINRA arbitration forum, it will make a referral to the attorney's disciplinary agency. FINRA Response Letter at 9. FINRA reasonably declined amending the proposed rule change in response, as the comment is outside the scope of the proposed rule change.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ FINRA Response Letter at 8.

¹¹⁷ *Id.*

¹¹⁰ Proposed Rules 12808(b)(1) and 13808(b)(1).

¹¹¹ See Notice at 105130–105131.

¹¹² Caruso at 1.

¹¹³ Cambridge at 3. Another commenter stated that the proposed rule change would do little to address the problem that FINRA arbitration is becoming more expensive and less fair than courts, and suggested that FINRA expand the application of FINRA Rule 9280 (Contemptuous Conduct) to FINRA arbitrations to incentivize litigators to act in

¹⁰⁹ See FINRA Response Letter at 4, 8 (stating that the existing provisions of the Codes provide arbitrators with "sufficient flexibility to modify the proposed shortened deadlines when necessary"); see also *supra* notes 45–47.

complete a proceeding, the proposed rule change should help reduce the length of time for completing qualifying proceedings, helping ensure that eligible parties can meaningfully participate for the duration of the case.

Moreover, as FINRA stated, existing provisions of the Codes would continue to provide parties and arbitrators with the flexibility to address the unique facts and circumstances of each case (such as the complexity of a case or the volume of discovery) and to modify deadlines as appropriate.¹¹⁸ For these reasons, the proposed rule change is reasonably 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.

IV. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act, which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, protect investors and the public interest.¹¹⁹

It is therefore ordered pursuant to Section 19(b)(2) of the Exchange Act¹²⁰ that the proposed rule change (SR-FINRA-2024-021), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²¹

Stephanie J. Fouse,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103758; File No. SR-NASDAQ-2025-037]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt New Rule 5703 To Permit the Generic Listing and Trading of Class Exchange-Traded Fund Shares

August 21, 2025.

On May 6, 2025, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt new Nasdaq Rule 5703 to permit the generic listing and trading of Class Exchange-Traded Fund Shares. The proposed rule change was published for comment in the **Federal Register** on May 27, 2025.³

On June 30, 2025, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On August 15, 2025, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety.⁶

The Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 103072 (May 20, 2025), 90 FR 22373 (“Notice”). The Commission has received no comments regarding the proposed rule change.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 103357, 90 FR 29598 (July 3, 2025). The Commission designated August 25, 2025 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁶ Amendment No. 1 to the proposed rule change is available at: <https://www.sec.gov/comments/sr-nasdaq-2025-037/srnasdaq2025037.htm>.

⁷ 15 U.S.C. 78s(b)(2)(B).

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Rule 5703 to permit the generic listing and trading of Class Exchange-Traded Fund (“ETF”) Shares. The Exchange is also proposing to make conforming changes to Rule 5615 (Exemptions from Certain Corporate Governance Requirements), Rule 5705(b) (Index Fund Shares), Rule 5735 (Managed Fund Shares), and Equity 4, Rule 4120 in order to accommodate the proposed listing of Class ETF Shares. This Amendment No. 1 to SR-NASDAQ-2025-037 amends and replaces in its entirety the proposal as originally submitted on May 6, 2025. The Exchange submits this Amendment No. 1 in order to clarify certain points and add additional details to the proposal, and revises the proposed rule text.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rulefilings> and at the principal office of the Exchange.

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 new Rule 5703 for the purpose of permitting the generic listing and trading, or trading pursuant to unlisted trading privileges, of Class ETF Shares.⁸ The Exchange is also proposing to make conforming changes to Rule 5615 (Exemptions from Certain Corporate Governance Requirements), Rule 5705(b) (Index Fund Shares), Rule 5735 (Managed Fund Shares), and Equity 4, Rule 4120 in order to accommodate the

⁸ The Exchange notes that Cboe BZX Exchange, Inc. (“BZX”) has filed a substantially similar filing. See Securities Exchange Act Release No. 103188 (June 4, 2025), 90 FR 24457 (June 10, 2025) (SR-CboeBZX-2025-076).

¹¹⁸ See *id.*

¹¹⁹ 15 U.S.C. 78o-3(b)(6).

¹²⁰ 15 U.S.C. 78s(b)(2).

¹²¹ 17 CFR 200.30-3(a)(12).

proposed listing of Class ETF Shares. Consistent with Exchange Traded Fund Shares listed under the generic listing standards in Rule 5704, Class ETF Shares would be permitted to be listed and traded on the Exchange without prior Commission approval order or notice of effectiveness pursuant to Section 19(b) of the Act.⁹

Background

There are numerous applications for exemptive relief for Class ETF Shares currently before the Commission¹⁰ that request exemptive relief similar to that previously granted to other funds.¹¹ This proposal would provide for the “generic” listing and/or trading of Class ETF Shares under proposed Rule 5703 on the Exchange.

Starting in 2000, the Commission began granting limited relief for The Vanguard Group, Inc. (“Vanguard”) to offer certain index-based open-end management investment companies with Class ETF Shares.¹² After this relief

was granted, there was limited public discourse about Class ETF Shares until 2019, when the prospect of providing blanket exemptive relief to Class ETF Shares was addressed in the Commission’s adoption of Rule 6c–11 under the Investment Company Act (the “ETF Rule”).¹³ The ETF Rule permits ETFs that satisfy certain conditions to operate without the expense or delay of obtaining an exemptive order. However, the ETF Rule did not provide blanket exemptive relief to allow for Class ETF Shares as part of the final rule. Instead, the Commission concluded that Class ETF Shares should request relief through the exemptive application process so that the Commission may assess all relevant policy considerations in the context of the facts and circumstances of particular applicants. The Exchange adopted Rule 5704 shortly after the implementation of the ETF Rule and, because there were no exemptive applications before the Commission, did not propose to include any language comparable to what is being proposed herein.¹⁴

As noted above, a number of applications for exemptive relief to permit the applicable fund to offer Class ETF Shares (the “Applications”) have been submitted to the Commission starting in early 2023. In general, the Applications state that the ability of a fund to offer Class ETF Shares, *i.e.*, both a class of mutual fund shares (each such class, a “Mutual Fund class” and such shares “Mutual Fund Shares”) and ETF Shares, could be beneficial to the fund and to shareholders of each type of class for various reasons, including more efficient portfolio management, better secondary market trading opportunities, and cost efficiencies, among others.¹⁵ The Commission has granted, by order, specific exemptive relief (“Multi-Class Fund Exemptive Relief”) under the Investment Company Act on [DATE], that permits, subject to certain conditions and requirements, a Multi-Class Fund (as defined below) to issue Class ETF Shares (as defined below) and

original application, as reflected in the final Commission order. *See also* the Vanguard Group, Inc., Investment Company Act Release Nos. 26282 (Dec. 2, 2003) (notice) and 26317 (Dec. 30, 2003) (order); Vanguard International Equity Index Funds, Investment Company Act Release Nos. 26246 (Nov. 3, 2003) (notice) and 26281 (Dec. 1, 2003) (order); Vanguard Bond Index Funds, Investment Company Act Release Nos. 27750 (Mar. 9, 2007) (notice) and 27773 (April 2, 2007) (order) (collectively referred to as the “Vanguard Orders”).

¹³ *See* Securities Exchange Act Release No. 33–10695 (September 26, 2019), 84 FR 57162 (October 24, 2019) (the “ETF Rule Adopting Release”).

¹⁴ *See* Securities Exchange Act Release No. 88561 (April 3, 2020), 85 FR 19984 (April 9, 2020) (SR–NASDAQ–2019–090).

¹⁵ *See supra* note 12.

one or more classes of shares that are not exchange traded, among other things.¹⁶

Proposal

Proposed Rule 5703(a) provides that the Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Class ETF Shares that meet the criteria of this Rule.¹⁷

Proposed Rule 5703(b) provides that the proposed rule would be applicable only to Class ETF Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Class ETF Shares are included within the definition of “security” or “securities” as such terms are used in the Rules of the Exchange.

Proposed Rule 5703(b) further provides that: (1) transactions in Class ETF Shares will occur throughout the Exchange’s trading hours; and (2) the Exchange will implement and maintain written surveillance procedures for Class ETF Shares.

Proposed Rule 5703(c) will set forth the definitions used in the Rule. Specifically, proposed Rule 5703(c)(1) provides that the term “Class ETF Shares” means shares of the ETF Class issued by a Multi-Class Fund.

Proposed Rule 5703(c)(2) provides that the term “ETF Class” means the class of exchange-traded shares of a Multi-Class Fund that (i) operates as an exchange-traded fund pursuant to exemptive relief granted by order under the Investment Company Act (“Multi-Class Fund Exemptive Relief”), and (ii) is in compliance with the requirements of Rules 5703(d)(ii) and

¹⁶ The Exchange will amend this filing to add a cite to the Multi-Class Fund Exemptive Relief when that becomes available.

¹⁷ To the extent that Class ETF Shares do not satisfy one or more of the criteria in proposed Rule 5703, the Exchange may file a separate proposal under Section 19(b) of the Act in order to list such securities on the Exchange. Any of the statements or representations in that proposal regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, and intraday indicative values (as applicable), or the applicability of Exchange listing rules specified in any filing to list such Class ETF Shares shall constitute continued listing requirements for the Class ETF Shares. Further, in the event that Class ETF Shares become listed under proposed Rule 5703 and subsequently can no longer satisfy the requirements of proposed Rule 5703, such Class ETF Shares may be listed as a series of Index Fund Shares under Rule 5705(b) or Managed Fund Shares under Rule 5735, as applicable, as long as the Class ETF Shares meets all listing requirements applicable under the alternate listing rule.

⁹ Rule 19b–4(e)(1) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (“SRO”) is not deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO’s trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the SRO has a surveillance program for the product class. As contemplated by this Rule 5703, the Exchange proposes new Rule 5703 to establish generic listing standards for Class ETF Shares that are permitted of the ETF Class that would be required to operate as an ETF pursuant to the Multi-Class Fund Exemptive Relief (as defined herein) and be in compliance with the conditions and requirements of Rule 6c–11 under the Investment Company Act of 1940 (the “Investment Company Act”), except as noted in the Multi-Class Fund Exemptive Relief. Class ETF Shares listed under proposed Rule 5703 would therefore not need a separate proposed rule change pursuant to Rule 19b–4 before it can be listed and traded on the Exchange.

¹⁰ *See e.g.*, DFA Investment Dimensions Group Inc. and Dimensional Investment Group Inc., (amendment filed March 31, 2025); F/m Investments LLC (amendment filed April 10, 2025); Fidelity Hastings Street Trust and Fidelity Management & Research Company (amendment filed April 11, 2025); Morgan Stanley Institutional Fund Trust and Morgan Stanley Investment Management Inc. (amendment filed April 11, 2025); BlackRock Funds (amendment filed April 15, 2025); Guinness Atkinson Funds (amendment filed April 17, 2025); Metropolitan West Funds, TCW ETF Trust, and TCW Funds, Inc. (amendment filed April 22, 2025); and Northern Funds and Northern Trust Investments, Inc. (amendment filed May 2, 2025).

¹¹ *See infra* note 12.

¹² *See* Vanguard Index Funds, Investment Company Act Release Nos. 24680 (Oct. 6, 2000) (notice) and 24789 (Dec. 12, 2000) (order). The Commission itself, as opposed to the Commission staff acting under delegated authority, considered the original Vanguard application and determined that the relief was appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Investment Company Act. In the process of granting the order, the Commission also considered and denied a hearing request on the

5703(d)(2)(A)(i)(2) below on an initial and continued listing basis.

Proposed Rule 5703(c)(3) provides that the term “Multi-Class Fund” means a registered open-end management company that (i) pursuant to Multi-Class Fund Exemptive Relief, issues Class ETF Shares and one or more classes of shares that are not exchange traded, and (ii) is in compliance with the conditions and requirements of the Multi-Class Fund Exemptive Relief.

Proposed Rule 5703(c)(4) provides that the term “Reporting Authority” in respect of a particular Multi-Class Fund means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists Class ETF Shares (if the Exchange is trading such securities pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such Multi-Class Fund, including, but not limited to, the amount of any dividend equivalent payment or cash distribution to holders of Class ETF Shares, net asset value, index or portfolio value, the current value of the portfolio of securities required in connection with the issuance of Class ETF Shares, or other information relating to the issuance, redemption or trading of Class ETF Shares. A Multi-Class Fund may have more than one Reporting Authority, each having different functions.

Proposed Rule 5703(d) provides that the Exchange may approve Class ETF Shares of a Multi-Class Fund for listing and/or trading (including pursuant to unlisted trading privileges) on the Exchange pursuant to Rule 19b-4(e) under the Act, provided that: (i) the Multi-Class Fund is eligible to operate an ETF Class as an exchange-traded fund pursuant to, and is otherwise in compliance with the terms and conditions of, the Multi-Class Fund Exemptive Relief; (ii) the ETF Class is in compliance with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief; and (iii) the ETF Class and the Multi-Class Fund each satisfies the requirements of this Rule 5703, as applicable, on an initial and continued listing basis.

Proposed Rule 5703(d)(1) provides that the requirements of paragraph (d) of this Rule must be satisfied by the Multi-Class Fund issuing the Class ETF Shares on an initial and continued listing basis. The Multi-Class Fund with respect to such Class ETF Shares must also satisfy the following criteria on an initial and, except for sub-paragraph (A) below, continued, listing basis. Further,

proposed Rule 5703(d)(1) provides that: (A) for each Multi-Class Fund, the Exchange will establish a minimum number of Class ETF Shares required to be outstanding at the time of commencement of trading on the Exchange; (B) if an index underlying a Multi-Class Fund is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser shall erect and maintain a “fire wall” around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund adviser. If the investment adviser to an actively managed Multi-Class Fund is affiliated with a broker-dealer, such investment adviser shall erect and maintain a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Multi-Class Fund’s portfolio; and (C) any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the composition, methodology, and related matters of an index underlying a Multi-Class Fund, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index. For actively managed Multi-Class Funds, personnel who make decisions on the portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable portfolio.

Proposed Rule 5703(d)(2) provides that Class ETF Shares of each Multi-Class Fund will be listed and traded on the Exchange subject to application of the continued listing criteria therein. Proposed Rule 5703(d)(2)(A) provides that the Exchange will consider the suspension of trading in, and will initiate delisting proceedings under the Rule 5800 Series of, Class ETF Shares under any of the following circumstances: (i) if the Exchange becomes aware, with respect to the Class ETF Shares: (1) the Multi-Class Fund is no longer eligible to operate an ETF Class as an exchange-traded fund pursuant to, or is otherwise no longer in compliance with the terms and conditions of, the Multi-Class Fund Exemptive Relief; or (2) the ETF Class is no longer in compliance with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief; (ii) if any of the

other listing requirements set forth in this Rule are not continuously maintained; (iii) if, following the initial twelve month period after commencement of trading on the Exchange of the Class ETF Shares, there are fewer than 50 beneficial holders of the Class ETF Shares for 30 or more consecutive trading days; or (iv) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Proposed Rule 5703(d)(2)(B) provides that with respect to the Class ETF Shares, upon termination of the Multi-Class Fund or the ETF Class, as the case may be, the Exchange requires that the Class ETF Shares be removed from Exchange listing.

Proposed Rule 5703(e) provides that neither the Exchange, the Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value; the current value of the portfolio of securities required to be deposited to the Multi-Class Fund in connection with the issuance of Class ETF Shares; the amount of any dividend equivalent payment or cash distribution to holders of Class ETF Shares; net asset value; or other information relating to the purchase, redemption, or trading of Class ETF Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

The Exchange is also proposing to make corresponding amendments to include Class ETF Shares in other Exchange rules, which are intended to align the treatment of the proposed products with how other open-end management investment company shares (e.g., Exchange Traded Fund Shares, Index Fund Shares, and Managed Fund Shares) are treated under the Exchange’s rules. First, the Exchange proposes to amend the definition of “Derivative Securities” in Rule 5615(a)(6)(B) to add Class ETF Shares so that Rule 5615(a)(6)(A) and its exemptions from certain corporate

governance requirements are applicable to Class ETF Shares.¹⁸

Second, the Exchange proposes to amend the definition of “Derivative Securities Products” in Rule 5705(b)(3)(A)(i)a. to add Class ETF Shares so the exclusions applicable to Derivative Securities Products in Nasdaq Rule 5705(b)(3)(A) will also apply to Class ETF Shares. The Exchange believes this is appropriate to ensure that Class ETF Shares are treated consistently with other open-end management investment company shares listed on the Exchange such as Exchange Traded Fund Shares, Index Fund Shares, and Managed Fund Shares.

Third, the Exchange proposes to amend the definition of “Exchange Traded Derivative Securities” in Rule 5735(c)(6) to add Class ETF Shares so the exclusions applicable to Exchange Traded Derivative Securities in Rule 5735(b)(1)(A) will also apply to Class ETF Shares. The Exchange believes this is appropriate to ensure that Class ETF Shares are treated consistently with other open-end management investment company shares listed on the Exchange such as Exchange Traded Fund Shares, Index Fund Shares, and Managed Fund Shares.

Fourth, the Exchange proposes to amend Equity 4, Rule 4120 to include Class ETF Shares in the Exchange’s trading halt provisions in Rule 4120(a)(9) and 4120(b)(4)(A).¹⁹ This will ensure the applicability of trading halts to the trading of Class ETF Shares listed on Nasdaq, and those traded on Nasdaq pursuant to unlisted trading privileges.

Discussion

Proposed Rule 5703 is based on Rule 5704 related to the listing and trading of ETF Shares on the Exchange, which are issued under the Investment Company Act and qualify as ETF Shares under Rule 6c–11. Exchange Traded Fund Shares are similar to Class ETF Shares

because the ETF Class is required to operate as an ETF pursuant to the Multi-Class Fund Exemptive Relief and be in compliance with the conditions and requirements of Rule 6c–11 under the Investment Company Act (except as noted in the Multi-Class Fund Exemptive Relief).²⁰ The proposed Class ETF Shares generic listing rule would apply only to the class of shares that are exchange traded. Because the ETF Class would be required to comply, among other things, with the conditions and requirements of Rule 6c–11 under the Investment Company Act, similar to Exchange Traded Fund Shares under Rule 5704, the Exchange believes that using Rule 5704 as the basis for proposed Rule 5703 is appropriate.

The Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices because the Exchange will perform ongoing surveillance of Class ETF Shares listed on the Exchange in order to ensure that (i) the Multi-Class Fund is, and continues to be, eligible to operate an ETF Class as an exchange-traded fund pursuant to, and is in otherwise in compliance with, the terms and conditions of, the Multi-Class Fund Exemptive Relief, (ii) the ETF Class continues to be compliant with the conditions and requirements of Rule 6c–11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief, and (iii) the ETF Class and the Multi-Class Fund each satisfies the requirements of 5703, as applicable, on an initial and continuing basis. The Exchange believes that the manipulation concerns are mitigated by a combination of the Exchange’s surveillance procedures, the Exchange’s ability to halt trading under the proposed Rule 5703(d)(2)(B), and the Exchange’s ability to suspend trading and commence delisting proceedings under proposed Rule 5703(d)(2)(A). The Exchange will halt trading in the Class ETF Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including without limitation the conditions specified in Nasdaq Rule 4120(a)(9) and (10) and under Nasdaq Rules 4120(a)(12). The Exchange also believes that such concerns are further mitigated by enhancements to the arbitrage mechanism that have come from Rule 6c–11, specifically the additional flexibility provided through the use of custom baskets for creations and redemptions and the additional information made available to the public through the additional daily website disclosure obligations

applicable under Rule 6c–11.²¹ The Exchange also notes that there are firewall and other information barrier restrictions in place in the proposed rule text.²² The Exchange believes that the combination of these factors will act to keep Class ETF Shares trading near the value of their underlying holdings and further mitigate concerns around manipulation of Class ETF Shares on the Exchange. The Exchange will monitor for compliance to ensure that (i) the Multi-Class Fund is, and continues to be, eligible to operate an ETF Class as an exchange-traded fund pursuant to, and is in otherwise in compliance with, the terms and conditions of, the Multi-Class Fund Exemptive Relief, (ii) the ETF Class continues to be compliant with the conditions and requirements of Rule 6c–11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief, and (iii) the ETF Class and the Multi-Class Fund each satisfies the requirements of 5703, as applicable, on an initial and continuing basis. Specifically, the Exchange will review the website of Class ETF Shares listed on the Exchange in order to ensure that the requirements of Rule 6c–11 are being met. The Exchange will also employ numerous intraday alerts that will notify Exchange personnel of trading activity throughout the day that is potentially indicative of certain disclosures not being made accurately or the presence of other unusual conditions or circumstances that could be detrimental to the maintenance of a fair and orderly market. As a backstop to the surveillances described above, the Exchange also notes that Rule 5703 would require an issuer of Class ETF Shares to notify the Exchange of any failure to comply with the requirements of proposed Rule 5703, the Multi-Class Fund Exemptive Relief, or Rule 6c–11 under the Investment Company Act.

The Exchange may suspend trading in and commence delisting proceedings for Class ETF Shares where such securities are not in compliance with the applicable listing standards or where the Exchange believes that further dealings on the Exchange are inadvisable.²³ The Exchange also notes

¹⁸ Rule 5615(a)(6)(A) provides that issuers whose only securities listed on Nasdaq are non-voting preferred securities, debt securities or Derivative Securities, are exempt from the requirements relating to Independent Directors (as set forth in Rule 5605(b)), Compensation Committees (as set forth in Rule 5605(d)), Director Nominations (as set forth in Rule 5605(e)), Codes of Conduct (as set forth in Rule 5610), and Meetings of Shareholders (as set forth in Rule 5620(a)). In addition, these issuers are exempt from the requirements relating to Audit Committees (as set forth in Rule 5605(c)), except for the applicable requirements of SEC Rule 10A–3. Notwithstanding, if the issuer also lists its common stock or voting preferred stock, or their equivalent on Nasdaq it will be subject to all the requirements of the Nasdaq 5600 Rule Series.

¹⁹ Rule 4120(b)(4)(A) sets out the definition of “Derivative Securities Product,” which is referenced in the Exchange’s halt authority pursuant to Rules 4120(a)(10) and 4120(b).

²⁰ See *supra* note 16.

²¹ The Exchange notes that the Commission came to a similar conclusion in several places in the ETF Rule Adopting Release. See ETF Rule Adopting Release at 15–18; 60–61; 69–70; 78–79; 82–84; and 95–96.

²² See proposed Rules 5703(d)(1)(B) and (C).

²³ Specifically, proposed Rule 5703(d)(2) provides that Class ETF Shares will be listed and traded on the Exchange subject to application of Proposed Rule 5703(d)(2)(A) and (B). Proposed Rule 5703(d)(2)(A) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under the Rule

that Rule 5701(d) requires any issuer to provide the Exchange with prompt notification after it becomes aware that (i) the Multi-Class Fund is no longer eligible to operate an ETF Class as an exchange-traded fund pursuant to, or otherwise no longer complies with, the terms and conditions of, the Multi-Class Fund Exemptive Relief, (ii) the ETF Class is no longer compliant with the conditions and requirements of Rule 6c–11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief, or (iii) the ETF Class or the Multi-Class Fund no longer satisfies the requirements of 5703, as applicable, on an initial and continuing basis.²⁴

Further, the Exchange also represents that its surveillance procedures are adequate to properly monitor the trading of the Class ETF Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which are currently applicable to Exchange Traded Fund Shares, Index Fund Shares and Managed Fund Shares, among other product types, to monitor trading in Class ETF Shares. The Exchange or the Financial Industry Regulatory Authority, Inc. (“FINRA”), on behalf of the Exchange, will communicate as needed regarding trading in Class ETF Shares and certain of their applicable underlying components with other

markets that are members of the Intermarket Surveillance Group (“ISG”) or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange may obtain information regarding trading in Class ETF Shares and certain of their applicable underlying components from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Finally, the issuer of Class ETF Shares will be required to comply with Rule 10A–3 under the Act for the initial and continued listing of Class ETF Shares, as provided under Rule 5615(a)(6).²⁵

The Exchange notes that it may consider all relevant factors in exercising its discretion to halt or suspend trading in Class ETF Shares. Trading may be halted if the circuit breaker parameters in Rule 4121 have been reached, because of other 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 certain information about the Class ETF Shares that is required to be disclosed under Rule 6c–11 of the Investment Company Act is not being made available, including specifically where the Exchange becomes aware that the net asset value or the daily portfolio disclosure with respect to Class ETF Shares is not disseminated to all market participants at the same time, it will halt trading in such securities until such time as the net asset value or the daily portfolio disclosure is available to all market participants;²⁶ (2) if an interruption to the dissemination to the value of the index or reference asset on which Class ETF Shares is based persists past the trading day in which it occurred or is no longer calculated or available; (3) trading in the securities comprising the underlying index or portfolio has been halted in the primary market(s); or (4) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. The Exchange deems Class ETF Shares to be equity

securities and therefore they would be subject to the full panoply of Exchange rules and procedures that currently govern the trading of equity securities on the Exchange.²⁷

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that proposed Rule 5703 is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading Class ETF Shares on the Exchange provide specific initial and continued listing criteria required to be met by such securities. Proposed Rule 5703(d) sets forth initial and continued listing criteria applicable to Class ETF Shares, specifically providing that the Exchange may approve Class ETF Shares for listing and/or trading (including pursuant to unlisted trading privileges) on the Exchange pursuant to Rule 19b–4(e) under the Act, provided that: (i) the Multi-Class Fund is eligible to operate an ETF Class as an exchange-traded fund pursuant to, and is otherwise in compliance with the terms and conditions of, the Multi-Class Fund Exemptive Relief; (ii) the ETF Class is in compliance with the conditions and requirements of Rule 6c–11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief; and (iii) the ETF Class and the Multi-Class Fund each satisfies the requirements of this Rule 5703, as applicable, on an initial and continued listing basis.³⁰ The Exchange will

5800 Series of, Class ETF Shares under any of the following circumstances: (i) if the Exchange becomes aware, with respect to the Class ETF Shares: (1) the Multi-Class Fund is no longer eligible to operate an ETF Class as an exchange-traded fund pursuant to, or is otherwise no longer in compliance with the terms and conditions of, the Multi-Class Fund Exemptive Relief; or (2) the ETF Class is no longer in compliance with the conditions and requirements of Rule 6c–11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief; (ii) if any of the other listing requirements set forth in this Rule are not continuously maintained; (iii) if, following the initial twelve month period after commencement of trading on the Exchange of Class ETF Shares, there are fewer than 50 beneficial holders of the Class ETF Shares for 30 or more consecutive trading days; or (iv) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Proposed Rule 5703(d)(2)(B) provides that with respect to the Class ETF Shares, upon termination of the Multi-Class Fund or the ETF Class, as the case may be, the Exchange requires that the Class ETF Shares be removed from Exchange listing.

²⁴ The Exchange notes that failure by an issuer to notify the Exchange of non-compliance pursuant to Rule 5701(d) would itself be considered non-compliance with the requirements of proposed Rule 5703 and would subject the Class ETF Shares to potential trading halts and the delisting process under the Rule 5800 Series.

²⁵ See *supra* note 18. The Exchange notes that these proposed changes in Rule 5615(a)(6)(B) would subject Class ETF Shares to the same corporate governance requirements as other open-end management investment companies listed on the Exchange.

²⁶ The Exchange will obtain a representation from the issuer of Class ETF Shares that the net asset value per share will be calculated daily and made available to all market participants at the same time, and the requirements pertaining to the Multi-Class Fund Exemptive Relief and Rule 6c–11 under the Investment Company Act in proposed Rule 5703 will be satisfied.

²⁷ With respect to trading in Class ETF Shares, the Exchange represents that all of the Nasdaq member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with the Exchange’s rules and federal securities laws, and Nasdaq will continue to monitor its members for compliance with such requirements, which are not changing as a result of the Multi-Class Fund Exemptive Relief order issued under the Investment Company Act.

²⁸ 15 U.S.C. 78f(b).

²⁹ 15 U.S.C. 78f(b)(5).

³⁰ The Exchange notes that eligibility to operate in reliance on Rule 6c–11 or any applicable exemptive relief under the Investment Company Act does not necessarily mean that an investment company would be listed on the Exchange pursuant to proposed Rule 5703. To this point, an investment company that operates in reliance of exemptive relief providing for Class ETF Shares could alternatively be listed as a series of Index Fund

comply with all the requirements of Rule 19b-4(e) to specifically note that such Class ETF Shares are being listed on the Exchange pursuant to Rule 5703.

Proposed Rule 5703(d)(2) provides that Class ETF Shares of each Multi-Class Fund will be listed and traded on the Exchange subject to application of proposed Rules 5703(d)(2)(A) and (B). Proposed Rule 5703(d)(2)(A) provides that the Exchange will consider the suspension of trading in, and will initiate delisting proceedings under the Rule 5800 Series of, Class ETF Shares under any of the following circumstances: (i) if the Exchange becomes aware, with respect to the Class ETF Shares: (1) the Multi-Class Fund is no longer eligible to operate an ETF Class as an exchange-traded fund pursuant to, or is otherwise no longer in compliance with the terms and conditions of, the Multi-Class Fund Exemptive Relief; or (2) the ETF Class is no longer in compliance with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief; (ii) if any of the other listing requirements set forth in this Rule 5703 are not continuously maintained; (iii) if, following the initial twelve month period after commencement of trading on the Exchange of the Class ETF Shares, there are fewer than 50 beneficial holders of the Class ETF Shares for 30 or more consecutive trading days; or (iv) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. The Exchange notes that it may become aware that the issuer is no longer compliant with Rule 6c-11 or any applicable exemptive relief thereunder, as described in proposed Rule 5703(d)(2)(A)(i), as a result of either the Exchange identifying non-compliance through its own monitoring process or through notification by the issuer.

Proposed Rule 5703(d)(2)(B) provides that with respect to the Class ETF Shares, upon termination of the Multi-Class Fund or the ETF Class, as the case may be, the Exchange requires that the Class ETF Shares be removed from Exchange listing. The Exchange also

notes that it will obtain a representation from the issuer of Class ETF Shares stating that the requirements of Rule 6c-11 and the applicable exemptive relief under the Investment Company Act will be continuously satisfied and that the issuer will notify the Exchange of any failure to do so.

The Exchange further believes that proposed Rule 5703 is designed to prevent fraudulent and manipulative acts and practices because of the robust surveillances in place on the Exchange as required under proposed Rule 5703(b)(2) along with the similarities of proposed Rule 5703 to the rules related to other securities that are already listed and traded on the Exchange and which would qualify as Class ETF Shares. ETF Shares are identical to Class ETF Shares except that Class ETF Shares have received exemptive relief to operate an exchange-traded fund class in addition to classes of shares that are not exchange-traded. As such, the Exchange believes because the ETF Class would be required to comply, among other things, with the conditions and requirements of Rule 6c-11 under the Investment Company Act, similar to an exchange-traded fund under Rule 5704, the Exchange believes that using Rule 5704 as the basis for proposed Rule 5703 is appropriate.

The Exchange believes that the proposal is consistent with Section 6(b)(1) of the Act³¹ in that, in addition to being designed to prevent fraudulent and manipulative acts and practices, the Exchange has the capacity to enforce proposed Rule 5703 by performing ongoing surveillance of Class ETF Shares listed on the Exchange in order to ensure that (i) the Multi-Class Fund is, and continues to be, eligible to operate an ETF Class as an exchange-traded fund pursuant to, and is in otherwise in compliance with, the terms and conditions of, the Multi-Class Fund Exemptive Relief, (ii) the ETF Class continues to be compliant with the conditions and requirements of Rule 6c-11 under the Investment Company Act, except as noted in such Multi-Class Fund Exemptive Relief, and (iii) the ETF Class and the Multi-Class Fund each satisfies the requirements of 5703, as applicable, on an initial and continuing basis. The Exchange believes that the manipulation concerns that such standards are intended to address are mitigated by a combination of the Exchange's surveillance procedures, the Exchange's ability to halt trading under the proposed Rule 5703(d)(2)(B), and the Exchange's ability to suspend trading and commence delisting

proceedings under proposed Rule 5703(d)(2)(A). The Exchange also believes that such concerns are further mitigated by enhancements to the arbitrage mechanism that have come from compliance with Rule 6c-11, specifically the additional flexibility provided through the use of custom baskets for creations and redemptions and the additional information made available to the public through the additional daily website disclosure obligations applicable under Rule 6c-11.³² The Exchange believes that the combination of these factors will act to keep Class ETF Shares trading near the value of their underlying holdings and further mitigate concerns around manipulation of Class ETF Shares on the Exchange. The Exchange will monitor for compliance with Rule 6c-11 and any applicable exemptive relief in order to ensure that the continued listing standards are being met. Specifically, the Exchange plans to review the website of Class ETF Shares in order to ensure that the requirements of Rule 6c-11 are being met. The Exchange will also employ numerous intraday alerts that will notify Exchange personnel of trading activity throughout the day that is potentially indicative of certain disclosures not being made accurately or the presence of other unusual conditions or circumstances that could be detrimental to the maintenance of a fair and orderly market. As a backstop to the surveillances described above, the Exchange also notes that Rule 5701(d) would require an issuer of Class ETF Shares to notify the Exchange of any failure to comply with Rule 6c-11 or the Investment Company Act.

To the extent that any of the requirements under Rule 6c-11 or the Multi-Class Fund Exemptive Relief under the Investment Company Act are not being met, the Exchange may halt trading in Class ETF Shares as provided in proposed Rule 5703(d)(2)(B). Further, the Exchange may also suspend trading in and commence delisting proceedings for Class ETF Shares where such securities are not in compliance with the applicable listing standards or where the Exchange believes that further dealings on the Exchange are inadvisable. As discussed above, the Exchange also notes that Rule 5701(d) requires any issuer to provide the Exchange with prompt notification after it becomes aware of any non-

Shares or Managed Fund Shares pursuant to Rule 5705(b) or 5735, respectively, and would be subject to all requirements under each of those rules. Further to this point, in the event that Class ETF Shares listed on the Exchange preferred to be listed as a series of Index Fund Shares or Managed Fund Shares (as applicable), nothing would preclude such security from changing to be listed as a series of Index Fund Shares or Managed Fund Shares (as applicable), as long as the security met each of the initial and continued listing obligations under the applicable rules.

³¹ 15 U.S.C. 78f(b)(1).

³² The Exchange notes that the Commission came to a similar conclusion in several places in the ETF Rule Adopting Release. See ETF Rule Adopting Release at 15-18; 60-61; 69-70; 78-79; 82-84; and 95-96.

compliance with proposed Rule 5703, which would include any failure of the issuer to comply with Rule 6c-11 or the Multi-Class Fund Exemptive Relief under the Investment Company Act.

Further, the Exchange also represents that its surveillance procedures are adequate to properly monitor the trading of the Class ETF Shares in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which are currently applicable to Index Fund Shares, Managed Fund Shares and ETF Shares, among other product types, to monitor trading in Class ETF Shares. The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in Class ETF Shares and certain of their applicable underlying components with other markets that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange may obtain information regarding trading in Class ETF Shares and certain of their applicable underlying components from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Additionally, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities that may be held by a Multi-Class Fund for the Class ETF Shares reported to FINRA's TRACE. FINRA also can access data obtained from the MSRB's EMMA system relating to municipal bond trading activity for surveillance purposes in connection with trading in Class ETF Shares, to the extent that the Multi-Class Fund for the Class ETF Shares holds municipal securities. Finally, as noted above, the issuer of Class ETF Shares will be required to comply with Rule 10A-3 under the Act for the initial and continued listing of Class ETF Shares, as provided under Rule 5615(a)(6).³³

The Exchange believes that permitting Class ETF Shares to list on the Exchange will help perfect the mechanism of a free and open market and, in general, will protect investors and the public interest in that it will permit the listing and trading of Class ETF Shares, consistent with the applicable exemptive relief, and in a manner that will benefit investors. Specifically, the Exchange believes that the relief proposed in the Applications and the

expected benefits of the Class ETF Shares described above would be to the benefit of investors.

The Exchange also believes that proposed Rule 5703 to explicitly provide the initial and continued listing standards applicable to Class ETF Shares, including the suspension of trading or removal standards, are designed to promote transparency and clarity in the Exchange's Rules.

The Exchange also believes that the corresponding changes to add Class ETF Shares in the Exchange's corporate governance requirements under Rule 5615(a)(6)(B), the Index Fund Shares provisions in Rule 5705(b), the Managed Fund Shares provisions in Rule 5735, and the trading halt provisions in Equity 4, Rule 4120, each as discussed in detail above, will add clarity to the Exchange's Rulebook. ETF Shares, Managed Fund Shares, and Index Fund Shares are similarly included in these provisions. Therefore, the Exchange believes these are non-substantive changes meant only to subject Class ETF Shares to the same exemptions and provisions currently applicable to ETF Shares, among other product types, so that the treatment of these open-end management investment companies is consistent under the Exchange's rules. 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 not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposal, by permitting the listing and trading of Class ETF Shares under exemptive relief from the Investment Company Act and the rules and regulations thereunder, would introduce additional competition among various ETF products to the benefit of investors.

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. Proceedings To Determine Whether To Approve or Disapprove SR-NASDAQ-2025-037, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section

19(b)(2)(B) of the Act³⁴ to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,³⁵ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposal's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices" and "to protect investors and the public interest."³⁶

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice and Amendment No. 1, in addition to any other comments they may wish to submit about the proposed rule change, as modified by Amendment No. 1. In particular, the Commission seeks comment on whether the proposal is consistent with Section 6(b)(5) of the Act,³⁷ and specifically, whether the proposed rule change is designed to prevent fraudulent and manipulative acts and practices.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the

³⁴ 15 U.S.C. 78s(b)(2)(B).

³⁵ *Id.*

³⁶ 15 U.S.C. 78f(b)(5).

³⁷ *Id.*

³³ See *supra* notes 18 and 25.

Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.³⁸

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by September 16, 2025. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by September 30, 2025.

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-2025-037 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-2025-037. 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 filing 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-2025-037 and should be submitted on or before September 16, 2025. Rebuttal comments should be submitted by September 30, 2025.

³⁸ Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁹

Vanessa A. Countryman,

Secretary.

[FR Doc. 2025-16292 Filed 8-25-25; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35722; File No. 812-15764]

ISQ OpenInfra Income Fund, et al.

August 21, 2025.

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: ISQ OpenInfra Income Fund, I Squared Capital Registered Advisor LLC, I Squared Capital Registered Advisors (US) LLC, I Squared Capital Advisors (UK) LLP, I Squared Asia Advisors Pte. Ltd., I Squared Capital Advisors (HK) Limited, I Squared Capital Advisors (Taiwan) Limited, I Squared Australia Advisors Pty Ltd, I Squared India Advisors Private Limited, I Squared Capital Advisors (Brazil) Ltda., and certain Existing Affiliated Funds as described in Exhibit A to the application.

FILING DATES: The application was filed on April 23, 2025, and amended on August 18, 2025.

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 September 15, 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: Christopher Fischer, I Squared Capital, chris.fischer@isquaredcapital.com, Benjamin Wells, Esq., bwells@stblaw.com, and Jonathan H. Gaines, Esq., jonathan.gaines@stblaw.com, both of Simpson Thacher & Bartlett LLP.

FOR FURTHER INFORMATION CONTACT: Adam Large, Senior Special Counsel, Stephan N. Packs, Senior Counsel, or Daniele Marchesani, Assistant Chief Counsel, 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' First Amended and Restated Application, dated August 18, 2025, 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 www.sec.gov/edgar/searchedgar/companysearch. You may also call the SEC's Office of Investor Education and Advocacy at (202) 551-8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2025-16289 Filed 8-25-25; 8:45 am]

BILLING CODE 8011-01-P

³⁹ 17 CFR 200.30-3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103761; File No. SR-C2-2025-023]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Fees for the One-Minute Interval Intraday Open-Close Report

August 21, 2025.

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 August 14, 2025, Cboe C2 Exchange, Inc. (the “Exchange” or “C2”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe C2 Exchange, Inc. (the “Exchange” or “C2”) proposes to adopt fees for the One-Minute Interval Intraday Open-Close Report. The text of the proposed rule change is 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/) and at the Exchange’s Office of the Secretary.

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 its One-Minute Interval Intraday Open-Close Report and establish the Qualifying Academic Discount Program for ad hoc purchases of historical One-Minute Interval Intraday Open-Close Report.³ The Exchange recently adopted a new data product known as the One-Minute Interval Intraday Open-Close Report and the Exchange now proposes to adopt fees for this product.⁴

By way of background, the Exchange currently offers End-of-Day (“EOD”) and Intraday Open-Close Data (collectively, “Open-Close Data”). EOD Open-Close Data is an end-of-day volume summary of trading activity on the Exchange at the option level by origin (customer, professional customer, broker-dealer, and market maker), side of the market (buy or sell), price, and transaction type (opening or closing). The customer and professional customer volume is further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). The EOD Open-Close Data is proprietary Exchange trade data and does not include trade data from any other exchange. It is also a historical data product and not a real-time data feed. The Exchange also offers Intraday Open-Close Data, which provides similar information to that of EOD Open-Close Data but is produced and updated every 10 minutes during the trading day. Data is captured in “snapshots” taken every 10 minutes throughout the trading day and is available to subscribers within five minutes of the conclusion of each 10-minute period.⁵ The Intraday Open-Close Data provides a volume summary of trading activity on the Exchange at the option level by origin (customer, professional customer, broker-dealer, and market maker), side of the market (buy or sell), and transaction type

(opening or closing). The customer and professional customer volume are further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). The Intraday Open-Close Data is proprietary Exchange trade data and does not include trade data from any other exchange. All Open-Close Data products are completely voluntary products, in that the Exchange is not required by any rule or regulation to make this data available and that potential customers may purchase it on an ad-hoc basis only if they voluntarily choose to do so.

The Exchange recently adopted a new Intraday Open-Close Data that is the same as the existing Intraday Open-Close Data, except that is produced and updated every minute during the trading day (the “One-Minute Intraday Open-Close Data”). The One-Minute Intraday Open-Close Data is captured in “snapshots” taken every 1 minute throughout the trading day and would be available to subscribers within five minutes of the conclusion of each one-minute period.⁶ Similar to the existing Intraday Open-Close Data, the One-Minute Intraday Open-Close Data provides a volume summary of trading activity on the Exchange at the option level by origin (customer, professional customer, broker-dealer, and market maker), side of the market (buy or sell), and transaction type (opening or closing). The customer and professional customer volume are further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). The One-Minute Intraday Open-Close Data is proprietary Exchange trade data and does not include trade data from any other exchange.

The Exchange proposes to provide in its Fee Schedule that firms may purchase One-Minute Intraday Open-Close Data on a subscription basis or by ad hoc request for a specified month (historical file). The Exchange proposes to assess a monthly fee of \$5,000 (or \$60,000 per year) for subscribing to the data feed. The Exchange also proposes to assess a fee of \$1,500 per request per

³ The Exchange initially filed the proposed fee changes on August 1, 2025 (SR-C2-2025-020). On August 14, 2025, the Exchange withdrew that filing and submitted this filing.

⁴ See Securities Exchange Act Release No. 103324 (June 25, 2025), 90 FR 27890 (June 30, 2025) (SR-C2-2025-012).

⁵ For example, subscribers to the intraday product receive the first calculation of intraday data by approximately 9:42 a.m. ET, which represents data captured from 9:30 a.m. to 9:40 a.m. Subscribers receive the next update at 9:52 a.m., representing the data previously provided together with data captured from 9:40 a.m. through 9:50 a.m., and so forth. Each update represents the aggregate data captured from the current “snapshot” and all previous “snapshots.”

⁶ For example, subscribers to the one-minute intraday product would receive the first calculation of intraday data by approximately 9:34 a.m. ET, which represents data captured from 9:30 a.m. to 9:31 a.m. Subscribers will receive the next update at 9:35 a.m., representing the data previously provided together with data captured from 9:31 a.m. through 9:32 a.m., and so forth. Each update will represent the aggregate data captured from the current “snapshot” and all previous “snapshots.” There may be variability in the time delivered during the day based on market activity; the Exchange expects to deliver this in intervals ranging from 2–5 minutes after the one-minute interval.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

month for an ad-hoc request of historical One-Minute Intraday Open-Close Data covering all Exchange-listed securities. An ad-hoc request can be for any number of months beginning with March 2019 for which the data is available.⁷

Additionally, the Exchange proposes to adopt a fee for the external distribution of products derived from the One-Minute Intraday Open-Close Data. The Exchange currently assess a fee of \$5,000 per month to allow the unlimited external distribution of Derived Data from the Ten-Minute Interval Open-Close Data.⁸ By way of background, “Derived Data” is pricing data or other data that (i) is created in whole or in part from Exchange Data, (ii) is not an index or financial product, and (iii) cannot be readily reverse-engineered to recreate Exchange Data or used to create other data that is a reasonable facsimile or substitute for Exchange Data. Derived Data may be created by Distributors for a number of different purposes, as determined by the Distributor. The Exchange now proposes to adopt a fee of \$7,500 per month to allow the unlimited external distribution of Derived Data from One-Minute Intraday Open-Close Data.⁹

Lastly, the Exchange proposes to implement a similar Qualifying Academic Discount that is in place for the existing Intraday Open-Close Data to apply to the One-Minute Intraday Open-Close Data.¹⁰ The proposed Qualifying Academic Discount for the One-Minute Intraday Open-Close Data shall permit qualifying academic purchasers to purchase historical One-Minute Intraday Open-Close Data for \$1,500 per year for the first year (as opposed to the existing rate of \$1,000 per year for the first year for the existing Intraday Open-Close Data). Additional months after the first year may be purchased separately and will be assessed a prorated amount based on the yearly rate (*i.e.*, \$125 per month for historical Intraday Open-Close Data). Particularly, the Exchange believes that academic institutions and researchers provide a valuable service for the Exchange in studying and promoting the options market. Though academic institutions and researchers

have need for granular options data sets, they do not trade upon the data for which they subscribe. The Exchange believes the proposed reduced fee for qualifying academic purchasers of historical One-Minute Intraday Open-Close Data will encourage and promote academic studies of its market data by academic institutions. In order to qualify for the academic pricing, an academic purchaser must be (1) an accredited academic institution or member of the faculty or staff of such an institution, (2) that will use the data in independent academic research, academic journals and other publications, teaching and classroom use, or for other bona fide educational purposes (*i.e.* academic use). Furthermore, use of the data must be limited to faculty and students of an accredited academic institution, and any commercial or profit-seeking usage is excluded. Academic pricing will not be provided to any purchaser whose research is funded by a securities industry participant. The Exchange notes that these same qualifications are in place for Qualifying Academic Discount for both the Short Trade Volume Report offered by the Exchange’s affiliated equities exchanges and the existing EOD Open-Close Data and Intraday Open-Close Data, offered by the Exchange and its affiliated options exchanges.¹¹

The Exchange notes that while the One-Minute Intraday Open-Close Data is priced higher than its existing pricing for the Intraday Open-Close Data this is to be expected, as a participant subscribing to the One-Minute Intraday Open-Close Data receives 10x the data points than a subscriber of Intraday Open-Close Data.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.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.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposal to make the One-Minute Intraday Open-Close Data available for purchase would further broaden the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The proposal also promotes increased transparency through the dissemination of One-Minute Intraday Open-Close Data. The proposed rule change would benefit investors by making the One-Minute Intraday Open-Close Data available for purchase, which as noted above, may promote better informed trading. Particularly, information regarding opening and closing activity across different option series may indicate investor sentiment, which can be helpful trading information. Subscribers to the data may be able to enhance their ability to analyze option trade and volume data on an intraday basis, and create and test trading models and analytical strategies. The Exchange believes One-Minute Intraday Open-Close Data provides a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular series, but also emphasizes such data is not necessary for trading. The Exchange believes that market participants may find it beneficial to receive additional data based on these shorter intervals as opposed to the existing 10-minute intervals provided in the Intraday Open-Close Data. While use cases are the same as the existing 10-minute intervals

⁷ For example, a firm that requests historical Intraday Open-Close Data for the months of June 2025 and July 2025, would be assessed a total of \$3,000.

⁸ See Securities Exchange Act Release No. 34–94912 (May 13, 2022), 87 FR 30542 (May 19, 2022) (SR–C2–2022–011).

⁹ The Exchange notes that this fee is in addition to the product fees for the One-Minute Intraday Open-Close Data.

¹⁰ See Securities Exchange Act Release No. 92173 (June 14, 2021), 86 FR 33399 (June 24, 2021) (SR–C2–2021–010).

¹¹ See *e.g.*, Securities Exchange Act Release No. 102967 (May 1, 2025), 90 FR 19343 (May 7, 2025) (SR–CboeBYX–2025–009) and see also Securities Exchange Act Release No. 92173 (June 14, 2021), 86 FR 33399 (June 24, 2021) (SR–C2–2021–010).

¹² The Exchange also notes that it has introduced clarifying edits to the existing Intraday Open-Close Data in its Fees Schedule to distinguish between the pricing for the ten-minute intraday data and the one-minute intraday data.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ *Id.*

currently provided, the increased frequency provides more current information and, more data reporting intervals throughout the day to gain knowledge of the trading activity by origin. Of further note, the Exchange has created this proposed new report in response to customer feedback.

The Exchange believes the proposed fees are reasonable as the proposed fees reflect modest increases in price relative to the additional data points being offered in this new One-Minute Intraday Open-Close Data. As discussed above, a participant who subscribes to the One-Minute Intraday Open-Close Data receives ten times the data points that they would receive in comparison to the Intraday Open-Close Data and are only seeing an increase of five times in the cost for ten times the amount of data. Similarly, a participant who purchases the historical One-Minute Intraday Open-Close Data for the month of August 2025 receives ten times the amount of data in contrast to a participant who purchases the historical Intraday Open-Close Data for the month of August 2025 with only a 3x difference in the costs. Meaning, a participant receives ten times the data for only three times the cost. Finally, a Distributor of the Intraday Open-Close Data for Derived Data is charged \$5,000 while a Distributor of the One Minute Intraday Open-Close Data is charged \$7,500—again this permits a Distributor to distribute Derived Data based on ten times the amount of underlying data points and to only pay an increased fee of 1.5 times the fee for the Intraday Open-Close Derived Data. In summary, for each fee for the One-Minute Intraday Open-Close Data, a participant is able to receive a greater increase in the amount of data points it receives relative to the increase in the fee they would pay to receive this additional data.

Of further note, other exchanges also offer similar data product.¹⁶ Specifically, NASDAQ OMX PHLX (“PHLX”) and the NASDAQ Stock Market LLC (“NASDAQ”) offer the PHLX Options Trade Outline (“PHOTO”) and NASDAQ Options Trade Outline (“NOTO”), respectively. PHOTO and NOTO provide similar information as that included in the proposed One-Minute Intraday Open-Close Data. Similar to the One-Minute Intraday Open-Close Data, both the PHOTO and NOTO intraday products include periodic, cumulative data for a

particular trading session for a particular option series. Both reports include information regarding the aggregate number of trades to open a position, aggregate number of trades to close a position, and the origin of the trades based on the specific categories of market participants (*i.e.*, customers, broker-dealers, market makers, etc.).¹⁷ The primary distinction between these reports is that the One-Minute Interval Intraday Open-Close Report is provided in one minute intervals as opposed to ten minute intervals.

The Exchange notes that while the pricing of these similar reports is lower¹⁸ than the proposed fees, similar to above, a participant receives a greater increase in the amount of data relative to the increased fee of a competitor offering.¹⁹

Furthermore, proposing fees that are excessively higher than established fees for similar data products, such as the Intraday Open-Close Data, would simply serve to reduce demand for the Exchange’s data product, which as noted, is entirely optional. Like the Exchange’s the Intraday Open-Close Data and similar data products offered at other exchanges, the One-Minute Intraday Open-Close Data provides insight into trading on a specific market and may likewise aid in assessing investor sentiment. Similarly, market participants may be able to analyze option trade and volume data, and create and test trading models and analytical strategies using only the Intraday Open-Close Data. As such, if a market participant views the Intraday Open-Close Data as a more attractive offering for its specific business needs, then such market participant can merely choose to purchase the Exchange’s the Intraday Open-Close Data.

The Exchange also believes the proposed fees are reasonable as they would support the introduction of a new market data product that is designed to aid investors by providing further insight into trading on the Exchange. The Exchange believes One-Minute Intraday Open-Close Data provides a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular series, but also emphasizes such data is not necessary for trading. The Exchange believes that market participants may find it beneficial to receive additional data based on these shorter intervals as opposed to the existing 10-minute intervals provided in the Intraday Open-Close Data. While use cases are the same as the existing 10-minute intervals currently provided, the increased frequency provides more current information and, more data reporting intervals throughout the day to gain knowledge of the trading activity by origin. The Exchange also believes the proposed fees are equitable and not unfairly discriminatory as the fees would apply equally to all users who choose to purchase such data. The Exchange’s proposed fees would not differentiate between subscribers that purchase One-Minute Intraday Open-Close Data and would allow any interested market participant to purchase such data based on their business needs.

Lastly, the Exchange believes that the discount for qualifying academic purchasers for the historical One-Minute Intraday Open-Close Data is reasonable because academic institutions are not able to monetize access to the data as they do not trade on the data set. The Exchange believes the proposed discount will allow for more academic institutions to purchase the historical One-Minute Intraday Open-Close Data, and, as a result, promote research and studies of the options industry to the benefit of all market participants. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all academic institutions that submit an application and meet the accredited academic institution and academic use criteria. As stated above, qualified academic purchasers will subscribe to the data set for educational use and purposes and are not permitted to use the data for commercial or monetizing purposes, nor can they qualify if they are funded by an industry participant. As a result, the Exchange believes the proposed discount is equitable and not unfairly

¹⁷ *Id.*

¹⁸ See Price List—U.S. Derivatives Data for Nasdaq PHLX, LLC (“PHLX”), The Nasdaq Stock Market, LLC (“Nasdaq”), Nasdaq ISE, LLC (“ISE”), and Nasdaq GEMX, LLC (“GEMX”), available at <http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#web>. Particularly, PHLX offers “Nasdaq PHLX Options Trade Outline (PHOTO)” and assesses \$3,000 per month for an intra-day subscription and \$1,000 per month for historical reports; Nasdaq offers the “Nasdaq Options Trade Outline (NOTO)” and assesses \$2,000 per month for an intra-day subscription and \$500 per month for historical reports; ISE offers the “Nasdaq ISE Open/Close Trade Profile” and assesses \$2,500 per month for an intra-day subscription and \$1,000 per month for historical reports; and GEMX offers the “Nasdaq GEMX Open/Close Trade Profile” and assesses \$1,500 per month for an intra-day subscription and \$750 per month for historical reports.

¹⁹ For example, if a firm subscribes to the PHOTO report and the One-Minute Interval Intraday Open-Close Report, a firm receives ten times the amount of data provided in the Exchange’s One-Minute Interval Intraday Open-Close Report for less than double the cost.

¹⁶ See Securities Exchange Act Release No. 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR-PHLX-2010-121); See also Securities Exchange Act Release No. 65587 (October 18, 2011), 76 FR 65765 (October 24, 2011) (SR-NASDAQ-2011-144).

discriminatory because it maintains equal treatment for all industry participants or other subscribers that use the data for vocational, commercial or other for-profit purposes.

As noted above, the Exchange anticipates a wide variety of market participants to purchase One-Minute Intraday Open-Close Data, including but not limited to individual customers, buy-side investors and investment banks. The Exchange reiterates that the decision as to whether or not to purchase the One-Minute Intraday Open-Close Data is entirely optional for all potential subscribers. Indeed, no market participant is required to purchase the One-Minute Intraday Open-Close Data, and the Exchange is not required to make the One-Minute Intraday Open-Close Data available to all investors. Rather, the Exchange is voluntarily making One-Minute Intraday Open-Close Data available, as requested by customers, and market participants may choose to receive (and pay for) this data based on their own business needs. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to make available a data product for purchase that is similar to those offered by other competitor options exchanges but contains finer data reporting intervals.²⁰

The Exchange also does not believe the proposed fees would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own comparable reports that includes additional data points with lower prices to better compete with the Exchange's offerings. The Exchange operates in a highly competitive environment, and its ability to price the reports is constrained by competition among exchanges who choose to adopt similar products. The Exchange must consider this in its pricing discipline in order to compete for subscribers of the Exchange's market data via the reports. For example, proposing fees that are excessively higher than fees for potentially similar data products would simply serve to reduce demand for the Exchange's

reports, which as discussed, market participants are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed fees apply uniformly to any purchaser in that the Exchange does not differentiate between the different market participants that may purchase the report. The proposed fees are set at a reasonable level that would allow any interested market participant to purchase such data based on their business needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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 Act²¹ and paragraph (f) of Rule 19b-4²² 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-C2-2025-023 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.

All submissions should refer to file number SR-C2-2025-023. 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 filing 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-C2-2025-023 and should be submitted on or before September 16, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Vanessa A. Countryman,
Secretary.

[FR Doc. 2025-16296 Filed 8-25-25; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103757; File No. SR-NYSETEX-2025-26]

Self-Regulatory Organizations; NYSE Texas, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule of NYSE Texas, Inc.

August 21, 2025.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on August 20, 2025, the NYSE Texas, Inc. ("NYSE Texas" 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

²³ 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.

²⁰ See supra note 16.

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f).

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 the Fee Schedule of NYSE Texas, Inc. (the "Fee Schedule") to adopt a drop copy port that is identical to drop copy port available on the Exchange's affiliate, NYSE Arca, Inc. ("NYSE Arca"). The proposed rule change is available on the Exchange's website at www.nyse.com and at the principal office of the Exchange.

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 adopt a drop copy port that is identical to drop copy port available on NYSE Arca.⁴

The Exchange currently makes ports available that provide connectivity to the Exchange's trading systems (*i.e.*, ports for the entry of orders and/or quotes ("order/quote entry ports")). With this proposal, the Exchange proposes to adopt drop copy port and related rule text on the Exchange's Fee Schedule. Drop copy ports would provide Participant Firms additional "copies" of order activity transacted over one or more order/quote entry ports. The order activity can be filtered by various parameters, such as MPID, order/quote port, as well as by the kind of order activity, *i.e.*, all order activity or just execution-related activity.⁵ As

proposed, the Fee Schedule would specify that only one fee per drop copy port would apply, even if Participant Firms receive drop copies from multiple order/quote entry ports, except that no fee would apply to ports in the backup datacenter if configured such that it is duplicative of another drop copy port of the same user.

Finally, similar to order/quote entry ports, the use of drop copy ports would be prorated to the number of trading days in a billing month, including any scheduled early closing days, that the port is connected to the Exchange.⁶

The proposed drop copy port is an optional port that provides Participant Firms with additional copies of order activity, and as such, Participant Firms can elect to obtain a drop copy port and are not required to do so.

2. Statutory Basis

The Exchange believes the proposal furthers the objectives of Section 6(b)(5) of the Act⁷ in that the proposed rule change is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange's proposal to adopt drop copy port on the Fee Schedule is consistent with the Act because the drop copy port, which is an optional product, would provide Participant Firms additional "copies" of order activity transacted over one or more order/quote entry ports. Participant Firms currently obtain similar information from their order/quote entry ports. Participant Firms can elect to obtain a drop copy port but are not required to do so. The proposed drop copy port is identical to drop copy port on NYSE Arca.

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. Drop copy port is an optional offering that

schedule of NYSE Arca, which also provides its members with a drop copy port. See NYSE Arca Schedule of Fees, Connectivity Fees at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf.

⁶ NYSE Arca similarly prorates fees for drop copy ports utilized by its members. See NYSE Arca Schedule of Fees, Connectivity Fees, at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf.

⁷ 15 U.S.C. 78f(b)(5).

Participant Firms can choose to obtain. Continuing to offer such products would allow the Exchange to remain competitive in the equities marketplace which currently has 16 equities markets,⁸ numerous alternative trading systems,⁹ and broker-dealer internalizers and wholesalers, all competing with one another. The Exchange's proposal does not impose an undue burden on intra-market competition as this is an optional product that Participant Firms can choose to obtain and are not required to do so. The drop copy port is identical to drop copy port on NYSE Arca. The drop copy port on the Exchange does not impose an undue burden on inter-market competition as other equities markets, including the Exchange's affiliate, NYSE Arca, offer an identical product.

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.

D. 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 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 Act¹⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹¹

⁸ See Cboe U.S. Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share.

⁹ See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atslist.htm>.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) 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

⁴ See NYSE Arca Schedule of Fees, Connectivity Fees, at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf.

⁵ The Exchange proposes to add language to the Fee Schedule to differentiate between drop copy ports and order/quote entry ports. This aspect of the proposed rule change also conforms to the fee

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹³ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day prefiling requirement and the 30-day operative delay so that the proposal may become operative immediately upon filing. The proposed rule change would allow the Exchange to offer the proposed drop copy port immediately and the proposed drop copy port is identical to the drop copy port available on the Exchange's affiliate, NYSE Arca. The Commission believes that the proposed rule change raises no novel issues and that waiver of five-day prefiling requirement and the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the five-day prefiling requirement and operative delay and designates the proposal operative upon filing.¹⁴

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)¹⁵ 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

as designated by the Commission. The Commission has waived this requirement.

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁵ 15 U.S.C. 78s(b)(2)(B).

- Send an email to rule-comments@sec.gov. Please include file number SR-NYSETEX-2025-26 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-NYSETEX-2025-26. 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 filing 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-NYSETEX-2025-26 and should be submitted on or before September 16, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Vanessa A. Countryman,

Secretary.

[FR Doc. 2025-16288 Filed 8-25-25; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103760; File No. SR-CboeBZX-2025-116]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Fees for the One-Minute Interval Intraday Open-Close Report

August 21, 2025.

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 August 14, 2025, 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

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") proposes to adopt fees for the One-Minute Interval Intraday Open-Close Report. The text of the proposed rule change is 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/) and at the Exchange's Office of the Secretary.

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 its One-Minute Interval Intraday Open-Close Report and establish the Qualifying Academic Discount Program for ad hoc purchases of historical One-Minute Interval Intraday Open-Close Report.³ The Exchange recently adopted a new data product known as the One-Minute Interval Intraday Open-Close Report and the Exchange now proposes to adopt fees for this product.⁴

By way of background, the Exchange currently offers End-of-Day ("EOD") and Intraday Open-Close Data (collectively, "Open-Close Data"). EOD Open-Close Data is an end-of-day volume summary of trading activity on the Exchange at the option level by origin (customer, professional customer, broker-dealer,

³ The Exchange initially filed the proposed fee changes on August 1, 2025 (SR-CboeBZX-2025-109). On August 14, 2025, the Exchange withdrew that filing and submitted this filing.

⁴ See Securities Exchange Act Release No. 103322 (June 25, 2025), 90 FR 27887 (June 30, 2025) (SR-CboeBZX-2025-079).

and market maker), side of the market (buy or sell), price, and transaction type (opening or closing). The customer and professional customer volume is further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). The EOD Open-Close Data is proprietary Exchange trade data and does not include trade data from any other exchange. It is also a historical data product and not a real-time data feed. The Exchange also offers Intraday Open-Close Data, which provides similar information to that of EOD Open-Close Data but is produced and updated every 10 minutes during the trading day. Data is captured in “snapshots” taken every 10 minutes throughout the trading day and is available to subscribers within five minutes of the conclusion of each 10-minute period.⁵ The Intraday Open-Close Data provides a volume summary of trading activity on the Exchange at the option level by origin (customer, professional customer, broker-dealer, and market maker), side of the market (buy or sell), and transaction type (opening or closing). The customer and professional customer volume are further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). The Intraday Open-Close Data is proprietary Exchange trade data and does not include trade data from any other exchange. All Open-Close Data products are completely voluntary products, in that the Exchange is not required by any rule or regulation to make this data available and that potential customers may purchase it on an ad-hoc basis only if they voluntarily choose to do so.

The Exchange recently adopted a new Intraday Open-Close Data that is the same as the existing Intraday Open-Close Data, except that is produced and updated every minute during the trading day (the “One-Minute Intraday Open-Close Data”). The One-Minute Intraday Open-Close Data is captured in “snapshots” taken every 1 minute throughout the trading day and would be available to subscribers within five minutes of the conclusion of each one-minute period.⁶ Similar to the existing

Intraday Open-Close Data, the One-Minute Intraday Open-Close Data provides a volume summary of trading activity on the Exchange at the option level by origin (customer, professional customer, broker-dealer, and market maker), side of the market (buy or sell), and transaction type (opening or closing). The customer and professional customer volume are further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). The One-Minute Intraday Open-Close Data is proprietary Exchange trade data and does not include trade data from any other exchange.

The Exchange proposes to provide in its Fee Schedule that firms may purchase One-Minute Intraday Open-Close Data on a subscription basis or by ad hoc request for a specified month (historical file). The Exchange proposes to assess a monthly fee of \$6,000 (or \$72,000 per year) for subscribing to the data feed. The Exchange also proposes to assess a fee of \$2,500 per request per month for an ad-hoc request of historical One-Minute Intraday Open-Close Data covering all Exchange-listed securities. An ad-hoc request can be for any number of months beginning with March 2019 for which the data is available.⁷

Additionally, the Exchange proposes to adopt a fee for the external distribution of products derived from the One-Minute Intraday Open-Close Data. The Exchange currently assess a fee of \$5,000 per month to allow the unlimited external distribution of Derived Data from the Ten-Minute Interval Open-Close Data.⁸ By way of background, “Derived Data” is pricing data or other data that (i) is created in whole or in part from Exchange Data, (ii) is not an index or financial product, and (iii) cannot be readily reverse-engineered to recreate Exchange Data or used to create other data that is a reasonable facsimile or substitute for Exchange Data. Derived Data may be created by Distributors for a number of

which represents data captured from 9:30 a.m. to 9:31 a.m. Subscribers will receive the next update at 9:35 a.m., representing the data previously provided together with data captured from 9:31 a.m. through 9:32 a.m., and so forth. Each update will represent the aggregate data captured from the current “snapshot” and all previous “snapshots.” There may be variability in the time delivered during the day based on market activity; the Exchange expects to deliver this in intervals ranging from 2–5 minutes after the one-minute interval.

⁷ For example, a firm that requests historical Intraday Open-Close Data for the months of June 2025 and July 2025, would be assessed a total of \$3,000.

⁸ See Securities Exchange Act Release No. 34–94912 (May 13, 2022), 87 FR 30542 (May 19, 2022) (SR–C2–2022–011).

different purposes, as determined by the Distributor. The Exchange now proposes to adopt a fee of \$7,500 per month to allow the unlimited external distribution of Derived Data from One-Minute Intraday Open-Close Data.⁹

Lastly, the Exchange proposes to implement a similar Qualifying Academic Discount that is in place for the existing Intraday Open-Close Data to apply to the One-Minute Intraday Open-Close Data.¹⁰ The proposed Qualifying Academic Discount for the One-Minute Intraday Open-Close Data shall permit qualifying academic purchasers to purchase historical One-Minute Intraday Open-Close Data for \$2,500 per year for the first year (as opposed to the existing rate of \$1,500 per year for the first year for the existing Intraday Open-Close Data). Additional months after the first year may be purchased separately and will be assessed a prorated amount based on the yearly rate (*i.e.*, \$208.33 per month for historical Intraday Open-Close). Particularly, the Exchange believes that academic institutions and researchers provide a valuable service for the Exchange in studying and promoting the options market. Though academic institutions and researchers have need for granular options data sets, they do not trade upon the data for which they subscribe. The Exchange believes the proposed reduced fee for qualifying academic purchasers of historical One-Minute Intraday Open-Close Data will encourage and promote academic studies of its market data by academic institutions. In order to qualify for the academic pricing, an academic purchaser must be (1) an accredited academic institution or member of the faculty or staff of such an institution, (2) that will use the data in independent academic research, academic journals and other publications, teaching and classroom use, or for other bona fide educational purposes (*i.e.* academic use). Furthermore, use of the data must be limited to faculty and students of an accredited academic institution, and any commercial or profit-seeking usage is excluded. Academic pricing will not be provided to any purchaser whose research is funded by a securities industry participant. The Exchange notes that these same qualifications are in place for Qualifying Academic Discount for both the Short Trade Volume Report offered by the Exchange’s affiliated equities exchanges

⁹ The Exchange notes that this fee is in addition to the product fees for the One-Minute Intraday Open-Close Data.

¹⁰ See Securities Exchange Act Release No. 92173 (June 14, 2021), 86 FR 33399 (June 24, 2021) (SR–C2–2021–010).

⁵ For example, subscribers to the intraday product receive the first calculation of intraday data by approximately 9:42 a.m. ET, which represents data captured from 9:30 a.m. to 9:40 a.m. Subscribers receive the next update at 9:52 a.m., representing the data previously provided together with data captured from 9:40 a.m. through 9:50 a.m., and so forth. Each update represents the aggregate data captured from the current “snapshot” and all previous “snapshots.”

⁶ For example, subscribers to the one-minute intraday product would receive the first calculation of intraday data by approximately 9:34 a.m. ET,

and the existing EOD Open-Close Data and Intraday Open-Close Data, offered by the Exchange and its affiliated options exchanges.¹¹

The Exchange notes that while the One-Minute Intraday Open-Close Data is priced higher than its existing pricing for the Intraday Open-Close Data this is to be expected, as a participant subscribing to the One-Minute Intraday Open-Close Data receives 10x the data points than a subscriber of Intraday Open-Close Data.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.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.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposal to make the One-Minute Intraday Open-Close Data available for

purchase would further broaden the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The proposal also promotes increased transparency through the dissemination of One-Minute Intraday Open-Close Data. The proposed rule change would benefit investors by making the One-Minute Intraday Open-Close Data available for purchase, which as noted above, may promote better informed trading. Particularly, information regarding opening and closing activity across different option series may indicate investor sentiment, which can be helpful trading information. Subscribers to the data may be able to enhance their ability to analyze option trade and volume data on an intraday basis, and create and test trading models and analytical strategies. The Exchange believes One-Minute Intraday Open-Close Data provides a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular series, but also emphasizes such data is not necessary for trading. The Exchange believes that market participants may find it beneficial to receive additional data based on these shorter intervals as opposed to the existing 10-minute intervals provided in the Intraday Open-Close Data. While use cases are the same as the existing 10-minute intervals currently provided, the increased frequency provides more current information and, more data reporting intervals throughout the day to gain knowledge of the trading activity by origin. Of further note, the Exchange has created this proposed new report in response to customer feedback.

The Exchange believes the proposed fees are reasonable as the proposed fees reflect modest increases in price relative to the additional data points being offered in this new One-Minute Intraday Open-Close Data. As discussed above, a participant who subscribes to the One-Minute Intraday Open-Close Data receives ten times the data points that they would receive in comparison to the Intraday Open-Close Data and are only seeing an increase of four times in the cost for ten times the amount of data. Similarly, a participant who purchases the historical One-Minute Intraday Open-Close Data for the month of August 2025 receives ten times the amount of data in contrast to a participant who purchases the historical Intraday Open-Close Data for the month of August 2025 with just over a 3x difference in the costs. Meaning, a participant receives ten times the data for just over three times the cost.

Finally, a Distributor of the Intraday Open-Close Data for Derived Data is charged \$5,000 while a Distributor of the One Minute Intraday Open-Close Data is charged \$7,500—again this permits a Distributor to distribute Derived Data based on ten times the amount of underlying data points and to only pay an increased fee of 1.5 times the fee for the Intraday Open-Close Derived Data. In summary, for each fee for the One-Minute Intraday Open-Close Data, a participant is able to receive a greater increase in the amount of data points it receives relative to the increase in the fee they would pay to receive this additional data.

Of further note, other exchanges also offer similar data product.¹⁶ Specifically, NASDAQ OMX PHLX (“PHLX”) and the NASDAQ Stock Market LLC (“NASDAQ”) offer the PHLX Options Trade Outline (“PHOTO”) and NASDAQ Options Trade Outline (“NOTO”), respectively. PHOTO and NOTO provide similar information as that included in the proposed One-Minute Intraday Open-Close Data. Similar to the One-Minute Intraday Open-Close Data, both the PHOTO and NOTO intraday products include periodic, cumulative data for a particular trading session for a particular option series. Both reports include information regarding the aggregate number of trades to open a position, aggregate number of trades to close a position, and the origin of the trades based on the specific categories of market participants (*i.e.*, customers, broker-dealers, market makers, *etc.*).¹⁷ The primary distinction between these reports is that the One-Minute Interval Intraday Open-Close Report is provided in one minute intervals as opposed to ten minute intervals.

The Exchange notes that while the pricing of these similar reports is lower¹⁸ than the proposed fees, similar

¹⁶ See Securities Exchange Act Release No. 62887 (September 10, 2010), 75 FR 57092 (September 17, 2010) (SR-Phlx-2010-121); See also Securities Exchange Act Release No. 65587 (October 18, 2011), 76 FR 65765 (October 24, 2011) (SR-NASDAQ-2011-144).

¹⁷ *Id.*

¹⁸ See Price List—U.S. Derivatives Data for Nasdaq PHLX, LLC (“PHLX”), The Nasdaq Stock Market, LLC (“Nasdaq”), Nasdaq ISE, LLC (“ISE”), and Nasdaq GEMX, LLC (“GEMX”), available at <http://www.nasdaqtrader.com/Trader.aspx?id=DPPriceListOptions#web>. Particularly, PHLX offers “Nasdaq PHLX Options Trade Outline (PHOTO)” and assesses \$3,000 per month for an intra-day subscription and \$1,000 per month for historical reports; Nasdaq offers the “Nasdaq Options Trade Outline (NOTO)” and assesses \$2,000 per month for an intra-day subscription and \$500 per month for historical reports; ISE offers the “Nasdaq ISE Open/Close Trade Profile” and assesses \$2,500 per month for an intra-day subscription and \$1,000 per month for historical reports; and GEMX offers the “Nasdaq

¹¹ See *e.g.*, Securities Exchange Act Release No. 102967 (May 1, 2025), 90 FR 19343 (May 7, 2025) (SR-ChoeBYX-2025-009) and see also Securities Exchange Act Release No. 92173 (June 14, 2021), 86 FR 33399 (June 24, 2021) (SR-C2-2021-010).

¹² The Exchange also notes that it has introduced clarifying edits to the existing Intraday Open-Close Data in its Fees Schedule to distinguish between the pricing for the ten-minute intraday data and the one-minute intraday data.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ *Id.*

to above, a participant receives a greater increase in the amount of data relative to the increased fee of a competitor offering.¹⁹

Furthermore, proposing fees that are excessively higher than established fees for similar data products, such as the Intraday Open-Close Data, would simply serve to reduce demand for the Exchange's data product, which as noted, is entirely optional. Like the Exchange's the Intraday Open-Close Data and similar data products offered at other exchanges, the One-Minute Intraday Open-Close Data provides insight into trading on a specific market and may likewise aid in assessing investor sentiment. Similarly, market participants may be able to analyze option trade and volume data, and create and test trading models and analytical strategies using only the Intraday Open-Close Data. As such, if a market participant views the Intraday Open-Close Data as a more attractive offering for its specific business needs, then such market participant can merely choose to purchase the Exchange's the Intraday Open-Close Data.

The Exchange also believes the proposed fees are reasonable as they would support the introduction of a new market data product that is designed to aid investors by providing further insight into trading on the Exchange. The Exchange believes One-Minute Intraday Open-Close Data provides a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular series, but also emphasizes such data is not necessary for trading. The Exchange believes that market participants may find it beneficial to receive additional data based on these shorter intervals as opposed to the existing 10-minute intervals provided in the Intraday Open-Close Data. While use cases are the same as the existing 10-minute intervals currently provided, the increased frequency provides more current information and, more data reporting intervals throughout the day to gain knowledge of the trading activity by origin. The Exchange also believes the proposed fees are equitable and not unfairly discriminatory as the fees would apply equally to all users who choose to purchase such data. The Exchange's proposed fees would not

differentiate between subscribers that purchase One-Minute Intraday Open-Close Data and would allow any interested market participant to purchase such data based on their business needs.

Lastly, the Exchange believes that the discount for qualifying academic purchasers for the historical One-Minute Intraday Open-Close Data is reasonable because academic institutions are not able to monetize access to the data as they do not trade on the data set. The Exchange believes the proposed discount will allow for more academic institutions to purchase the historical One-Minute Intraday Open-Close Data, and, as a result, promote research and studies of the options industry to the benefit of all market participants. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all academic institutions that submit an application and meet the accredited academic institution and academic use criteria. As stated above, qualified academic purchasers will subscribe to the data set for educational use and purposes and are not permitted to use the data for commercial or monetizing purposes, nor can they qualify if they are funded by an industry participant. As a result, the Exchange believes the proposed discount is equitable and not unfairly discriminatory because it maintains equal treatment for all industry participants or other subscribers that use the data for vocational, commercial or other for-profit purposes.

As noted above, the Exchange anticipates a wide variety of market participants to purchase One-Minute Intraday Open-Close Data, including but not limited to individual customers, buy-side investors and investment banks. The Exchange reiterates that the decision as to whether or not to purchase the One-Minute Intraday Open-Close Data is entirely optional for all potential subscribers. Indeed, no market participant is required to purchase the One-Minute Intraday Open-Close Data, and the Exchange is not required to make the One-Minute Intraday Open-Close Data available to all investors. Rather, the Exchange is voluntarily making One-Minute Intraday Open-Close Data available, as requested by customers, and market participants may choose to receive (and pay for) this data based on their own business needs. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to make available a data product for purchase that is similar to those offered by other competitor options exchanges but contains finer data reporting intervals.²⁰

The Exchange also does not believe the proposed fees would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own comparable reports that includes additional data points with lower prices to better compete with the Exchange's offerings. The Exchange operates in a highly competitive environment, and its ability to price the reports is constrained by competition among exchanges who choose to adopt similar products. The Exchange must consider this in its pricing discipline in order to compete for subscribers of the Exchange's market data via the reports. For example, proposing fees that are excessively higher than fees for potentially similar data products would simply serve to reduce demand for the Exchange's reports, which as discussed, market participants are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed fees apply uniformly to any purchaser in that the Exchange does not differentiate between the different market participants that may purchase the report. The proposed fees are set at a reasonable level that would allow any interested market participant to purchase such data based on their business needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

GEMX Open/Close Trade Profile" and assesses \$1,500 per month for an intra-day subscription and \$750 per month for historical reports.

¹⁹ For example, if a firm subscribes to the PHOTO report and the One-Minute Interval Intraday Open-Close Report, a firm receives ten times the amount of data provided in the Exchange's One-Minute Interval Intraday Open-Close Report for only double the cost.

²⁰ See supra note 16.

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 Act²¹ and paragraph (f) of Rule 19b-4²² 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-2025-116 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-2025-116. 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 filing 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-2025-116 and should be submitted on or before September 16, 2025.

²¹ 15 U.S.C. 78s(b)(3)(A).
²² 17 CFR 240.19b-4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³
Vanessa A. Countryman,
Secretary.
[FR Doc. 2025-16294 Filed 8-25-25; 8:45 am]
BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #21242; ARIZONA Disaster Number AZ-20012 Declaration of Economic Injury]

Administrative Declaration of an Economic Injury Disaster for the State of Arizona

AGENCY: U.S. Small Business Administration.
ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Arizona dated August 18, 2025.

Incident: Dragon Bravo and White Sage Fires.

DATES: Issued on August 18, 2025.
Incident Period: July 4, 2025 and continuing.

Economic Injury (EIDL) Loan Application Deadline Date: May 18, 2026.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Sharon Henderson, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator’s EIDL declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal <https://lending.sba.gov> or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at disastercustomerservice@sba.gov or by phone at 1-800-659-2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Coconino.

Contiguous Counties:

Arizona: Gila, Mohave, Navajo, Yavapai.
Utah: Kane, San Juan.

The Interest Rates are:

²³ 17 CFR 200.30-3(a)(12).

	Percent
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.625

The number assigned to this disaster for economic injury is 212420.

The States which received an EIDL Declaration are Arizona, Utah.

(Catalog of Federal Domestic Assistance Number 59008)

(Authority: 13 CFR 1234.3(b).)

James Stallings,

Associate Administrator.

[FR Doc. 2025-16329 Filed 8-25-25; 8:45 am]

BILLING CODE 8026-09-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA-2024-2404; Summary Notice No. -2025-51]

Petition for Exemption; Summary of Petition Received; Leidos, Inc.

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 September 15, 2025.

ADDRESSES: Send comments identified by docket number FAA-2024-2404 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: Liam Andrews, 202–267–8181, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, at 202–267–9677.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

Dan Ngo,

Manager, Part 11 Petitions Branch, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2024–2404

Petitioner: Leidos, Inc.

Sections of 14 CFR Affected:

§§ 61.3(a)(1)(i), 61.3(c)(1), 61.23(a)(2), 91.7(a), 91.119(c), 91.121, 91.151(b), 91.403(b), 91.405(a), 91.407(a)(1), 91.409(a)(1), 91.409(a)(2), 91.417(a), and 91.417(b).

Description of Relief Sought: Leidos, Inc., seeks to amend their current exemption, Exemption No. 23892 to conduct beyond visual line of sight (BVLOS) operations.

[FR Doc. 2025–16284 Filed 8–25–25; 8:45 a.m.]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2025–1268; Summary Notice No.—2025–50]

Petition for Exemption; Summary of Petition Received; Tactical Electronics and Military Supply LLC.

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 September 15, 2025.

ADDRESSES: Send comments identified by docket number FAA–2025–1268 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–2025–1268.

Petitioner: Tactical Electronics and Military Supply LLC.

Section(s) of 14 CFR Affected: § 107.36.

Description of Relief Sought: Tactical Electronics and Military Supply LLC seeks relief for limited dispensing of Hazardous Material, as defined in 49 CFR 171.8, with small unmanned aircraft systems (UAS) weighing less than 55 pounds (lbs.), including payload. The petitioner proposes to conduct research, development, testing and evaluation, along with realistic training for Department of Defense (DoD) customers regarding offensive and defensive use of Kinetic small UAS platforms.

[FR Doc. 2025–16282 Filed 8–25–25; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2024–2435; Summary Notice No.—2025–52]

Petition for Exemption; Summary of Petition Received; Agri Spray Drones LLC

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 September 15, 2025.

ADDRESSES: Send comments identified by docket number FAA–2024–2435 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–2024–2435.

Petitioner: Agri Spray Drones LLC.

Section(s) of 14 CFR Affected:

§§ 61.3(a)(1)(i), 61.23(a)(2)(c), 61.101(e)(4), 61.101(e)(5), 61.113(a), 61.113(b), 61.315(a), 61.315(c)(2), 61.315(3), 91.7(a), 91.119(c), 91.121, 91.151(b), 91.403(b), 91.405(a), 91.407(a)(1), 91.409(a)(1), 91.409(a)(2), 91.417(a), 91.417(b).

Description of Relief Sought: Agri Spray Drones LLC (Agri Spray Drones) requests exemption for banner towing operations with the DJI FlyCart 30 unmanned aircraft system (UAS), at a maximum take-off weight (MTOW) of 209.73 pounds (lbs.), 200 feet above ground level (AGL) or below, and limited to property owned by Agri Spray Drones or privately owned crop fields adjacent to contracted festivals and events throughout the Midwest.

[FR Doc. 2025–16278 Filed 8–25–25; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2025–0260]

Parts and Accessories Necessary for Safe Operation; Emergency Safety Solutions' Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of application for exemption; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on an application for a five year exemption received from Emergency Safety Solutions (ESS or Applicant). Specifically, ESS seeks an exemption from certain Federal Motor Carrier Safety Regulations (FMCSRs) related to requirements for placing warning devices around a stopped commercial motor vehicle (CMV), requirements that exterior lamps be steady burning, and requirements that specific types of warning devices be used. The exemption would allow CMVs to operate with a module manufactured by ESS which pulses the rear clearance, identification, and brake lamps from a standard lower level lighting intensity (1–2 Hertz) to a higher-level lighting intensity (4–5 Hertz) when activated during emergency stops or breakdowns. FMCSA requests public comment on Applicant's request for exemption.

DATES: Comments must be received on or before September 25, 2025.

ADDRESSES: You may submit comments identified by Federal Docket

Management System (FDMS) Number FMCSA–2025–0260 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–2025–0260) 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: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

Privacy Act: In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice DOT/ALL 14 –FDMS, which can be reviewed at <https://www.transportation.gov/privacy>. The comments are posted without edit and are searchable by the name of the submitter.

FOR FURTHER INFORMATION CONTACT: Mr. David Sutula, Chief, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, FMCSA, at (202) 366–9209, or by email at david.sutula@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–2025–0260), indicate the specific section of this document to which the comment applies, and provide a reason for 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–2025–0260” in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, click the “Comment” button, and type your comment into the text box on 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.

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 analysis. The Agency must provide an opportunity for public comment on the request.

The Agency reviews the application, safety analyses, and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved without the exemption, pursuant to the standard set forth in 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 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 reason for the denial (49 CFR 381.315(c)(2)). The exemption may be renewed (49 CFR 381.300(b)).

III. Applicant’s Request

Current Regulatory Requirements

Applicant seeks an exemption from the requirements in 49 CFR 393.95(f), 392.22(a), and 392.22(b). The applicable FMCSRs require the driver of a CMV stopped on the traveled portion or the shoulder of a road for any cause other than a necessary traffic stop to activate hazard warning signal flashers and place required warning devices as soon as possible, but within ten minutes, at specified locations behind and in front of the stopped CMV. They also specify placement of warning devices in certain circumstances, such as during daylight hours, or where devices may be obstructed from view (*e.g.*, when stopped within 500 feet of a curve or the crest of a hill). 49 CFR 392.22(b). The FMCSRs also require that all exterior lamps be steady burning, with certain exceptions. 49 CFR 393.25(e). Finally, the FMCSRs specify the types and number of warning devices to be used for stopped vehicles, namely three bidirectional emergency reflective triangles, or at least six fuses or three liquid-burning flares. 49 CFR 393.95(f)(1)–(2). Other warning devices may be used in addition to required devices, as long as they do not reduce the effectiveness of required devices. 49 CFR 393.95(f)(3).

Applicant’s Request

Applicant requests the exemption for two Hazard Enhanced Location Protocol (H.E.L.P.) lighting alert products, H.E.L.P. DeliverSAFE Truck and H.E.L.P. DeliverSAFE Trailer. Applicant requests an exemption from §§ 392.22(a), 392.22(b), and 393.95(f) for all drivers of CMVs equipped with the H.E.L.P. DeliverSAFE Truck system. Applicant requests an exemption from §§ 392.22(a) and 392.22(b) for all drivers of CMVs equipped with the H.E.L.P. DeliverSAFE Trailer system. The H.E.L.P. DeliverSAFE Truck module taps into the CMV’s red and amber lighting circuits and activates higher flash rates on lamps on the front, sides, and rear of the CMV tractor and trailer or box truck when the CMV is in park or the parking brake is engaged, the hazard lights are on, and the module’s hard switch is turned on. The H.E.L.P. DeliverSAFE Trailer module is mounted externally between the tractor and trailer and relies on software to confirm

the vehicle is stationary, hazard lights are activated, and the system is armed via either mobile app or hard switch located on the product. The Trailer module activates higher flash rates on lamps on the sides and rear of the trailer of the stopped CMV but because it does not activate lamps on the tractor, the driver would continue to need to carry warning devices required by § 393.95(f) if stopped on an undivided or two-lane highway where traffic is approaching from the front of the CMV.

Applicant asserts that the H.E.L.P. Lighting Alerts will pulsate at higher frequency of 4–5 hertz when activated during emergency stops and, therefore, will enhance visibility of a stopped or stalled CMV to other approaching motorists. Applicant submits that pulsating of the required and auxiliary lamps of a CMV significantly increases visibility and reduces the frequency of rear-end crashes, without the need for each CMV to be equipped with warning devices required by the FMCSRs. Applicant cites studies, including a 2010 study conducted by performed by Virginia Tech Transportation Institute (VTTI) for the National Highway Traffic Safety Administration (NHTSA) (DOT HS 811 329) and 2022 study performed by VTTI for ESS, that it states support its claim that the ESS module will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent the exemption. Applicant also states that its modules protect CMV drivers by removing the need for the driver to exit the CMV to place the FMCSR-required warning devices around the CMV and then recover the devices in or alongside moving traffic.

While not directly relevant to the exemption request, the Applicant states that its H.E.L.P. Digital Alerts module supplements the system by sending digital warnings to navigation systems of oncoming motorists to alert them to the disabled CMV’s presence approximately 20 seconds before the approaching vehicle is predicted to encounter the CMV.

Applicant further explains that the National Highway Traffic Safety Administration provided ESS with a January 19, 2021, interpretation letter advising that the H.E.L.P. Lighting Alerts are permitted under the Federal Motor Vehicle Safety Standards as an auxiliary hazard warning signal flasher.

A copy of ESS’s application for exemption, and all supporting materials, are 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 ESS's application for a five-year exemption from 49 CFR 393.95(f), 392.22(a), and 392.22(b).

All comments received before the close of business on the comment closing date 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 may 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. 2025-16310 Filed 8-25-25; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2025-0467]

Request for Comments on the Renewal of a Previously Approved Collection: Request for Waiver of Service Obligation, Request for Deferment of Service Obligation, and Application for Review

AGENCY: Maritime Administration (MARAD), U.S. Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: MARAD invites public comments on its intention to request Office of Management and Budget (OMB) approval to renew an information collection in accordance with the Paperwork Reduction Act of 1995. The proposed collection OMB 2133-0510 (Request for Waiver of Service Obligation, Request for Deferment of Service Obligation, and Application for Review) is used to determine if waivers and deferments may be granted to graduates of the U.S. Merchant Marine Academy (USMMA) and State Maritime Academies (SMAs) who participated in the Student Incentive Payment (SIP) Program. There are no changes since the last renewal. MARAD is required to publish this notice in the **Federal Register** to obtain comments from the public and affected agencies.

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 information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Danielle Bennett, 202-366-7618, Office of Maritime Labor and Training, W23-458, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room, Washington, DC 20590, Email: Maritime.Graduate@dot.gov.

SUPPLEMENTARY INFORMATION:

Title: Request for Waiver of Service Obligation, Request for Deferment of Service Obligation, and Application for Review.

OMB Control Number: 2133-0510.

Type of Request: Extension of a previously approved collection.

Abstract: This collection may be used by USMMA and SMA SIP graduates to request: (1) a waiver of their service obligation requirement; (2) a deferment of their service obligation; or (3) a review of the decision made about a waiver or deferment request by the Maritime Administrator.

Respondents: USMMA and SMA SIP graduates.

Affected Public: Individuals or households.

Estimated Number of Respondents: 11.

Estimated Number of Responses: 11.

Estimated Hours per Response: .5 Hours (30 minutes).

Annual Estimated Total Annual Burden Hours: 7.

Frequency of Response: As needed.

A 60-day **Federal Register** Notice soliciting comments on this information collection was published on June 5, 2025, **Federal Register** (FR 24192, Vol. 90, No. 208).

(Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.49.)

By Order of the Maritime Administration.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2025-16347 Filed 8-25-25; 8:45 am]

BILLING CODE 4910-81-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 August 18, 2025. See **SUPPLEMENTARY INFORMATION** section 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 Action

On August 18, 2025, OFAC determined that one or more persons identified below meet one or more of the criteria for the imposition of sanctions set forth in section 1(a)–(c) of Executive Order 14059 of December 15, 2021, "Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade," 86 FR 71549 (E.O. 14059). OFAC has selected to impose blocking sanctions pursuant to section 2(a)(i) of E.O. 14059 on the persons identified below.

As a result, 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. LOPEZ VEGA, Edwin Danney (a.k.a. "Pecho de Rata"), Limon, Costa Rica; DOB 02 Jan 1977; POB Centro Central, Limon, Costa Rica; nationality Costa Rica; Gender Male; Cedula No. 701210791 (Costa Rica) (individual) [ILLICIT-DRUGS-EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

2. GAMBOA SANCHEZ, Celso Manuel, Cartago, Costa Rica; DOB 21 Apr 1976; POB Carmen Central, San Jose, Costa Rica; nationality Costa Rica; Gender Male; Cedula No. 109380563 (Costa Rica) (individual) [ILLCIT-DRUGS-EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

3. JAMES WILSON, Alejandro Antonio (a.k.a. "Turesky"), San Jose, Costa Rica; DOB 05 Oct 1972; POB Centro Central, Limon, Costa Rica; nationality Costa Rica; Gender Male; Cedula No. 701040769 (Costa Rica) (individual) [ILLCIT-DRUGS-EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

4. ARIAS MONGE, Alejandro (a.k.a. "Diablo"), Limon, Costa Rica; DOB 19 Sep 1984; POB Guapiles Pococi, Limon, Costa Rica; nationality Costa Rica; Gender Male; Cedula No. 701600166 (Costa Rica) (individual) [ILLCIT-DRUGS-EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

Entities

1. LIMON BLACK STAR FC, Limon, Costa Rica; Organization Established Date 2022; Organization Type: Activities of sports clubs [ILLCIT-DRUGS-EO14059] (Linked To: GAMBOA SANCHEZ, Celso Manuel).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Celso Manuel Gamboa Sanchez, a person whose property and interests in property are blocked pursuant to E.O. 14059.

2. BUFETE CELSO GAMBOA AND ASOCIADOS, San Jose, Costa Rica; Organization Established Date 1945; Organization Type: Legal activities [ILLCIT-DRUGS-EO14059] (Linked To: GAMBOA SANCHEZ, Celso Manuel).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Celso Manuel Gamboa Sanchez, a person whose property and interests in property are blocked pursuant to E.O. 14059.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

[FR Doc. 2025-16264 Filed 8-25-25; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0095]

Agency Information Collection Activity Under OMB Review: Pension Claim Questionnaire for Farm Income

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 September 25, 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. 2900-0095."

FOR FURTHER INFORMATION CONTACT: VA PRA information: Dorothy Glasgow, 202-461-1084, VAPRA@va.gov.

SUPPLEMENTARY INFORMATION:

Title: Pension Claim Questionnaire for Farm Income (21P-4165).

OMB Control Number: 2900-0095
<https://www.reginfo.gov/public/do/PRASearch>.

Type of Review: Extension without change of a currently approved collection.

Abstract: The Department of Veterans Affairs (VA) through its Veterans

Benefits Administration (VBA) administers an integrated program of benefits and services, established by law, for Veterans, service personnel, and their dependents and/or beneficiaries. Entitlement to pension benefits for veterans and their surviving dependents is based on the family's countable annual income under the authority of 38 U.S.C. 1503 and the authority of 38 U.S.C. 1522. The VA Form 21P-4165 is used to gather the necessary information to evaluate the claimant's countable income and net worth related to the operation of a farm to establish entitlement to pension benefits and to evaluate a beneficiary's ongoing entitlement to pension benefits.

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 90 FR 26682, June 23, 2025.

Affected Public: Individuals or Households.

Estimated Annual Burden: 109 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 218.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dorothy Glasgow,

Acting, VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2025-16336 Filed 8-25-25; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0036]

Agency Information Collection Activity Under OMB Review: Statement of Disappearance

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 September 25, 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. 2900–0036.”

FOR FURTHER INFORMATION CONTACT: VA PRA information: Dorothy Glasgow, 202–461–1084, VAPRA@va.gov

SUPPLEMENTARY INFORMATION:

Title: Statement of Disappearance (VA Form 21P–1775).

OMB Control Number: 2900–0036
<https://www.reginfo.gov/public/do/PRASearch>.

Type of Review: Extension without change of a currently approved collection.

Abstract: The major use of the form is used to gather the necessary information to determine if a decision of presumptive death can be made for benefit payment purposes. 38 U.S.C. 108 requires a formal “presumption of death” when a veteran has been missing for seven years. It would be impossible to administer the Survivor Benefits program without this collection of information. This is an extension only, no substantive changes.

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 90 FR 26681, June 23, 2025.

Affected Public: Individuals or Households.

Estimated Annual Burden: 28 hours.
Estimated Average Burden per Respondent: 2.75 hours.
Frequency of Response: One time.
Estimated Number of Respondents: 10.

Authority: 44 U.S.C. 3501 *et seq.*

Dorothy Glasgow,

Acting, VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2025–16334 Filed 8–25–25; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0906]

Agency Information Collection Activity Under OMB Review: Application for Veterans Affairs Life Insurance (VALife)

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 September 25, 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. 2900–0906.”

FOR FURTHER INFORMATION CONTACT: VA PRA information: Dorothy Glasgow, (202) 461–1084, VAPRA@va.gov.

SUPPLEMENTARY INFORMATION:

Title: Application for Veterans Affairs Life Insurance (VALife) VA Form 29–10277.

OMB Control Number: 2900–0906
<https://www.reginfo.gov/public/do/PRASearch>.

Type of Review: Extension without change of a currently approved collection.

Abstract: This form is used by authorized agents (POA, Guardian, or VA Fiduciary) to apply on behalf of incompetent Veterans for Veterans Affairs Life Insurance (VALI) and to designate a beneficiary. The information is required by law, 38 U.S.C. Section 1922.

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 90 FR 26681, June 23, 2025.

Affected Public: Individuals or Households.

Estimated Annual Burden: 8,333.

Estimated Average Burden per

Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 25,000.

Authority: 44 U.S.C. 3501 *et seq.*

Dorothy Glasgow,

Acting, VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2025–16337 Filed 8–25–25; 8:45 am]

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Part II

Securities and Exchange Commission

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Electronic FLEX Options Rules; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-103759; File No. SR-Phlx-2025-38]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Electronic FLEX Options Rules

August 21, 2025.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 13, 2025, 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 adopt rules that will govern the listing and trading of electronic flexible exchange options (“FLEX Options”).

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/phlx/rulefilings> and at the principal office of the Exchange.

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 rules in new Options 3A that will govern the

listing and trading of FLEX Options on the Exchange’s electronic market.³

Summary

The Exchange is proposing this new functionality be implemented in connection with a technology migration to enhanced Nasdaq, Inc. (“Nasdaq”) functionality that will result in higher performance, scalability, and more robust architecture.⁴ The Exchange intends to begin implementation of the proposed rule change on November 3, 2025.⁵ Phlx will migrate to the new platform on a symbol-by-symbol basis over 5 week period. The delayed implementation of the proposed FLEX rules will ensure that the Exchange will have the necessary functionality in place to trade FLEX. The Exchange will issue a public notice to Exchange Phlx members⁶ and members organizations⁷

³ FLEX Options include both single-leg and Complex Order options. If a particular rule only applies to a Complex Order, the Exchange has noted that distinction in the rule text. *See infra* notes 71–73.

⁴ The Exchange separately proposed a number of rule filings in connection with this technology migration. *See* Securities Exchange Act Release No. 101989 (December 30, 2024), 89 FR 106888 (December 30, 2024) (SR-Phlx-2024-71). SR-Phlx-2024-71 is effective but not yet operative. SR-Phlx-2024-71 would be operative at the same time as this rule change as they are both part of the same technology migration. *See also* Securities Exchange Act Release No. 102862 (April 15, 2025), 90 FR 16731 (April 21, 2025) (SR-Phlx-2025-17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx’s Complex Order Functionality). SR-Phlx-2025-17 proposed the same operative date as this proposal as they are both part of the same technology migration. *See also* Securities Exchange Act Release No. 103667 (August 8, 2025), 90 FR 39042 (August 13, 2025) (SR-Phlx-2025-35) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend PXL and Adopt New Auctions).

⁵ *See* <https://www.nasdaqtrader.com/MicroNews.aspx?id=OTA2024-17>.

⁶ The term “member” means a permit holder which has not been terminated in accordance with the By-Laws and these Rules of the Exchange. A member is a natural person and must be a person associated with a member organization. Any references in the rules of the Exchange to the rights or obligations of an associated person or person associated with a member organization also includes a member. *See* Options 1, Section 1(16).

⁷ The term “member organization” means a corporation, partnership (general or limited), limited liability partnership, limited liability company, business trust or similar organization, transacting business as a broker or a dealer in securities and which has the status of a member organization by virtue of (i) admission to membership given to it by the Membership Department pursuant to the provisions of General 3, Sections 5 and 10 or the By-Laws or (ii) the transitional rules adopted by the Exchange pursuant to Section 6-4 of the By-Laws. References herein to officer or partner, when used in the context of a member organization, shall include any person holding a similar position in any organization other than a corporation or partnership that has the status of a member organization. *See* Options 1, Section 1(17).

(collectively “Members”)⁸ to highlight the features for FLEX proposed hereunder.

As proposed, FLEX Options will be customized options contracts that will allow investors to tailor contract terms for exchange-listed equity and index options. FLEX Options will be designed to meet the needs of investors for greater flexibility in selecting the terms of options within the parameters of the Exchange’s proposed rules. FLEX Options will not be preestablished for trading and will not be listed individually for trading on the Exchange. Rather, investors will select FLEX Option terms and will be limited by the parameters detailed below in their selection of those terms. As a result, FLEX Options would allow investors to specify more specific, individualized investment objectives than may be available to them in the standardized options market.

Today, Phlx permits members located on Phlx’s trading floor to transact FLEX Options pursuant to its FLEX rules at Options 8, Section 34. FLEX trading on the trading floor takes place in open outcry subject to the Options 8 Rules which are specific to the trading floor.⁹ Today, only Phlx members who are approved for trading on the trading floor may transact FLEX Options. The proposed FLEX electronic rules would permit electronic Phlx members and member organizations to transact options pursuant to the proposed Options 3A rules similar to the electronic rules of other options exchanges.¹⁰ Finally, the Exchange notes that while ISE does not transact FLEX Currency Options, these products are currently traded on Phlx’s trading floor today and will continue to be offered on Phlx’s trading floor.

Some key features of the new electronic FLEX Options functionality are as follows:

- **System Availability:** The Exchange will not conduct an Opening Process pursuant to Options 3, Section 8 in FLEX Options.¹¹ Orders in FLEX Options may only be submitted through an electronic FLEX Auction, a FLEX Price Improvement XL (“FLEX PXL”),

⁸ The Exchange will utilize the terms “member” and “member organization” for purposes of the rule text. For ease of reference, the Exchange proposes to use the word “Member” to signify members and member organization in this proposal.

⁹ *See infra* note 22.

¹⁰ *See infra* note 23.

¹¹ *See* proposed Options 3A, Section 8(a). Rather, Members may begin submitting orders in FLEX Options into one of the proposed auction mechanisms (*i.e.*, electronic FLEX Auction, FLEX PXL, and FLEX Solicited Order Mechanism) once the underlying security is open for trading. *See* proposed Options 3A, Section 8(b).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

or a FLEX Solicited Order Mechanism (“FLEX SOM”), each as discussed in detail below.¹² Accordingly, the Exchange’s simple and complex order books will not be available for transactions in FLEX Options.¹³

- **Terms:** FLEX Options will be a type of put or call, and will allow investors the flexibility to choose an exercise style of American or European, an expiration date, a settlement type, and an exercise price, all within the parameters specified in the proposed rules.¹⁴ As discussed further below, FLEX Options will not be permitted with identical terms as an existing non-FLEX Option series listed on the Exchange.¹⁵

- **Priority:** As discussed in detail below within the respective sections for FLEX Auctions, FLEX PIXL, and FLEX SOM, the Exchange will apply the same priority order for FLEX Options as it applies today in its standard non-FLEX market, particularly in its standard auction mechanisms such as its standard Solicited Order Mechanism and standard PIXL. Specifically, the System¹⁶ shall execute trading interest at the best price level within the System before executing at the next best price. Public Customers shall have priority over non-Public Customer interest at the same price with time priority meaning that priority shall be afforded to Public Customer orders in the sequence in which they are received by the System. As set out in Options 1, Section 1(b)(46), 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).¹⁷

¹² See proposed Options 3A, Section 11(a).

¹³ See proposed Options 3A, Section 10(a).

¹⁴ As discussed later in this filing, proposed Options 3A, Section 3(c) will govern FLEX Options terms.

¹⁵ At least one of the following terms must differ between FLEX Options and non-FLEX Options on the same underlying security: exercise date, exercise price, or exercise style. See proposed Options 3A, Section 3(b)(1).

¹⁶ The 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. See Options 1, Section 1(b)(57).

¹⁷ The term “Professional” means any person or entity that (i) is not a broker or dealer in securities,

Because of their composition, the Exchange believes that FLEX Options may allow investors to more closely meet their individual investment and hedging objectives by customizing options contracts for the purpose of satisfying particular investment objectives that could not be met by the standardized markets.

Background

The Commission approved the trading of FLEX Options in 1993.¹⁸ At the time, the Chicago Board Options Exchange, Inc., now Cboe Exchange, Inc. (“Cboe”), proposed FLEX Options based on the Standard and Poor’s Corporation 500 and 100 Stock Indexes.¹⁹ These FLEX Options were offered as an alternative to an over-the-counter (“OTC”) market in customized equity options.²⁰ Several years after the initial approval, the Commission approved the trading of additional FLEX Options on specified equity securities.²¹ In its order, the Commission provided: “The benefits of the Exchanges’ options markets include, but are not limited to, a centralized market center, an auction market with posted transparent market quotations and transaction reporting, parameters and procedures for clearance and settlement, and the guarantee of the OCC [Options Clearing Corporation] for all contracts traded on the Exchange.”²²

The Exchange notes that FLEX Options are currently traded on Cboe, NYSE American LLC (“NYSE American”), NYSE Arca, Inc. (“NYSE Arca”), Nasdaq PHLX LLC (“Phlx”), Nasdaq ISE, LLC (“ISE”), and FLEX Equity Options on BOX Exchange LLC (“BOX”).²³ The Exchange further notes

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).

¹⁸ See Securities Exchange Act Release No. 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993) (SR-CBOE-92-17) (Order Approving and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1, 2, 3, and 4 to Proposed Rule Changes by the Chicago Board Options Exchange, Inc., Relating to FLEX Options).

¹⁹ See *id.*

²⁰ See *id.*

²¹ See Securities Exchange Act Release No. 36841 (February 14, 1996), 61 FR 6666 (February 21, 1996) (SR-CBOE-95-43) (SR-PSE-95-24) (Order Approving Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval of Amendments by the Chicago Board Options Exchange, Inc. and the Pacific Stock Exchange, Inc., Relating to the Listing of Flexible Exchange Options on Specified Equity Securities).

²² See *id.* The Exchange notes that the Commission found pursuant to Rule 9b-1 under the Act, that FLEX Options, including FLEX Equity Options, are standardized options for purposes of the options disclosure framework established under Rule 9b-1 of the Act.

²³ See Cboe Rules 4.20-4.22 and 5.70-5.75, NYSE American Rules 900G-910G, NYSE Arca Rules

that Cboe and ISE offer electronic FLEX trading while Cboe, NYSE American, NYSE Arca, Phlx and BOX offer only open outcry trading of FLEX Options on their respective trading floors.²⁴ The Exchange now proposes to allow for the trading of FLEX Options on its electronic market²⁵ in a manner that is identical to ISE’s electronic FLEX Options, with two exceptions. First, Phlx will retain its allocation methodology²⁶ as provided in Options 3, Section 10(a)(1)(A), (E), and (F) with respect to allocation for Public Customers, Market Makers and all other interest. Phlx’s allocation methodology differs from ISE’s allocation methodology at Options 3, Section 10.²⁷ Phlx proposes to align to its current System behavior with respect to its allocation methodology to provide increased consistency for Members

5.30-O-5.41-O, Phlx Options 8, Section 34, and BOX Rules 5055 and 7605. The Exchange also notes that BOX recently received approval from the Commission to allow for the trading of FLEX equity options on the BOX trading floor. See Securities Exchange Act Release No. 100156 (May 15, 2024), 89 FR 44721 (May 21, 2024) (SR-BOX-2023-20). ISE received approval to trade FLEX on November 22, 2024. See also Securities Exchange Release Act No. 101720 (November 22, 2024), 89 FR 94986 (November 29, 2024) (SR-ISE-2024-12).

²⁴ See *supra* notes 18-21.

²⁵ Today, Phlx offers open outcry FLEX Options as described in Options 8, Section 34. Phlx has filed two rule changes to amend its FLEX Rules at Options 8, Section 34, which rule changes are effective but will not be operative until the Phlx migration. See Securities Exchange Act Release Nos. 97658 (June 7, 2023), 88 FR 38562 (June 13, 2023) (SR-Phlx-2023-22); and 102977 (May 2, 2025), 90 FR 19546 (May 8, 2025) (SR-Phlx-2025-20). This proposed rule change will be operative at the same time as these aforementioned rule changes when Phlx conducts its technology migration in November 2025.

²⁶ Phlx’s allocation model is different than ISE in that Phlx allocates to Market Makers before allocating to all other non-Public Customer market participants pursuant to Phlx Options 3, Section 10 while ISE does not have an additional allocation to Market Makers before all other market participants pursuant to ISE Options 3, Section 10. The Exchange notes that Public Customers on Phlx, similar to Priority Customers on ISE, will continue to have priority over other market participants.

²⁷ Phlx filed rule proposals to adopt order types in Options 3, Section 7 that are identical to ISE Options 3, Section 7 order types. See Securities Exchange Act Release No. 101989 (December 30, 2024), 89 FR 106888 (December 30, 2024) (SR-Phlx-2024-71). SR-Phlx-2024-71 is effective but not yet operative. SR-Phlx-2024-71 would be operative at the same time as this rule change as they are both part of the same technology migration. Also, Phlx adopted a SOM at Options 3, Section 11(d) and (e) that is nearly identical to ISE’s SOM at Options 3, Section 11, but for the allocation model which is identical to Phlx’s allocation methodology at Options 3, Section 10. In contrast, ISE utilizes its allocation methodology at ISE Options 3, Section 10. See also Securities Exchange Act Release No. 103667 (August 8, 2025), 90 FR 39042 (August 13, 2025) (SR-Phlx-2025-35) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend PIXL and Adopt New Auctions).

trading FLEX Options and non-FLEX Options on Phlx, as discussed in detail below. Second, Phlx offers FLEX Currency Options unlike ISE. Today, Phlx offer FLEX Currency Options on its trading floor²⁸ subject to Options 8 Rules. Phlx proposes to likewise offer FLEX Currency Options electronically. The proposed rule text related to FLEX Currency Options is identical to Phlx Options 8, Section 34(f)(1)(C), (f)(4)(A), (f)(5)(A), (i)(4), and (j)(a).

Proposal

Transactions in FLEX Options traded on the Exchange will generally be subject to the same rules that apply to the trading of equity options and index options. In order, however, to provide investors with the flexibility to designate certain of the terms of the options, and to accommodate other special features of FLEX Options and the way in which they are traded, the Exchange proposes new rules applicable to FLEX Options in new Options 3A, Sections 1–19.

A. General Provisions (Section 1)

Proposed Section 1(a) will set forth the applicability of Exchange Rules, and will provide that Options 3A Rules will apply only to FLEX Options and that trading of FLEX Options will be subject to all other Rules applicable to the trading of options on the Exchange, unless otherwise provided in Options 3A. The Exchange has conducted a thorough review of its existing trading rules to ensure that the proposed Rules in Options 3A accurately reflects the application of the Exchange's non-FLEX Option trading rules to FLEX Options,²⁹

²⁸ Today, Phlx permits members located on Phlx's trading floor to transact FLEX Options pursuant to its FLEX rules at Options 8, Section 34. FLEX trading on the trading floor take place in open outcry subject to the Options 8 Rules which are specific to the trading floor. Today, only Phlx members who are approved for trading on the trading floor may transact FLEX Options. The proposed FLEX electronic rules would permit electronic Phlx members and member organizations to transact options pursuant to the proposed Options 3A rules similar to the electronic rules of other options exchanges. The Exchange notes that the rules for FLEX on the trading floor differ than the rules for FLEX electronic in some respects as it relates to the manner in which an order is entered, responsibilities that are specific to floor trading and outlined in the Options 8 Rules and some position limit requirements for FLEX trading.

²⁹ For example, Options 3, Section 1 (Hours of Business) will apply to FLEX and non-FLEX Options, except the Exchange may determine to narrow or otherwise restrict the trading hours for FLEX Options. See proposed Options 3A, Section 2. As another example, Options 3, Section 9 (Trading Halts) will apply to FLEX and non-FLEX Options. The Exchange notes that pursuant to proposed Options 3A, Section 9, it will always halt trading in a FLEX Option class when trading in a non-FLEX Option class with the same underlying equity security or index is halted on the Exchange.

as well as those non-FLEX Option trading rules that would not apply to FLEX Options.³⁰

Proposed Section 1(b) will set forth the definitions used specifically in Options 3A, namely that the term "FLEX Option" means a flexible exchange option. A FLEX Option on an equity security may be referred to as a "FLEX Equity Option," a FLEX Option on an index may be referred to as a "FLEX Index Option," and a FLEX Option on any foreign currency, which is options-eligible pursuant to Options 4, Section 3 and which underlies non-FLEX U.S. dollar-settled foreign currency options that are trading on the Exchange, may be referred to as a "FLEX Currency Option." Further, the term "FLEX Order" means an order submitted in a FLEX Option pursuant to Options 3A.

The Exchange also proposes to add the definition of "FLEX Order" in Options 3, Section 7 (Order Types) in new paragraph (z). While FLEX Orders will also be defined in (and governed by) Options 3A, the Exchange believes that it will be useful to market participants to have the order types available on Phlx centralized within one rule.

B. Hours of Business (Section 2)

Proposed Section 2(a) will provide that the trading hours for FLEX Options will be the same as the trading hours for corresponding non-FLEX Options as set forth in Options 3, Section 1, except the Exchange may determine to narrow or otherwise restrict the trading hours for FLEX Options.³¹ Therefore, the trading hours for FLEX Options will generally

Furthermore, the System does not accept a FLEX Order for a FLEX Option series while trading in a FLEX Option class is halted.

³⁰ For example, the Exchange's simple and complex order books will not be available for transactions in FLEX Options. See proposed Options 3A, Section 10. In addition, FLEX Options may not trade via the Block Order Mechanism (Options 3, Section 11(a)), simple and complex Facilitation Mechanism (Options 3, Section 11(b) and (c)), or as simple and complex Customer Cross Orders (Options 3, Section 12(a) and (b)), simple and complex Qualified Contingent Cross ("QCC") Orders (Options 3, Section 12(c) and (d)), and simple and complex QCC with Stock Orders (Options 3, Section 12(e) and (f)). See also Securities Exchange Act Release No. 103667 (August 8, 2025), 90 FR 39042 (August 13, 2025) (SR-Phlx-2025-35) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend PIXL and Adopt New Auctions). If the Exchange intends to allow FLEX Options to trade via any of the foregoing auction mechanisms or as any of the foregoing crossing orders, the Exchange would be required to file a proposed rule change with the Commission to amend its FLEX rules to allow for the use of the foregoing trading functionality for FLEX Options.

³¹ See ISE Options 3A, Section 2 for identical provisions.

be 9:30 a.m. to 4:00 p.m. Eastern time, except for certain options products that trade until 4:15 p.m. Eastern time.³² This would align the proposed trading hours for FLEX Options with the current trading hours for corresponding non-FLEX Options.

As it relates to the Exchange's proposed discretion relating to the trading hours for FLEX Options, this is consistent with ISE's FLEX Options rules as noted above. The Exchange believes that given the unique nature of FLEX, in contrast to the non-FLEX market, it is reasonable to permit the Exchange, in its discretion, to narrow or otherwise restrict the trading hours for FLEX Options, so long as such trading hours occur within the normal options trading hours of the Exchange described above. The Exchange would provide adequate advance notification to its Members of such changes in FLEX trading hours.

C. FLEX Option Classes and Permissible Series (Section 3(a) and (b))

Pursuant to proposed Section 3(a), the Exchange may authorize for trading a FLEX Option class on any equity security (except the Fidelity Wise Origin Bitcoin Fund; the ARK21Shares Bitcoin ETF, VanEck Bitcoin ETF the iShares Ethereum Trust ETF, the Fidelity Ethereum Fund, the Bitwise Ethereum ETF, the Grayscale Ethereum Trust, and the Grayscale Ethereum Mini Trust (collectively "Spot Crypto ETPs")) or index if it may authorize for trading a non-FLEX Option class on that equity security or index pursuant to Options 4, Section 3 and Options 4A, Section 3,³³ respectively, even if the Exchange does not list that non-FLEX Option class for trading.³⁴ The Exchange proposes to exclude Spot Crypto ETPs from being eligible for trading as a FLEX Option on Phlx consistent with ISE Options 3A, Section 3(a). As discussed in the position limits section below, there will generally be no position limits for FLEX Equity Options.³⁵ The Exchange therefore proposes to exclude options on Spot Crypto ETPs from being eligible

³² See Options 3, Section 1(b)–(e). These products are currently options on Exchange-Traded Fund Shares (as defined in Options 4, Section 3(h)), options on Index-Linked Securities (as defined in Options 4, Section 3(k)(1)), and options on certain broad-based indexes, as designated by the Exchange.

³³ Options 4, Section 3 provides the criteria for the listing of options on several different underlying types of securities, including, for example, securities registered with the SEC under Regulation NMS of the Act ("NMS stock") and exchange-traded funds ("ETFs"). Options 4A, Section provides the criteria for the listing of options on indexes.

³⁴ See ISE, Options 3A, Section 3(a) for identical provisions.

³⁵ See proposed Options 3A, Section 18(b)(1)(A).

to trade as a FLEX Option (namely, a FLEX ETF option) to continue to limit the position limits for these options. For clarity, this exclusion will apply to both physically-settled and cash-settled FLEX ETF options (as further described in this filing), such that options on Spot Crypto ETPs will be excluded from being eligible to trade as a physically-settled or a cash-settled FLEX ETF option. If the Exchange determines to allow FLEX trading on all or any of the options on Spot Crypto ETPs later date, it will do so by submitting a 19b-4 rule filing with the Commission.

Proposed Section 3(b) will provide that the Exchange may approve a FLEX Option series for trading in any FLEX Option class it may authorize for trading pursuant to proposed Section 3(a). FLEX Option series are not pre-established. A FLEX Option series is eligible for trading on the Exchange upon submission to the System of a FLEX Order for that series pursuant to proposed Sections 11 through 13,³⁶ subject to the following stipulations.³⁷ First, the Exchange will only permit trading in a put or call FLEX Option series that does not have the same exercise style, same expiration date, and same exercise price as a non-FLEX Option series on the same underlying security or index that is already available for trading. This would include permitting trading in a FLEX Option series before a series with identical terms is listed for trading as a non-FLEX Option series. If the Exchange lists for trading a non-FLEX Option series with identical terms as a FLEX Option series, the FLEX Option series will become fungible with the non-FLEX Option series pursuant to proposed paragraph (d) of Section 3. The System would not accept a FLEX Order for a put or call FLEX Option series if a non-FLEX Option series on the same underlying security or index with the same expiration date, exercise price, and exercise style is already listed for trading.³⁸ Second, a FLEX Order for a FLEX Option series may be submitted on any trading day prior to the expiration date.³⁹ For proposed Section

3(b)(2), on the expiration date a FLEX Order for the expiring FLEX Option series may only be submitted to close out a position in such expiring FLEX Option series.⁴⁰

Third, in the event the relevant expiration is a holiday pursuant to General 3 (which incorporates Nasdaq General 3, Rule 1030 by reference),⁴¹ proposed Section 3(d) will apply to options with an expiration date that is the business day immediately preceding the holiday, except for Monday-expiring Weekly Expirations (as defined in Options 4A, Section 3), in which case proposed Section 3(d) will apply to options with an expiration date that is a business day immediately following the holiday.⁴²

D. FLEX Options Terms (Section 3(c))

Proposed Section 3(c) will specify the terms that must be included in a FLEX Order.⁴³ Specifically, when submitting a FLEX Order for a FLEX Option series to the System, the submitting Member must include one of each of the terms detailed in proposed subparagraphs (1)–(6) of Section 3(c) in the FLEX Order (all other terms of a FLEX Option series are the same as those that apply to non-FLEX Options), provided that a FLEX Equity Option overlying an ETF (cash- or physically-settled) may not be the same type (put or call) and may not have the same exercise style, expiration date, and exercise price as a non-FLEX Equity Option overlying the same ETF,⁴⁴ which terms constitute the FLEX Option series.

As noted in proposed Options 3A, Section 3(b)(1), the Exchange only permits trading in a put or call FLEX Option series that does not have the same exercise style, same expiration date, and same exercise price as a non-

as FLEX Options. As such, the System will reject at the outset a FLEX Option transaction that does not conform to the terms of the FLEX rules.

⁴⁰ The Exchange will System enforce this provision such that it will reject an opening position in an expiring FLEX Option series on the day of expiration.

⁴¹ Phlx General 3 incorporates by reference Series 1000 in General 3 of the Rules of The Nasdaq Stock Market, LLC (“Nasdaq”) (including Nasdaq Rule 1030).

⁴² See proposed Options 3A, Section 3(b)(3), which is identical to ISE Options 3A, Section 3(b)(3).

⁴³ See ISE Options 3A, Section 3(c) for identical provisions.

⁴⁴ The Exchange will discuss cash-settled FLEX Equity Options overlying an ETF (“cash-settled FLEX ETFs”) later in this filing. As discussed below, the Commission previously approved a rule filing by NYSE American to permit the listing and trading of this product, and Cboe recently filed an immediately effective rule change based on NYSE American’s filing. See *infra* notes 251 and 252. ISE also received approval to list cash-settled FLEX ETFs. See also Securities Exchange Release Act No. 101720 (November 22, 2024), 89 FR 94986 (November 29, 2024) (SR-ISE-2024-12).

FLEX Option series on the same underlying security or index that is already available for trading. Pursuant to proposed Options 3A, Section 3(c)(5)(A)(ii), certain FLEX Equity Options where the underlying security is an Exchange-Traded Fund are permitted to be settled by delivery in cash if the underlying security meets prescribed criteria. For FLEX ETF Options that qualify for cash-settlement pursuant to proposed Options 3A, Section 3(c)(5)(A)(ii), at least one of the following terms—exercise style, expiration date and exercise price—must differ from standard options in the non-FLEX market. FLEX Equity Options, which are not FLEX ETF Options that qualify for cash-settlement pursuant to proposed Options 3A, Section 3(c)(5)(A)(ii), are always settled with physical delivery of the underlying security pursuant to proposed Options 3A, Section 3(c)(5)(A)(i). FLEX Index Options are always cash-settled pursuant to proposed Options 3A, Section 3(c)(5)(B).

As proposed, the submitting Member must specify the following terms in the FLEX Order: (1) underlying equity security or index, as applicable (the index multiplier for FLEX Index Options is 100);⁴⁵ (2) type of option (*i.e.*, put or call);⁴⁶ (3) exercise style, which may be American-style or European-style, except that for a FLEX Currency Option the exercise style shall be European style;⁴⁷ (4) expiration date, which may be any business day (specified to the day, month, and year) no more than 15 years from the date on which a Member submits a FLEX Equity Option or FLEX Index Option to the System, and no more than 3 years from the date on which an executed FLEX Currency Option is submitted to the System with exercise settlement value on the expiration date determined by reference to the reported level of the index as derived from the opening prices of the component securities (“a.m. settlement”) or closing prices (“p.m. settlement”);⁴⁸ (5) settlement type for the FLEX Equity Option, FLEX

⁴⁵ See proposed Options 3A, Section 3(c)(1), which is identical to ISE Options 3A, Section 3(c)(1).

⁴⁶ See proposed Options 3A, Section 3(c)(2), which is identical to ISE Options 3A, Section 3(c)(2).

⁴⁷ See proposed Options 3A, Section 3(c)(3), which is identical to ISE Options 3A, Section 3(c)(3) and Phlx Options 8, Section 34(f)(A) (FLEX Currency Options).

⁴⁸ See proposed Options 3A, Section 3(c)(4), which is identical to ISE Options 3A, Section 3(c)(4) and Phlx Options 8, Section 34(f)(5)(A) (FLEX Currency Options). All FLEX Currency Options will expire at 11:59 p.m. eastern time on their designated expiration date

³⁶ Proposed Sections 11 through 13 of Options 3A will govern the electronic FLEX Auction, FLEX PIXL, and FLEX SOM, respectively. As discussed later in this filing, FLEX Orders may only be submitted through an electronic FLEX Auction, FLEX PIXL, or FLEX SOM.

³⁷ See proposed Options 3A, Section 3(b), which is identical to ISE Options 3A, Section 3(b).

³⁸ See proposed Options 3A, Section 3(b)(1), which is identical to ISE Options 3A, Section 3(b)(1).

³⁹ See proposed Options 3A, Section 3(b)(2), which is identical to ISE Options 3A, Section 3(b)(2). The Exchange notes that it will System enforce which options are eligible to be submitted

Index Option, or FLEX Currency Option, as applicable;⁴⁹ and (6) exercise price, which may be in increments no smaller than \$0.01.⁵⁰ Further, the Exchange may determine the smallest increment for exercise prices of FLEX Options on a class-by-class basis without going lower than \$0.01.⁵¹ The Exchange notes that the exercise price of the FLEX Option would generally be dependent on the price of the underlying security.

As it relates to the settlement type for FLEX Equity Options, the Exchange proposes in subparagraph (c)(5)(A)(i) of Options 3A, Section 3 that FLEX Equity Options, other than as permitted in proposed subparagraphs (c)(5)(A)(ii) and (iii), are settled with physical delivery of the underlying security. Proposed subparagraph (c)(5)(A)(ii) will allow for the cash-settlement of certain qualifying FLEX Equity Options with an underlying security that is an ETF.⁵² Proposed subparagraph (c)(5)(A)(iii) will provide that FLEX Equity Options are subject to the exercise by exception provisions of OCC Rule 805.

As it relates to the settlement type for FLEX Index Options, the Exchange proposes in subparagraphs (c)(5)(B)(i) and (ii) of Options 3A, Section 3 that FLEX Index Options are settled in U.S. dollars, and may be either a.m.-settled (with exercise settlement value determined by reference to the reported level of the index derived from the reported opening prices of the component securities) or p.m.-settled (with exercise settlement value determined by reference to the reported level of the index derived from the reported closing prices of the component securities). The Exchange notes that Cboe received approval of its pilot program that permitted it to list p.m.-settled FLEX Index Options whose exercise settlement value is derived from closing prices on the last trading day prior to expiration that expire on or within two business days of a third Friday-of-the-month expiration day for a non-FLEX Option ("FLEX PM Third

Friday Options").⁵³ Consistent with the Commission's approval of Cboe's and ISE's proposal, the Exchange is proposing to allow the listing of FLEX PM Third Friday Options on Phlx as well, and will align proposed Section 3(c)(5)(B)(ii) with ISE Options 3A, Section 3(c)(5)(B)(ii).⁵⁴

As it relates to the settlement type for FLEX Currency Options, the Exchange proposes in subparagraphs (c)(5)(C) of Options 3A, Section 3 that the settlement value for FLEX Currency Options on the Australian dollar, the Euro, the British pound, the Canadian dollar, the Swiss franc, the Japanese yen, the Mexican peso, the Brazilian real, the Chinese yuan, the Danish krone, the New Zealand dollar, the Norwegian krone, the Russian ruble, the South African rand, the South Korean won, and the Swedish krona shall be the Exchange Spot Price at 12:00:00 Eastern Time (noon) on expiration day, unless the Exchange determines to apply an alternative closing settlement value as a result of extraordinary circumstances. FLEX Currency Options are settled in U.S. dollars. FLEX Currency Options will cease trading at 10:15 a.m. eastern time on their designated expiration date. Phlx offers FLEX Currency Options at Options 4C both electronically and on its trading floor. The proposed rule text is identical to Phlx Options 8, Section 34(f)(6)(C).⁵⁵

⁵³ See Securities Exchange Act Release No. 99222 (December 21, 2023), 88 FR 89771 (December 28, 2023) (SR-CBOE-2023-018) ("FLEX Settlement Pilot Approval"). In support of making the pilot a permanent program, Cboe cited to its own review of pilot data during the course of the pilot program and a study by the Commission's Division of Economic and Risk Analysis ("DERA") staff. See FLEX Settlement Pilot Approval, notes 18 and 35. ISE also received approval to list FLEX PM Third Friday Options. See also Securities Exchange Release Act No. 101720 (November 22, 2024), 89 FR 94986 (November 29, 2024) (SR-ISE-2024-12).

⁵⁴ The only broad-based indexes option that would be able to list as a FLEX PM Third Friday Option is the Nasdaq-100 Index option ("NDX" or "NDX options") and options based on 1/100 the value of the Nasdaq-100 ("XND" or "XND options"). The Exchange notes that Cboe lists both NDX and XND electronic FLEX options today pursuant to a license agreement with Nasdaq. Phlx received approval to permit the listing of a third-Friday-of-the-month p.m. expiration on NDX and XND options its standardized market. See Securities Exchange Act Release No. 98950 (November 15, 2023), 88 FR 81172 (November 21, 2023) (SR-Phlx-2023-45) (Order Approving a Proposed Rule Change To Permit the Listing and Trading of P.M.-Settled Nasdaq-100 Index Options With a Third-Friday-of-the-Month Expiration).

⁵⁵ Phlx amended Options 8, Section 34 in SR-Phlx-2025-20. See Securities Exchange Act Release Nos. 97658 (June 7, 2023), 88 FR 38562 (June 13, 2023) (SR-Phlx-2023-22); and 102977 (May 2, 2025), 90 FR 19546 (May 8, 2025) (SR-Phlx-2025-20). This proposed rule change will be operative at the same time as these aforementioned rule changes when Phlx conducts its technology migration in November 2025.

E. FLEX Fungibility (Section 3(d))

Proposed Section 3(d)(1)(A) will provide that if the Exchange lists for trading a non-FLEX Option series with identical terms as a FLEX Option series, all existing open positions established under the FLEX trading procedures will become fully fungible with transactions in the identical non-FLEX Option series.⁵⁶ In addition, proposed Section 3(d)(1)(B) will provide that any further trading in the series would be as non-FLEX Options subject to non-FLEX trading procedures and Rules.⁵⁷ The foregoing provisions are identical to ISE Options 3A, Section 3(d)(1)(A).

Notwithstanding the above, if a non-FLEX Option series⁵⁸ is added intraday, for the balance of that trading day, a position established under the FLEX trading procedures may be closed using the FLEX trading procedures in Options 3A against another closing only FLEX position. No FLEX Orders may be submitted into an electronic auction pursuant to Sections 11(b), 12, or 13 below for a FLEX Option series with the same terms as the non-FLEX Option series, unless the FLEX Order is a closing order, and it is the day on which the non-FLEX Option series was added intraday. Members may only submit responses that close out existing FLEX positions.⁵⁹ In the event the non-FLEX Option series is added on a trading day after the position is established, the holder or writer of a FLEX Option position established under the FLEX trading procedures would be permitted to close such position as a non-FLEX transaction consistent with the

⁵⁶ An open position resulting from a transaction on the Exchange becomes fungible post-trade and is separate from the execution occurring on the Exchange. For example, assume a Member buys one (1) American style AAPL call option expiring on October 9, 2024, with a strike price of 150, which is a FLEX series because there is no standard option listed with those same terms. Now assume, while holding this position, a standard option with the same terms is listed (American style AAPL call option expiring on October 9, 2024, with a strike price of 150). After this standard option is listed, the Member purchases one (1) contract in this non-FLEX option series. After this second transaction, the Participant will have an open position of two (2) contracts in the standard AAPL call expiring on October 9, 2024, with a 150 strike price.

⁵⁷ This includes all priority and trade-through provisions on the Exchange. See, e.g., Options 3, Section 10 and Options 5, Section 2.

⁵⁸ Similar to ISE, the Exchange would apply the closing-only provisions to *all* non-FLEX Option series (i.e., American-style and European-style FLEX Option series). As such, the Exchange's proposed language in Options 3A, Section 3(d)(2)(A) will provide that the Exchange's closing-only provisions would apply "if a non-FLEX Option is added intraday." This is identical to ISE Options 3A, Section 3(d)(2)(A).

⁵⁹ See proposed Options 3A, Section 3(d)(2)(A), which is identical to ISE Options 3A, Section 3(d)(2)(A).

⁴⁹ See proposed Options 3A, Section 3(c)(5), which is identical to ISE Options 3A, Section 3(c)(5).

⁵⁰ See proposed Options 3A, Section 3(c)(6), which is identical to ISE Options 3A, Section 3(c)(6).

⁵¹ See proposed Options 3A, Section 3(c), which is identical to ISE Options 3A, Section 3(c). As noted above, the Exchange does not offer these capabilities today for non-FLEX index options. The Exchange will also clarify that it would not go lower than \$0.01 when determining the smallest increment for exercise prices of FLEX Options to make clear that it would stay within the stated confines of this Rule.

⁵² As discussed later in this filing, the Exchange is proposing to list and trade cash-settled FLEX ETFs in the same manner as ISE.

requirements of subsection (d)(1) of this rule.⁶⁰ The Exchange will notify Members when a FLEX Option series is restricted to closing only transactions. The System will reject a transaction in such a restricted series that does not conform to the requirements specified in proposed Options 3A, Section 3(d).⁶¹

F. Units of Trading; Minimum Trading Increments (Sections 4 and 5)

Proposed Section 4(a) of Options 3A will provide that bids and offers for FLEX Options must be expressed in U.S. dollars and decimals in the minimum increments as set forth in proposed Section 5.⁶² Proposed Section 5(a) will provide that the Exchange would determine the minimum increment for bids and offers on FLEX Options on a class-by-class basis, which may not be smaller than \$0.01 for the options leg of a FLEX Option.⁶³ Proposed Section 5(b) will provide that for the stock leg of a FLEX Option, the minimum increments are set forth in Options 3A, Section 11(b)(1)(G), Section 12(a)(5), and Section 13(a)(5). As discussed later in this filing, the foregoing rules specify how minimum increments for complex FLEX Orders (including complex FLEX Orders with a stock component) would be handled. The Exchange is adding these cross cites in the minimum increments rule in proposed Options 3A, Section 5(b) for transparency and clarity.

G. Types of Orders; Order and Quote Protocols (Section 6)

Pursuant to proposed Section 6(a), the Exchange may determine to make only the Limit Order and Cancel and Replace Order types⁶⁴ and Immediate-or-Cancel

times-in-force,⁶⁵ respectively, in Options 3, Section 7 available on a class or System basis for FLEX Orders.⁶⁶ The Exchange notes that it currently has the authority to make certain order types and TIFs available on a class or System basis for non-FLEX Options pursuant to Options 3, Section 7, and therefore proposes to have similar authority with respect to FLEX Options.

Proposed Section 6(b) will provide that only the following order and quote protocols in Supplementary Material .03 to Options 3, Section 7 will be available for FLEX Orders, FLEX auction notifications, and FLEX auction responses:⁶⁷

- *FIX*:⁶⁸ FLEX Orders and FLEX auction responses
- *OTTO*:⁶⁹ FLEX Orders, FLEX auction notifications, and FLEX auction responses

⁶⁵ See Supplementary Material .02(d) to Options 3, Section 7 for a description of Immediate-or-Cancel. All of the other TIFs in Supplementary Material .02 to Options 3, Section 7 will not apply to FLEX. See Securities Exchange Act Release No. 101989 (December 30, 2024), 89 FR 106888 (December 30, 2024) (SR-Phlx-2024-71) which is effective but not yet operative. SR-Phlx-2024-71 will be operative at the same time as this rule change.

⁶⁶ See Options 3, Section 7 for descriptions of these order types and times-in-force. See Securities Exchange Act Release No. 101989 (December 30, 2024), 89 FR 106888 (December 30, 2024) (SR-Phlx-2024-71) which is effective but not yet operative. SR-Phlx-2024-71 will be operative at the same time as this rule change.

⁶⁷ Notes 63–65 below describe what features are available on these protocols today for non-FLEX Options. The Exchange is proposing to specify that some of these features (*i.e.*, sending/receiving FLEX Orders, FLEX notifications and FLEX responses) will be available for FLEX Options through the specified protocols as described above. While other basic features will be available for FLEX Options (for example, the options symbol directory will be available for FLEX Options), the Exchange is proposing to specify the particular features in proposed Options 3A, Section 6(b) to highlight the most important features that would be available through these protocols for FLEX trading.

⁶⁸ “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; and (4) post trade allocation messages. See Supplementary Material .03(a) to Options 3, Section 7.

⁶⁹ “Ouch to Trade Options” or “OTTO” is an interface that allows member organizations and their Sponsored Customers to connect, send, and receive messages related to orders, auction orders, and auction responses to 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) order messages; (6) risk protection triggers and cancel notifications; (7) auction notifications; (8) auction responses; and (9) post trade allocation messages. See Supplementary Material .03(b) to Options 3, Section 7.

- *SQF*:⁷⁰ FLEX auction notifications and FLEX auction responses

H. Complex Orders (Section 7)

Pursuant to proposed Section 7(a), the Exchange may make complex orders, including a Complex Options Order,⁷¹ Stock-Options Order,⁷² and Stock-Complex Order⁷³ available for FLEX

⁷⁰ “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. See Supplementary Material .03(c) to Options 3, Section 7.

⁷¹ A Complex Options Order is an order for a Complex Options Strategy, which is the simultaneous purchase and/or sale of two or more different options series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy. See Options 3, Section 14(a)(1) which was amended in SR-Phlx-2025-17. See Securities Exchange Act Release No. 102862 (April 15, 2025), 90 FR 16731 (April 21, 2025) (SR-Phlx-2025-17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx’s Complex Order Functionality). SR-Phlx-2025-17 proposed the same operative date as this proposal as they are both part of the same technology migration.

⁷² A Stock-Option Order is an order for a Stock-Option Strategy, which is the purchase or sale of a stated number of units of an underlying stock or a security convertible into the underlying stock (“convertible security”) coupled with the purchase or sale of options contract(s) on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying stock or convertible security in the option leg to the total number of units of the underlying stock or convertible security in the stock leg. See Options 3, Section 14(a)(2) which was amended in SR-Phlx-2025-17. See Securities Exchange Act Release No. 102862 (April 15, 2025), 90 FR 16731 (April 21, 2025) (SR-Phlx-2025-17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx’s Complex Order Functionality). SR-Phlx-2025-17 proposed the same operative date as this proposal as they are both part of the same technology migration.

⁷³ A Stock-Complex Order is an order for a Stock-Complex Strategy, which is the purchase or sale of a stated number of units of an underlying stock or

Continued

⁶⁰ See proposed Options 3A, Section 3(d)(2)(B), which is identical to ISE Options 3A, Section 3(d)(2)(B). The Exchange is adding this language to clarify how it would handle open FLEX positions if an identical non-FLEX Option series is added on the day after.

⁶¹ See proposed Options 3A, Section 3(d)(2), which is identical to ISE Options 3A, Section 3(d)(2). The Exchange’s System will enforce the rejection of FLEX Options that are fully fungible with a non-FLEX Option.

⁶² See identical rule text at ISE Options 3A, Section 4(a).

⁶³ See identical rule text at ISE Options 3A, Section 5(a).

⁶⁴ See Options 3, Sections 7(b) and 7(f) for a description of Limit Orders and Cancel and Replace Orders, respectively. All of the other order types listed in Options 3, Section 7 (such as Customer Cross Orders, Qualified Contingent Cross Orders, QCC with Stock Orders, Block Orders, and Facilitation Orders) do not apply to FLEX. See Securities Exchange Act Release No. 101989 (December 30, 2024), 89 FR 106888 (December 30, 2024) (SR-Phlx-2024-71) which is effective but not yet operative. SR-Phlx-2024-71 will be operative at the same time as this rule change.

trading. Complex FLEX Orders may have up to the maximum number of legs determined by the Exchange.⁷⁴ Each leg of a complex FLEX Order: (1) must be for a FLEX Option series authorized for FLEX trading with the same underlying equity security or index; (2) must have the same exercise style (American or European); and (3) for a FLEX Index Option, may have a different settlement type (a.m.-settled or p.m.-settled).⁷⁵ The Exchange notes that a non-FLEX complex order can have both a.m.-settled and p.m.-settled legs today. The Exchange received approval to permit the listing and trading of p.m.-settled NDX and XND options pursuant to Supplementary Material .07[sic] to Options 4A, Section 12.⁷⁶ Specifically, the Exchange is permitted to list p.m.-settled NDX and XND options that expire (1) on any Monday, Tuesday, Wednesday, Thursday, or Friday (other than the third Friday-of-the-month or days that coincide with an end-of-month expiration)⁷⁷ or (2) on the last day of the trading month.⁷⁸ In addition, NDX and XND options are also currently allowed to be listed as p.m.-settled with a standard expiration (*i.e.*, the third-Friday-of-the-month) in addition to a.m.-settled.⁷⁹ Therefore, Phlx may currently list NDX and XND options that are both a.m.-settled and p.m.-settled for its non-FLEX market. As such, the Exchange's FLEX proposal for complex orders in this respect will align with ISE's current FLEX complex order

a security convertible into the underlying stock ("convertible security") coupled with the purchase or sale of a Complex Options Strategy on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying stock or convertible security in the option legs to the total number of units of the underlying stock or convertible security in the stock leg. *See* Options 3, Section 14(a)(3) which was amended in SR-Phlx-2025-17. *See* Securities Exchange Act Release No. 102862 (April 15, 2025), 90 FR 16731 (April 21, 2025) (SR-Phlx-2025-17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx's Complex Order Functionality). SR-Phlx-2025-17 proposed the same operative date as this proposal as they are both part of the same technology migration.

⁷⁴ The Exchange will initially permit a maximum of 10 legs.

⁷⁵ *See* identical rule text at ISE Options 3A, Section 7(a).

⁷⁶ *See* Securities Exchange Act Release No. 98950 (November 15, 2023), 88 FR 81172 (November 21, 2023) (SR-Phlx-2023-45) (Order Approving a Proposed Rule Change To Permit the Listing and Trading of P.M.-Settled Nasdaq-100 Index Options With a Third-Friday-of-the-Month Expiration).

⁷⁷ *See* Options 4A, Section 12(b)(6)(A).

⁷⁸ *See* Options 4A, Section 12(b)(6)(B).

⁷⁹ *See* Options 4A, Section 12(a)(5).

functionality as noted above,⁸⁰ but will also align with its own current non-FLEX complex order functionality.

Pursuant to proposed Section 7(b), complex FLEX Orders will not have to adhere to the ratio requirements in Options 3, Sections 14(a)(1)–(3). Options 3, Sections 14(a)(1)–(3) currently includes the complex ratio requirements for Complex Options Strategies, Stock-Options Strategies, and Stock-Complex Strategies.⁸¹ The Exchange is not changing the complex ratio requirements for non-FLEX complex orders under this proposal. Instead, it is proposing to offer this feature only for complex FLEX Orders so that Members may submit complex FLEX Orders with any ratio.⁸²

I. Opening of FLEX Trading (Section 8)

Proposed Section 8(a) will specify that there will be no Opening Process⁸³ pursuant to Options 3, Section 8 in FLEX Options. Instead, as specified in proposed Section 8(b), Members may begin submitting FLEX Orders into an electronic FLEX Auction pursuant to proposed Section 11(b), a FLEX PIXL pursuant to proposed Section 12, or a FLEX SOM pursuant to proposed Section 13 when the underlying security is open for trading.⁸⁴ The Exchange will also make clear in proposed Section 8(b)

⁸⁰ *See* identical rule text at ISE Options 3A, Section 7(a).

⁸¹ *See supra* notes 71–73.

⁸² For instance, the Exchange may permit Complex Options Strategies with a ratio on the options legs less than one-to-three (.333) or greater than three-to-one (3.00), and Stock-Option Strategies with a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying stock or convertible security in the option leg(s) to the total number of units of the underlying stock or convertible security in the stock leg. *See* Options 3, Section 14 which was amended by SR-Phlx-2025-17. *See* Securities Exchange Act Release No. 102862 (April 15, 2025), 90 FR 16731 (April 21, 2025) (SR-Phlx-2025-17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx's Complex Order Functionality). SR-Phlx-2025-17 proposed the same operative date as this proposal as they are both part of the same technology migration.

⁸³ As described in Options 3, Section 8(d)(i), Phlx's "Opening Process" for an option series will be conducted pursuant to paragraphs (f)–(k) below on or after 9:30 a.m. Eastern Time if: the ABBO, if any, is not crossed; and the System has received, within two minutes (or such shorter time as determined by the Exchange and disseminated to membership on the Exchange's website) of the opening trade or quote on the market for the underlying security, a Valid Width Quote. The System will accept a Lead Market Maker's Valid Width Quote or the Valid Width Quote of at least one Competitive Market Maker. The term "Away Best Bid or Offer" or "ABBO" means the displayed National Best Bid or Offer not including the Exchange's Best Bid or Offer. *See* Options 1, Section 1(b)(5).

⁸⁴ *See* proposed Options 3A, Section 8(a) and (b), which is identical to ISE Options 3A, Section 8(a) and (b).

that for FLEX Index Options, the term "underlying security" will have the same meaning as defined in Options 4A, Section 2(a)(19).⁸⁵

Because market participants incorporate transaction prices of underlying securities or the values of underlying indexes when pricing options (including FLEX Options), the Exchange believes that it will benefit investors for FLEX Options trading to not be available until that information has begun to be disseminated in the market (*i.e.*, when the security opens for trading).

Additionally, the Exchange's Opening Process is used to open or reopen a series of options on Phlx at a single opening price.⁸⁶ There is a period of time before an options series opens during which orders placed on the Exchange's order book do not generate trade executions but may participate in the Opening Process.⁸⁷ As noted above, FLEX Options will not be placed on the Exchange's simple and complex order books and therefore will not have an Opening Process.⁸⁸ FLEX Options are created with terms unique to individual investment objectives. As such, each investor may require FLEX Options with slightly different terms than those already created. These individually defined FLEX Options are customized for each investor, so the Opening Process may not be useful for investors who may create their own FLEX Options because the Opening Process is designed, in part, to determine a single opening, or reopening, price based on orders and quotes from multiple Members. With the bespoke nature of FLEX Options, there is not the opportunity, nor the need, to bring together multiple orders and quotes as part of an Opening Process.

J. Trading Halts (Section 9)

Proposed Section 9 will provide that the Exchange may halt trading in a FLEX Option class pursuant to Options 3, Section 9, and always halts trading in a FLEX Option class when trading in a non-FLEX Options class with the same underlying equity security or index is halted on the Exchange. The System will not accept a FLEX Order for a FLEX

⁸⁵ Options 4A, Section 2(a)(19) states that the term "underlying security" or "underlying securities" with respect to an index options contract means any of the securities that are the basis for the calculation of the index.

⁸⁶ *See* Options 3, Section 8(i) and (k).

⁸⁷ *See* Options 3, Section 8(d).

⁸⁸ *See* proposed Options 3A, Section 10(a). Instead, Members will be required to submit FLEX Orders into an electronic FLEX Auction, FLEX PIXL, or FLEX SOM. *See* proposed Options 3A, Section 11(a).

Option series while trading in a FLEX Option class is halted.⁸⁹

K. Exchange Order Books (Section 10)

Proposed Section 10 will provide that the Exchange's simple and complex order books will not be available for transactions in FLEX Options.

Accordingly, FLEX Options may only be traded on the Exchange by submitting FLEX Orders into a FLEX Electronic Auction pursuant to proposed Options[sic] 11(b), FLEX PIXL pursuant to proposed Options[sic] 12, and FLEX SOM pursuant to proposed Options[sic] 13, each as discussed further below. The Exchange notes that its proposal is in line with other options exchanges' FLEX rules that do not contemplate the interaction of their respective order books with FLEX transactions.⁹⁰

L. FLEX Options Trading (Section 11)

Proposed Section 11 will describe the procedures for FLEX trading on the Exchange. Specifically, a FLEX Option series will only be eligible for trading if a Member submits a FLEX Order for that series into an electronic FLEX Auction pursuant to proposed paragraph (b) of Options[sic] 11, or submits the FLEX Order to a FLEX PIXL or FLEX SOM Auction pursuant to proposed Section 12 or Section 13, respectively.⁹¹

Proposed Section 11(a)(1) and (2) will specify the requirements for both simple and complex FLEX Orders.

- For a simple FLEX Order, a FLEX Order for a FLEX Option series submitted to the System must include all terms for a FLEX Option series set forth in proposed Section 3 as described above, size, side of the market, and a bid or offer price.⁹² The Exchange also proposes that the System will not accept a FLEX Order with identical terms as a non-FLEX Option series that is already listed for trading to signify that this requirement is System-enforced.

- For a complex FLEX Order, a FLEX Order for a FLEX Option complex strategy submitted to the System must satisfy the criteria for a complex FLEX Order set forth in proposed Section 7(a) as described above, and include size, side of the market, and a net debit or credit price. Additionally, each leg of the FLEX Option complex strategy must

include all terms for a FLEX Option series set forth in proposed Section 3.⁹³ Similar to simple FLEX Orders, the Exchange proposes to System enforce the stipulation that it will not accept a FLEX Option complex strategy if a leg in the order has identical terms as a non-FLEX Option series that is already listed for trading.⁹⁴ The Exchange also proposes to add similar language as ISE to describe what would happen if there is a complex FLEX Order and subsequently, a non-FLEX Option series is introduced for the component leg(s). Specifically, proposed Section 11(a)(2)(A)(i) and (ii) will provide that if a non-FLEX Option series is added intra-day for a component leg(s) of a complex FLEX Order, the holder or writer of a FLEX Option position in the component leg(s) resulting from such complex FLEX Order would be permitted to close its position(s) under the FLEX trading procedures against another closing only FLEX Option position for the balance of the trading day on which the non-FLEX Option series is added. If a non-FLEX Option series is added for a component leg(s) of a complex FLEX Order on a trading day after the complex FLEX Order position is established, the holder or writer of a FLEX Option position in the component leg(s) resulting from such complex FLEX Order would be required to execute separate FLEX Option and non-FLEX Option transactions to close its position(s), such that FLEX Option component leg(s) would trade under the FLEX trading procedures and non-FLEX Option component leg(s) would trade subject to the non-FLEX trading procedures and rules.⁹⁵ Additionally, a complex FLEX Order submitted into the System for an electronic FLEX Auction pursuant to proposed Section 11(b), a FLEX PIXL pursuant to Section 12, or a FLEX SOM pursuant to Section 13 must include a bid or offer price for each leg, which leg prices when combined must equal the net price of the complex FLEX Order.⁹⁶

Proposed Section 11(b) will describe the electronic FLEX Auction. The proposed FLEX Auction will be identical to ISE Options 3A, Section 11(b) except that Phlx's allocation methodology at proposed Options 3A, Section 11(b)(3)(A)(i) will be identical to its allocation methodology in Options 3,

Section 10 whereas ISE's allocation methodology is identical to ISE Options 3, Section 10. Specifically, a Member may electronically submit a FLEX Order (simple or complex) into an electronic FLEX Auction for execution pursuant to this paragraph (b). Pursuant to proposed subparagraph (b)(1), a FLEX Auction may be initiated if all of the below conditions in proposed subparagraph (b)(1)(A)–(G) are met; otherwise, the System rejects or cancels a FLEX Order that does not meet the conditions in this subparagraph (b)(1).⁹⁷

- **Class:** The FLEX Order is in a class of options the Exchange is authorized to list for trading on the Exchange.

- **Size:** There is no minimum size for FLEX Orders.

- **Terms:** A simple or complex FLEX Order must comply with proposed Section 11(a).

- **Price:** The bid or offer price, or the net debit or credit price, as applicable, of the FLEX Order is the "auction price."

- **Time:** A FLEX Order may only be submitted for electronic execution in a FLEX Auction after FLEX trading has opened pursuant to proposed Section 8.

- **Exposure Interval:** The submitting Member must designate the length of the "exposure interval," which must be between three seconds and five minutes.⁹⁸ The Exchange would provide that the designated time may not go beyond the market close pursuant to proposed Section 11(b).⁹⁹

- **Minimum Increment:** The price of a simple FLEX Order must be in an increment the Exchange determines on a class basis (which may not be smaller than the amounts set forth in proposed Section 5 (*i.e.*, \$0.01)). If the FLEX Order is a complex order, the price must be a net price for the complex strategy.¹⁰⁰

⁹⁷ Proposed paragraph (b)(1) is identical to ISE Options 3A, Section 11(b)(1).

⁹⁸ There will be no default setting to the FLEX Auction exposure interval. As such, Members will be required to specify the exposure interval; otherwise, their FLEX Order will be rejected by the System.

⁹⁹ ISE Options 3A, Section 11(b)(1) is identical.

¹⁰⁰ See proposed subparagraph (G) of Section 11(b)(1). This provision is identical to ISE Options 3A, subparagraph (G) of Section 11(b)(1). Phlx will allow exercise prices to be expressed as percentages. As discussed above, the Exchange is also incorporating within proposed subparagraph (G) the minimum increment provisions for non-FLEX complex orders that are stock-tied from Options 3, Section 14(c)(1) which was amended by SR-Phlx-2025-17. See Options 3, Section 14 which was amended by SR-Phlx-2025-17. See Securities Exchange Act Release No. 102862 (April 15, 2025), 90 FR 16731 (April 21, 2025) (SR-Phlx-2025-17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx's Complex Order Functionality). SR-Phlx-2025-17 proposed the same operative date as this proposal as they are both part of the same technology migration.

⁸⁹ See ISE Options 3A, Section 9 for identical rule text.

⁹⁰ See *e.g.*, ISE Options 3A, Section 10 and NYSE Arca Rule 5.30–O(c). See also Securities Exchange Act Release No. 87235 (October 4, 2019), 84 FR 54671 (October 10, 2019) (SR-CBOE-2019-084) (among other changes, eliminating the availability of an electronic book for FLEX Options).

⁹¹ See proposed Options 3A, Section 11(a), which is identical to ISE Options 3A, Section 11(a).

⁹² See ISE Options 3A, Section 11(a)(1) for identical rule text.

⁹³ See ISE Options 3A, Section 11(a)(2) for identical rule text.

⁹⁴ See proposed Options 3A, Section 11(a)(2)(A).

⁹⁵ See proposed Options 3A, Section 11(a)(2)(A)(i) and (ii), which is identical to ISE Options 3A, Section 11(a)(2)(A)(i) and (ii).

⁹⁶ See proposed Options 3A, Section 11(a)(2)(B), which is identical to ISE Options 3A, Section 11(a)(2)(B).

The Exchange would align the minimum increment requirements for stock-tied FLEX complex strategies with the existing requirements for stock-tied non-FLEX complex strategies as set forth in Options 3, Section 14(c)(1). As such, proposed Options 3A, Section 11(b)(1)(G) will further provide that the prices of Complex Options Strategies (as defined in Options 3, Section 14) may be expressed in no smaller than one cent (\$0.01) increments, and the options leg of Complex Options Strategies may be executed in no smaller than one cent (\$0.01) increments, regardless of the minimum increments otherwise applicable to the individual options legs of the order. Prices of Stock-Option Strategies or Stock-Complex Strategies (each as defined in Options 3, Section 14) may be expressed in any decimal price determined by the Exchange,¹⁰¹ and the stock leg of a Stock-Option Strategy or Stock-Complex Strategy may be executed in any decimal price permitted in the equity market. The options leg of a Stock-Option Strategy or Stock-Complex Strategy may be executed in no smaller than one cent (\$0.01) increments, regardless of the minimum increments otherwise applicable to the individual options legs of the order. Similar to stock-tied complex orders today, the Exchange believes that smaller minimum increments are appropriate for complex FLEX Orders that contain a stock component as the stock component can trade at finer decimal increments permitted by the equity market.

Proposed subparagraph (b)(2) of Options[sic] 11 will describe the FLEX Auction process, and will provide that upon receipt of a FLEX Order that meets the conditions in subparagraph (a) as described above, the FLEX Auction commences. Proposed subparagraph (b)(2)(A) will describe the contents of

the FLEX Auction message, and will provide that the System initiates a FLEX Auction by sending a FLEX Auction notification message to Members detailing the FLEX Option series or complex strategy (as applicable), side, size, auction ID,¹⁰² capacity, and exposure interval. Similar to all other auction notifications, FLEX Auction notification messages are not disseminated to OPRA.¹⁰³ Identical to ISE, the FLEX Auction message will not include the price of the auctioned FLEX Order. The Exchange believes not including the auction price in the notification message will encourage Members to respond with the best prices at which they are willing to trade against the auctioned FLEX Order. If the message included the price, Members may only respond to trade at that price; without the price, Members may respond at better prices, which may result in price improvement opportunities for the auctioned FLEX Order.

Proposed subparagraph (b)(2)(B) will provide that one or more FLEX Auctions in the same FLEX Option series or complex strategy (as applicable) may occur at the same time. To the extent there is more than one FLEX Auction in a FLEX Option series or complex strategy (as applicable) underway at the same time, the FLEX Auctions conclude sequentially based on the times at which each FLEX Auction's exposure interval concludes. At the time each FLEX Auction concludes, the System allocates the FLEX Order pursuant to proposed subparagraph (3) and takes into account all FLEX responses submitted during the exposure interval.¹⁰⁴ Generally, if a Member attempts to initiate an electronic FLEX Auction in a FLEX Option series while another auction in that series is ongoing, the Exchange believes it will provide that second FLEX Order with an opportunity for execution in a timely manner by initiating another FLEX Auction, rather than having the Member wait for the first auction to conclude. The second Member may not be able to submit a response to trade in the ongoing FLEX Auction, because the terms may not be consistent with that Member's order (for example, there may not be sufficient size, and the Member may only receive a share of the auctioned order depending on other

responses). Therefore, the Exchange believes providing this proposed functionality may encourage Members to use electronic FLEX Auctions to execute their FLEX Orders.

Proposed subparagraph (b)(2)(C) will provide that the submitting Member may cancel a FLEX Auction prior to the end of the exposure interval.¹⁰⁵ Proposed subparagraph (b)(2)(D) will specify the conditions for submitting responses to a FLEX Auction. Any Member (including the submitting Member) may submit responses to a FLEX Auction that are properly marked specifying the FLEX Option series or complex strategy (as applicable), bid or offer price or net price (respectively), size, side of the market, and the auction ID for the FLEX Auction to which the Member is submitting the response. A FLEX response may only participate in the FLEX Auction with the auction ID specified in the response, which is why the auction notification message described above will include an auction ID and responses must identify the applicable auction ID.¹⁰⁶ If there are concurrent FLEX Auctions occurring, a Member may submit responses to all ongoing auctions, and thus concurrent auctions will not hinder a Member's ability to participate in any FLEX Auction.

A Member using the same badge/¹⁰⁷ mnemonic¹⁰⁸ may only submit a single FLEX response per auction ID to a FLEX Auction.¹⁰⁹ If an additional FLEX response is submitted for the same auction ID from the same badge/¹⁰⁷ mnemonic, then that FLEX response will automatically replace the previous FLEX response.¹¹⁰ The System caps the size of a FLEX response for the same badge/mnemonic at the size of the FLEX

¹⁰⁵ See ISE Options 3A, Section 11(b)(2)(C) for identical rule text.

¹⁰⁶ See ISE Options 3A, Section 11(b)(2)(D) for identical rule text.

¹⁰⁷ A "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. See Options 1, Section 1(b)(6).

¹⁰⁸ A "mnemonic" means an acronym comprised of letters and/or numbers assigned to member organizations. A member organization account may be associated with multiple mnemonics. See Options 1, Section 1(b)(29).

¹⁰⁹ A badge and mnemonic are essentially Member identifiers. Every order that comes into the System is tied to a badge or mnemonic.

¹¹⁰ In other words, the Member does not have to cancel the previous FLEX response before submitting an additional one as the previous response is *automatically* replaced. See proposed Options 3A, Section 11(b)(2)(D)(i), which is identical to ISE Options 3A, Section 11(b)(2)(D)(i). While not specified in the Exchange's current rules, this is consistent with current auction behavior, including current PIXL and SOM behavior.

¹⁰¹ The minimum increment for individual options leg of a FLEX Order may not be smaller than \$0.01, as required under proposed Options 3A, Section 5. However, when a stock leg is included in a complex strategy (*i.e.*, Stock-Option Strategy or Stock-Complex Strategy) for the FLEX Option, then the price for FLEX Stock-Option Strategies and FLEX Stock-Complex Strategies can be expressed to four decimal places in order to trade at finer decimal increments permitted by the equity market. However, the options leg will not be permitted to execute in increments smaller than one cent (\$0.01). This is identical to how a non-FLEX Stock-Option Strategy and a non-FLEX Stock-Complex Strategy can be priced today. See Options 3, Section 14(c)(1) for identical provisions. Options 3, Section 14 which was amended by SR-Phlx-2025-17. See Securities Exchange Act Release No. 102862 (April 15, 2025), 90 FR 16731 (April 21, 2025) (SR-Phlx-2025-17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx's Complex Order Functionality). SR-Phlx-2025-17 proposed the same operative date as this proposal as they are both part of the same technology migration.

¹⁰² As discussed below, this information on the proposed auction message will permit responses to only execute at the conclusion of the auction into which the responses were submitted.

¹⁰³ See ISE Options 3A, Section 11(b)(2)(D)(iv) for identical rule text.

¹⁰⁴ See ISE Options 3A, Section 11(b)(2)(B) for identical rule text.

Order (*i.e.*, the System ignores the size in excess of the size of the FLEX Order when processing the FLEX Auction).¹¹¹ Given that the Exchange is proposing below to apply a pro-rata allocation methodology to executions at the conclusion of the FLEX Auction, this provision is intended to prevent a Member from submitting a response with an extremely large size into the electronic FLEX Auction in order to obtain a larger pro-rata share of the FLEX Order.

Further, FLEX responses must be on the opposite side of the market as the FLEX Order. The System rejects a FLEX response on the same side of the market as the FLEX Order.¹¹² FLEX responses are not visible to Members or disseminated to OPRA.¹¹³ This is consistent with how ISE treats FLEX responses pursuant to ISE Options 3A, Section 11(b)(2)(D)(iv). The proposed rule change is also consistent with the Exchange's existing auctions, in which responses are not visible to the market.¹¹⁴ Responses to electronic auctions are not firm prior to the conclusion of the auction, at which time their price and size are firm. For the same reason as the Exchange is proposing not to disseminate the auction price on the auction notification message as discussed above, the Exchange believes it will encourage Members to submit responses at their best possible price if they do not know the prices at which other Members are willing to trade.¹¹⁵

A Member may modify or cancel its FLEX Responses during the exposure interval.¹¹⁶ The minimum price increment for FLEX responses is the same as the one the Exchange determines for a class pursuant to proposed subparagraph (b)(1)(G) above. A response to a FLEX Auction of a complex order must have a net price. The System rejects a FLEX response that

is not in the applicable minimum increment.¹¹⁷ Complex FLEX responses must be entered in the increments provided in Options 3, Section 14(c)(1) at the proposed execution net price or at a price that is at least one cent better for the Agency Order.¹¹⁸

Pursuant to proposed subparagraph (b)(3) of Section 11, the FLEX Auction concludes at the end of the exposure interval, unless the Exchange halts trading in the affected underlying or the submitting Member cancels the FLEX Auction before the end of the exposure interval, in which case the FLEX Auction concludes without execution.¹¹⁹ At the conclusion of the FLEX Auction:

- Pursuant to proposed subparagraph (b)(3)(A), the System executes the FLEX Order against the FLEX responses at the best price(s), to the price at which the balance of the FLEX Order or the FLEX responses can be fully executed (the "final auction price"). For purposes of ranking FLEX responses when determining how to allocate a FLEX Order, the term "price" refers to the dollar and decimal amount of the response bid or offer.¹²⁰

- Pursuant to proposed subparagraph (b)(3)(A)(i), if there are multiple FLEX responses at the same price level, then the contracts in those FLEX responses are allocated proportionally according to Size Pro-Rata Priority¹²¹ with Public

Customer¹²² overlay¹²³ (as described in Options 3, 10(a)(1)(A) and non-Public Customer interest allocation described in 10(a)(1)(E) and (F)). The Exchange notes that this is similar to ISE utilizes its allocation methodology in Options 3, Section 10 with respect to FLEX Options. Today, Phlx utilizes its allocation methodology in Options 3, Section 10 in its SOM and PIXL for non-FLEX Options where the Public Customer gets priority treatment over non-Public Customers pursuant to Options 3, Section 10(a)(1)(A).¹²⁴ After Public Customers responses are allocated, non-Public Customer responses would be allocated pursuant to Options 3, Section 10(a)(1)(E) and (F).¹²⁵

- Pursuant to proposed subparagraph (b)(3)(A)(ii), the executable quantity is allocated to the nearest whole number, with fractions rounded up for the FLEX

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. *See* Options 3, Section 10(a). Phlx filed rule proposals to amend Options 3, Section 10. *See* Securities Exchange Act Release No. 101989 (December 30, 2024), 89 FR 106888 (December 30, 2024) (SR-Phlx-2024-71). SR-Phlx-2024-71 is effective but not yet operative. SR-Phlx-2024-71 would be operative at the same time as this rule change as they are both part of the same technology migration.

¹²² 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). 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).

¹²³ Public Customer Priority: the highest bid and lowest offer shall have priority except that Public Customer orders shall have priority over non-Public Customer orders at the same price. If there are two or more Public Customer orders for the same options series at the same price, priority shall be afforded to such Public Customer orders in the sequence in which they are received by the System. Public Customer Priority is always in effect when the Price/Time execution algorithm is in effect. *See* Options 3, Section 10(a)(1)(C)(1)(a).

¹²⁴ *See, e.g.*, Options 3, Section 11(d)(3)(C) (SOM allocation methodology) and Options 3, Section 13(b)(5)(B) (PIXL allocation methodology).

¹²⁵ This is a distinction between ISE and Phlx. ISE allocates pursuant to its allocation methodology in Options 3, Section 10 and Phlx allocated pursuant to its Options 3, Section 10 methodology which also is utilized in Phlx's SOM allocation methodology at Options 3, Section 11(d)(3)(C) and PIXL allocation methodology at Options 3, Section 13(b)(5)(B). Phlx's allocation model is different than ISE in that Phlx allocates to Market Makers before allocating to all other non-Public Customer market participants pursuant to Phlx Options 3, Section 10 while ISE does not have an additional allocation to Market Makers before all other market participants pursuant to ISE Options 3, Section 10. The Exchange notes that Public Customers on Phlx and Priority Customers on ISE will continue to have priority over other market participants.

¹¹¹ *See* proposed Options 3A, Section 11(b)(2)(D)(ii), which is identical to ISE Options 3A, Section 11(b)(2)(D)(ii).

¹¹² *See* proposed Options 3A, Section 11(b)(2)(D)(iii), which is identical to ISE Options 3A, Section 11(b)(2)(D)(iii).

¹¹³ *See* proposed Options 3A, Section 11(b)(2)(D)(iv), which is identical to ISE Options 3A, Section 11(b)(2)(D)(iv).

¹¹⁴ *See* Supplementary Material .02 to Options 3, Section 11; and Options 3, Section 13(c)(4).

¹¹⁵ For example, if during a FLEX Auction of a buy FLEX Order, a Member submitted a response to sell at \$1.05, if another Member saw that response, it may merely respond to sell at \$1.05, or maybe \$1.04, even though it may ultimately be willing to sell at \$1.03. Without seeing the other responses, the second Member may instead submit a response to sell at \$1.03, which could result in price improvement for the auctioned order.

¹¹⁶ *See* proposed Options 3A, Section 11(b)(2)(D)(v), which is identical to ISE Section 11(b)(2)(D)(v).

¹¹⁷ *See* proposed Options 3A, Section 11(b)(2)(D)(vi) which is identical to ISE Options 3A, Section 11(b)(2)(D)(vi).

¹¹⁸ ISE does not currently have this rule text at Options 3A. ISE will file to add identical rule text in a separate rule change. The Exchange believes that this additional language will provide members with additional information as all Complex Orders trade in the increments described in Options 3, Section 14(c)(1) which states that bids and offers for Complex Options Strategies may be expressed in one cent (\$0.01) increments, and the options leg of Complex Options Strategies may be executed in one cent (\$0.01) increments, regardless of the minimum increments otherwise applicable to the individual options legs of the order. Bids and offers for Stock-Option Strategies or Stock-Complex Strategies may be expressed in any decimal price determined by the Exchange, and the stock leg of a Stock-Option Strategy or Stock-Complex Strategy may be executed in any decimal price permitted in the equity market. The options leg of a Stock-Option Strategy or Stock-Complex Strategy may be executed in one cent (\$0.01) increments, regardless of the minimum increments otherwise applicable to the individual options legs of the order. Options 3, Section 14 was amended by SR-Phlx-2024-71. *See* Securities Exchange Act Release No. 101989 (December 30, 2024), 89 FR 106888 (December 30, 2024) (SR-Phlx-2024-71) which is effective but not yet operative. SR-Phlx-2024-71 will be operative at the same time as this rule change.

¹¹⁹ *See* ISE Options 3A, Section 11(b)(3) for identical rule text.

¹²⁰ *See* ISE Options 3A, Section 11(b)(3)(A) for identical rule text.

¹²¹ Size Pro-Rata Priority shall mean that if there are two or more resting orders or quotes at the same price, the System allocates contracts from an

response with the higher quantity. Further, proposed subparagraph (b)(3)(A)(iii) will provide that if an allocation would result in less than one contract, then one contract will be allocated. The Exchange is adopting language that is consistent with its current rounding and allocation methodology as the Exchange does not allocate fractional contracts and instead rounds up to the nearest whole number.¹²⁶

Pursuant to proposed subparagraph (b)(3)(B), the System cancels an unexecuted FLEX Order (or unexecuted portion).¹²⁷ Further, proposed subparagraph (b)(3)(C) will provide that the System cancels any unexecuted responses (or unexecuted portions).¹²⁸

M. FLEX PIXL (Section 12)

The Exchange proposes to establish PIXL auction functionality for FLEX Options in Options 3A, Section 12. The proposed FLEX PIXL auction will be substantially similar to ISE Options 3A, Section 12, except for a difference related to the allocation methodology for all non-Public Customers. Pursuant to proposed Section 12, a Member (the “Initiating Member”) may electronically submit for execution an order (which may be a simple or complex order) it represents as agent (“Agency Order”) against principal interest or a solicited order(s) (except for an order for the account of any FLEX Market Maker with an appointment in the applicable FLEX Option class on the Exchange) (an “Initiating Order”), provided it submits the Agency Order for electronic execution into a FLEX PIXL auction pursuant to this Rule.¹²⁹

Proposed Section 12(a)(1)–(5) will set forth the FLEX PIXL auction eligibility requirements. Specifically, the Initiating Member may initiate a FLEX PIXL auction if all of the following conditions are met:

- *Class.* An Agency Order must in a FLEX Option class the Exchange designates as eligible for FLEX PIXL auctions.
- *FLEX Option Series.* The Agency Order and Initiating Order must each be a FLEX Order that complies with proposed Section 11(a) in a permissible FLEX Option series that complies with proposed Section 3 above. For a complex FLEX Order, each leg must be in a permissible FLEX option series that complies with proposed Section 3 above.¹³⁰
- *Marking.* The Initiating Member must mark an Agency Order for FLEX PIXL auction processing.
- *Size.* There will be no minimum size for Agency Orders. The Initiating Order must be for the same size as the Agency Order.
- *Minimum Increment.* The price of the Agency Order and Initiating Order for simple FLEX Orders must be in an increment the Exchange determines on a class basis (which may not be smaller than the amounts set forth in Section 5 above). If the Agency Order and Initiating Order are complex orders, the price must be a net price for the complex strategy.¹³¹ The Exchange will align the minimum increment requirements for stock-tied FLEX complex strategies with the existing requirements for stock-tied non-FLEX complex strategies as set forth in Options 3, Section 14(c)(1). As such, proposed Options 3A, Section 12(a)(5) will further provide that the prices of Complex Options Strategies (as defined in Options 3, Section 14) may be expressed in one cent (\$0.01) increments, and the options leg of Complex Options Strategies may be executed in no smaller than one cent (\$0.01) increments, regardless of the minimum increments otherwise applicable to the individual options legs of the order. Prices of Stock-Option Strategies or Stock-Complex Strategies (each as defined in Options 3, Section 14) may be expressed in any decimal price determined by the Exchange,¹³²

and the stock leg of a Stock-Option Strategy or Stock-Complex Strategy may be executed in any decimal price permitted in the equity market. The options leg of a Stock-Option Strategy or Stock-Complex Strategy may be executed in no smaller than one cent (\$0.01) increments, regardless of the minimum increments otherwise applicable to the individual options legs of the order. Similar to stock-tied complex orders today, the Exchange believes that smaller minimum increments are appropriate for complex FLEX Orders that contain a stock component as the stock component can trade at finer decimal increments permitted by the equity market.

- *Time.* An Initiating Member may only submit an Agency Order to a FLEX PIXL auction after trading in FLEX Options is open pursuant to proposed Section 8.

The System will reject or cancel both an Agency Order and Initiating Order submitted to a FLEX PIXL auction that do not meet the conditions in proposed paragraph (a) as described above. The proposed FLEX PIXL eligibility requirements in proposed Section 12(a) are identical to ISE Options 3A, Section 12(a).

Pursuant to proposed Section 12(b), the Initiating Order must stop the entire Agency Order at a specified price. If the Agency Order and Initiating Order are Complex Orders, the price must be a net price for the complex strategy.¹³³ In particular, the Initiating Member must specify either of the below; otherwise, the System will reject or cancel both an Agency Order and Initiating Order submitted to a FLEX PIXL auction that do not meet the conditions in this proposed paragraph (b).

- Pursuant to proposed subparagraph (b)(1), a single price at which it seeks to execute the Agency Order against the Initiating Order (a “single-price submission”), including whether it elects to have less than its guaranteed allocation (as described in proposed Section 12(e)(4) below). This is identical to ISE Options 3A, Section 12(b)(1).¹³⁴

the options leg will not be permitted to execute in increments smaller than one cent (\$0.01). See Options 3, Section 14 which was amended by SR-Phlx-2025-17. Phlx’s Complex Order functionality was amended in SR-Phlx-2025-17. See Securities Exchange Act Release No. 102862 (April 15, 2025), 90 FR 16731 (April 21, 2025) (SR-Phlx-2025-17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx’s Complex Order Functionality). SR-Phlx-2025-17 proposed the same operative date as this proposal as they are both part of the same technology migration. See also *supra* note 101.

¹³³ See ISE Options 3A, Section 12(b) for identical rule text.

¹³⁴ The Exchange will allow the Initiating Member to customize their guaranteed allocation

¹²⁶ See Options 3, Section 10(a), Supplementary Material .09 to Options 3, Section 11, and Supplementary Material .10 to Options 3, Section 13. See Securities Exchange Act Release Nos. 101989 (December 30, 2024), 89 FR 106888 (December 30, 2024) (SR-Phlx-2024-71). See also Securities Exchange Act Release No. 103667 (August 8, 2025), 90 FR 39042 (August 13, 2025) (SR-Phlx-2025-35) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend PIXL and Adopt New Auctions). ISE has identical rule text in Options 3, Section 10(c), Supplementary Material .09 to Options 3, Section 11, and Supplementary Material .10 to Options 3, Section 13.

¹²⁷ See ISE Options 3A, Section 11(b)(3)(B) for identical rule text.

¹²⁸ See ISE Options 3A, Section 11(b)(3)(C) for identical rule text.

¹²⁹ See ISE Options 3A, Section 12 which has identical rule text except for this phrase, “if the Agency Order is a simple order.” The Exchange is not including this phrase because the FLEX PIXL rule specifically states that any solicited contra-side orders entered by member organizations to trade against Agency Orders may not be for the account of an Exchange Market Maker that is assigned to the options class. See Supplementary Material .02 to Options 3A, Section 12. ISE will separately file a rule change to amend this language.

¹³⁰ See ISE Options 3A, Section 11(a)(2) which has identical rule text.

¹³¹ See ISE Option 3A, Section 12(a)(5) which has identical rule text.

¹³² The prices of the FLEX Stock-Option Strategies and FLEX Stock-Complex Strategies can be expressed to four decimal places, which is identical to how the stock portion of a non-FLEX Stock-Option Strategy and a non-FLEX Stock-Complex Strategy can be priced today. However,

As further discussed below, the proposed guaranteed allocation process will be based on the guaranteed allocation process available in non-FLEX PIXL auctions, and therefore the proposed rule change will provide further consistency across the Exchange's auction mechanism processes.¹³⁵

- Pursuant to subparagraph (b)(2), an initial stop price and instruction to automatically match the price and size of all FLEX PIXL responses (“auto-match”) at each price, up to a designated limit price, better than the price at which the balance of the Agency Order can be fully executed (the “final auction price”). This is identical to ISE Options 3A, Section 12(b)(2).

Proposed Section 12(c) will govern the FLEX PIXL auction process. Specifically, upon receipt of an Agency Order that meets the conditions in paragraphs (a) and (b) as described above, the FLEX PIXL auction process commences. Proposed subparagraphs (c)(1)(A) and (B) will describe concurrent FLEX PIXL auctions for simple Agency Orders and complex Agency Orders, respectively. One or more FLEX PIXL auctions in the same FLEX Option series or same complex strategy (as applicable) may occur at the same time.¹³⁶ To the extent there is more than one FLEX PIXL auction in a FLEX Option series or complex strategy (as applicable) underway at the same time, the FLEX PIXL auctions will conclude sequentially based on the

percentage of the Initiating Order anywhere from 0% up to 50% of the Agency Order (if there is a response(s) from one other Member at the same price) or up to 40% of the Agency Order (if there are responses from two or more Members at the same price). For example, an Agency Order is entered into FLEX PIXL for 100 contracts. If the Initiating Member only wants to have a guaranteed allocation of 10% on the Initiating Order that was entered with the Agency Order, the Initiating Member can stipulate 10% on the Initiating Order. If there are 4 FLEX PIXL responses for a total of 200 contracts at the end of the auction, then the Initiating Member will only get 10 contracts allocated on its Initiating Order (*i.e.*, the guaranteed 10% of 100 contracts). The Exchange notes that the proposed guaranteed allocation percentages of 50% (if there is a response(s) from one other Member) and 40% (if there are responses from two or more Members) for FLEX PIXL will differ from the current guaranteed allocation percentage of 40% for standard PIXL. Phlx has a consistent guaranteed allocation percentage for its non-FLEX price improvement auctions at Options 3, Section 13(b)(5)(B).

¹³⁵ See *id.*

¹³⁶ Further, for complex Agency Orders, PIXL auctions in different complex strategies may be ongoing at any given time, even if the complex strategies have overlapping components. A FLEX PIXL auction in a complex strategy may be ongoing at the same time as a FLEX PIXL auction in any component of the complex strategy. See proposed subparagraph (c)(1)(B)(i) of Options 3A, Section 12 which is identical to ISE subparagraph (c)(1)(B)(i) of Options 3A, Section 12.

times at which the FLEX PIXL auction periods end. At the time each FLEX PIXL auction concludes, the System allocates the Agency Order pursuant to proposed paragraph (e) as described below, and takes into account all FLEX PIXL responses received during the FLEX PIXL auction period. The concurrent FLEX PIXL auction feature in proposed Section 12(c)(1)(A) and (B) is identical to ISE Options 3A, Section 12(c)(1)(A) and (B), and is also consistent with the concurrent auction feature proposed above for FLEX Auctions. Similar to FLEX Auctions as proposed above, if a Member attempts to initiate a FLEX PIXL Auction in a FLEX Option series while another auction in that series is ongoing, the Exchange believes it will provide that second FLEX Order with an opportunity for execution in a timely manner by initiating another FLEX PIXL Auction, rather than requiring the Member to wait for the first auction to conclude. The second Member may not be able to submit a response to trade in the ongoing FLEX PIXL Auction because the terms may not be consistent with that Member's order (for example, there may not be sufficient size, and the Member may only receive a share of the auctioned order depending on other responses). Therefore, the Exchange believes that providing this functionality for FLEX PIXL may provide additional opportunities for execution of FLEX Orders by encouraging Members to use FLEX PIXL.

Pursuant to proposed Section 12(c)(2), the System initiates the FLEX PIXL auction process by sending a FLEX PIXL auction notification message detailing the side, size, auction ID, the length of the FLEX PIXL auction period, and FLEX Option series or complex strategy, as applicable, of the Agency Order to all Members that elect to receive FLEX PIXL auction notification messages. The Exchange may also determine to include the stop price in FLEX PIXL auction notification messages, which will apply to all FLEX PIXL auctions. Similar to all other auction notifications, FLEX PIXL auction notification messages will not be disseminated to OPRA.¹³⁷

Proposed Section 12(c)(3) will describe the “FLEX PIXL Auction period,” and is identical to ISE Options 3A, Section 12(c)(3). The FLEX PIXL Auction period will be defined as a period of time that must be designated by the Initiating Member, which may be no less than three seconds and no more than five minutes. Similar to the

¹³⁷ See ISE Options 3A, Section 12(c)(3) for identical rule text.

exposure interval for electronic FLEX Auctions in Section 11(b) discussed above, the Initiating Member will be required to identify a length of time within the specified parameters for FLEX PIXL as there will be no default for the FLEX PIXL Auction period. Otherwise, their FLEX Order will be rejected by the System. The designated time may not go beyond the market close, if an execution is permitted by this Section 12. The Exchange's non-FLEX auctions currently allow executions (as permitted by their respective rules) to occur in such scenarios, so the Exchange proposes to be consistent with current System functionality in this regard.¹³⁸ In doing so, the Exchange's proposal will promote executions in FLEX PIXL to the extent possible (instead of cancelling the FLEX Order) and also prevent executions from occurring after the market close.

Proposed Section 12(c)(4) will provide that an Initiating Member may not modify or cancel an Agency Order or Initiating Order after submission to a FLEX PIXL auction, except to improve the price of the Initiating Order. This will be identical to ISE Options 3A, Section 12(c)(4); the Exchange will allow a limited exception by allowing Initiating Members to improve the price of their Initiating Orders. The Exchange notes that this will align to current non-FLEX PIXL behavior, which allows entering Members to modify their PIXL Orders¹³⁹ upon entry into the PIXL by improving upon the initial price of the PIXL Orders.¹⁴⁰ Similar to allowing the initiating Member of a non-FLEX PIXL to improve the initial price of its PIXL Orders, the Exchange believes that it is appropriate to allow the Initiating Member of the FLEX PIXL to improve the price of its Initiating Order (*i.e.*, contra-side to the Agency Order) because it would also improve the stop price of the Agency Order that came in together with the Initiating Order.¹⁴¹

¹³⁸ While this behavior is not explicitly stated in the current Rules, the Exchange's proposal will be consistent with current non-FLEX auction behavior, including current PIXL and SOM behavior.

¹³⁹ PIXL Orders (*i.e.*, contra-side to the Agency Order) for PIXL are functionally equivalent to Initiating Orders (*i.e.*, contra-side order to the Agency Order) for FLEX PIXL. See Options 3, Section 13 for a description of PIXL Orders.

¹⁴⁰ See Options 3, Section 13(b)(1)(A) (providing that a PIXL Order may not be canceled or modified, but the stop price of the PIXL Order may be improved during the exposure period).

¹⁴¹ As proposed, the Initiating Member enters a paired FLEX Order into FLEX PIXL consisting of an Agency Order and an Initiating Order (which is the contra-side of the Agency Order). This is identical to how standard non-FLEX PIXL works today in that the Initiating Member enters a paired order into

Continued

Proposed Section 12(c)(5) will govern the requirements for FLEX PIXL responses. Specifically:

- Any Member other than the Initiating Member (the System rejects a response with the same badge/mnemonic as the Initiating Order) may submit responses to a FLEX PIXL auction that are properly marked specifying price, size, side, and the auction ID for the FLEX PIXL auction to which the Member is submitting the response. A FLEX PIXL response may only participate in the FLEX PIXL auction with the auction ID specified in the response.¹⁴²

- The minimum price increment for FLEX PIXL responses is the same as the one the Exchange determines for a class pursuant to proposed Section 12(a)(5) above. A response to a FLEX PIXL auction of a complex Agency Order must have a net price. The System will reject a FLEX PIXL response that is not in the applicable minimum increment.¹⁴³

- A Member using the same badge/mnemonic may only submit a single FLEX PIXL response per auction ID for a given auction. If an additional FLEX PIXL response is submitted for the same auction ID from the same badge/mnemonic, then that FLEX PIXL response will automatically replace the previous FLEX PIXL response.¹⁴⁴

- The System will cap the size of a FLEX PIXL response at the size of the Agency Order (*i.e.*, the System will ignore size in excess of the size of the Agency Order when processing the FLEX PIXL auction).¹⁴⁵

- FLEX PIXL responses must be on the opposite side of the market as the Agency Order. The System rejects a FLEX PIXL response on the same side of the market as the Agency Order.¹⁴⁶

standard PIXL consisting of a Public Customer, broker-dealer, or any other entity ("PIXL Order") that would be contra an agency order ("Initiating Order") (*i.e.*, the PIXL Agency Order's contra-side, and the functional equivalent to an Initiating Order on FLEX PIXL).

¹⁴² See proposed Options 3A, Section 12(c)(5), which is identical to ISE Options 3A, Section 12(c)(5).

¹⁴³ See proposed Options 3A, Section 12(c)(5)(A), which is identical to ISE Options 3A, Section 12(c)(5)(A).

¹⁴⁴ See proposed Options 3A, Section 12(c)(5)(B), which is identical to ISE Options 3A, Section 12(c)(5)(B).

¹⁴⁵ See proposed Options 3A, Section 12(c)(5)(C), which is identical to ISE Options 3A, Section 12(c)(5)(C). As noted above, this will align to current non-FLEX auction functionality, including PIXL auction functionality in Options 3, Section 13.

¹⁴⁶ See proposed Options 3A, Section 12(c)(5)(D), which is identical to ISE Options 3A, Section 12(c)(5)(D).

- FLEX PIXL responses will not be visible to PIXL auction participants or disseminated to OPRA.¹⁴⁷

- A Member may modify or cancel its FLEX PIXL responses during the FLEX PIXL auction.¹⁴⁸

- Finally, FLEX PIXL responses in a complex strategy with a stock component that are through the Stop Price must improve such Stop Price by at least one cent.¹⁴⁹

Pursuant to proposed Section 12(d), a FLEX PIXL auction concludes at the earliest to occur of the following times: (1) the end of the FLEX PIXL auction period; and (2) any time the Exchange halts trading in the affected underlying, provided, however, that in such instance the FLEX PIXL auction concludes without execution.¹⁵⁰

Proposed Section 12(e) will govern how executions will occur in FLEX PIXL. In particular, at the end of the FLEX PIXL auction, the System allocates the Initiating Order or FLEX PIXL responses against the Agency Order at the best price(s), to the price at which the balance of the Agency Order can be fully executed (the "final auction price"), as follows. For purposes of ranking the Initiating Order and FLEX PIXL responses when determining how to allocate the Agency Order against the Initiating Order and those responses, the term "price" refers to the dollar and decimal amount of the order or response bid or offer.¹⁵¹ Proposed subparagraphs (e)(1)–(4) details the FLEX PIXL allocation methodology for the following scenarios:

- No Price Improvement:** If the FLEX PIXL auction results in no price improvement, the System executes the Agency Order at the stop price in the following order:

- Public Customer responses (in time priority);¹⁵²

- The Initiating Order for the greater of (1) one contract or (2) up to 50% of the Agency Order if there is a response(s) from one other Member at the same price or 40% of the Agency Order if there are responses from two or more other Members at the same price

¹⁴⁷ See proposed Options 3A, Section 12(c)(5)(E), which is identical to ISE Options 3A, Section 12(c)(5)(E).

¹⁴⁸ See proposed Options 3A, Section 12(c)(5)(F), which is identical to ISE Options 3A, Section 12(c)(5)(F).

¹⁴⁹ See proposed Options 3A, Section 12(c)(5)(G). The Exchange notes that ISE does not have a similar sentence but intends to file a rule change to add this language to its corresponding rule.

¹⁵⁰ See ISE Options 3A, Section 12(e) for identical rule text.

¹⁵¹ See proposed Section 12(e)(1)(A), which is identical to ISE Options 3A, Section 12(e)(1)(A).

¹⁵² See proposed Section 12(e)(1)(A), which is identical to ISE Options 3A, Section 12(e)(1)(A).

(which percentages are based on the original size of the Agency Order).¹⁵³ Members may elect for the Initiating Order to have less than their guaranteed allocation as described in subparagraph (e)(4) below.¹⁵⁴ Unless there are remaining contracts after including all PIXL responses, under no circumstances does the Initiating Member receive an allocation percentage at the final auction price of more than 50% of the initial Agency Order in the event there is a response(s) from one other Member or 40% of the initial Agency Order in the event there are responses from two or more other Members, except when rounding up. The Exchange is specifying two limited scenarios in this Rule where the Initiating Member may receive an allocation percentage greater than its guaranteed allocation percentage, which is either when there are remaining contracts after including all PIXL responses or when rounding up.¹⁵⁵ As an example of the first scenario, assume an Initiating Member submitted a FLEX Order for 20 contracts into FLEX PIXL and there are 2 PIXL responses (one for 3 contracts and one for 4 contracts). After the 7 PIXL responses are allocated, the Initiating Member would then receive the remaining 13 contracts (which is more than their 40% allocation percentage) because there are remaining contracts after all PIXL responses are included.

- All other FLEX PIXL responses, allocated on a Size Pro-Rata basis ((as defined in Options 3, Section 10(a)(1)(E) and (F))¹⁵⁶ and

- The Initiating Order to the extent there are any remaining contracts.¹⁵⁷

- Price Improvement with Single-Price Submission:** If the FLEX PIXL auction results in price improvement for the Agency Order and the Initiating

¹⁵³ See proposed ISE Options 3A, Section 12(e)(1)(A) with identical rule text. See *infra* note 134 for further discussion on the 50%/40% allocation percentages.

¹⁵⁴ This sentence does not appear in ISE Options 3A, Section 12(e)(1)(B). The Exchange proposes to add this sentence as a guidepost and reminder that a Member may elect less than their guaranteed allocation.

¹⁵⁵ See proposed Section 12(e)(1)(B), which is identical to ISE Options 3A, Section 12(e)(1)(B).

¹⁵⁶ See proposed Section 12(e)(1)(C). Phlx's allocation model differs from ISE's allocation model, although the Exchange notes that Size Pro-Rata as defined in Options 3, Section 10(a) is similar to pro-rata as referenced in ISE Options 3, Section 10(c). Phlx's allocation model allocates to Market Makers pursuant to Options 3, Section 10(a)(1)(E), after allocating to Public Customers, and thereafter allocates to all other remaining non-Public Customer, non-Market Maker interest pursuant to Options 3, Section 10(a)(1)(F). The Exchange notes that Public Customers on Phlx will continue to have priority over other market participants.

¹⁵⁷ See proposed Section 12(e)(1)(D), which is identical to ISE Options 3A, Section 12(e)(1)(D).

Member selected a single-price submission, at each price better than the final auction price, the System executes the Agency Order in the following order:

- Public Customer responses (in time priority);¹⁵⁸
- Other FLEX PIXL responses (in time priority) at prices better than the final auction price; and
- All other FLEX PIXL responses at the final auction price, allocated on a Size Pro-Rata basis ((as defined in Options 3, Section 10(a)(1)(E) and (F)).¹⁵⁹

For example, assume a FLEX PIXL Agency Order is sent for 100 contracts with a price of \$1.00 and the Initiating Member selected a single-price submission. There are two PIXL responses for 5 contracts each at \$0.98, two PIXL responses for 20 contracts each at \$0.99, and two PIXL responses for 40 contracts each at \$1.00. The PIXL responses at \$0.98 and \$0.99 will be executed in their entirety. The PIXL responses at \$1.00 (final auction price) will be executed on a Size Pro-Rata basis.

At the final auction price, the System executes any remaining contracts from the Agency Order at that price in the order set forth in proposed Section 12(e)(1), as described above.¹⁶⁰

• **Price Improvement with Auto-Match:** If the FLEX PIXL auction results in price improvement for the Agency Order and the Initiating Member selected auto-match, at each price better than the final auction price up to the designated limit price, the System executes the Agency Order against the Initiating Order for the number of contracts equal to the aggregate size of all FLEX PIXL responses and then executes the Agency Order against those responses in the order set forth in proposed subparagraph (e)(2) described above. At the final auction price, the System executes contracts at that price in the order set forth in proposed subparagraph (e)(1) described above.¹⁶¹

• **Guaranteed Allocation:** If the Initiating Member selects a single-price submission, it may elect for the Initiating Order to have less than their

guaranteed allocation (50% if there is a response(s) from one other Member or 40% if there are responses from two or more Members) to trade against the Agency Order. The Initiating Member may select a lesser percentage than their guaranteed allocation. If the Initiating Member elects 0%, then notwithstanding subparagraphs (e)(1) and (2), the System only executes the Initiating Order against any remaining Agency Order contracts at the stop price after the Agency Order is allocated to all FLEX PIXL responses at all prices equal to or better than the stop price.

Guaranteed allocation information is not available to other market participants and may not be modified after it is submitted.¹⁶²

Pursuant to proposed Section 12(e)(5), the System cancels any unexecuted FLEX PIXL responses (or unexecuted portions) at the conclusion of the FLEX PIXL auction.¹⁶³

Lastly, the Exchange proposes a number of policies applicable to FLEX PIXL as Supplementary Materials to Options 3A, Section 12. Specifically, proposed Supplementary Material .01 will provide that a Member may only use a FLEX PIXL auction where there is a genuine intention to execute a bona fide transaction.¹⁶⁴ Proposed Supplementary Material .02 will provide that it will be deemed conduct inconsistent with just and equitable principles of trade and a violation of General 9, Section 1(c)¹⁶⁵ to engage in a pattern of conduct where the Initiating Member breaks up an Agency Order into separate orders for the purpose of gaining a higher allocation percentage than the Initiating Member would have otherwise received in accordance with the allocation procedures contained in proposed paragraph (e) above.¹⁶⁶ Lastly, proposed Supplementary Material .03 will provide that if an allocation would result in less than one contract, then one

contract will be allocated.¹⁶⁷ This aligns to how the Exchange currently allocates contracts in PIXL.¹⁶⁸

N. FLEX SOM (Section 13)

The Exchange proposes to establish SOM auction functionality for FLEX Options in Options 3A, Section 13. The proposed FLEX SOM auction will be substantially similar to ISE Options 3, Section 11(d) and (e), except for the allocation methodology which aligns with the Exchange's current System functionality for non-FLEX Options, as further described below. Pursuant to proposed Section 13, a Member (the "Initiating Member") may electronically submit for execution an order (which may be a simple or complex order) it represents as agent ("Agency Order") against a solicited order ("Solicited Order") if it submits the Agency Order for electronic execution into a FLEX SOM auction pursuant to this Rule.¹⁶⁹

Proposed Section 13(a)(1)–(6) will set forth the FLEX SOM auction eligibility requirements, and will be identical to ISE Options 3A, Section 13(a)(1)–(6). Specifically, the Initiating Member may initiate a FLEX SOM auction if all of the following conditions are met:

- **Class.** An Agency Order must be in a FLEX Option class the Exchange designates as eligible for FLEX SOM auctions.

- **FLEX Option Series.** The Agency Order and Solicited Order must each be a FLEX Order that complies with proposed Section 11(a) in a permissible FLEX Option series that complies with proposed Section 3 above. For a complex FLEX Order, each leg must be

¹⁶⁷ See ISE Supplementary Material .03 to Options 3A, Section 12 for identical rule text. The Exchange would System-enforce this provision by rejecting a FLEX PIXL auction that does not comply with the provisions in proposed Options 3A, Section 12.

¹⁶⁸ See Supplementary Material .10 to Options 3, Section 13. See also Securities Exchange Act Release No. 103667 (August 8, 2025), 90 FR 39042 (August 13, 2025) (SR-Phlx–2025–35) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend PIXL and Adopt New Auctions).

¹⁶⁹ See identical rule text at ISE Options 3A, Section 13. Of note, facilitated orders cannot be entered into FLEX SOM (just like they cannot be entered into standard SOM today). Since an order with the capacity of Firm can be valid for a solicitation order, the Exchange will not System enforce the rejection of Firm capacity orders to avoid the rejection of contra-side orders that are entered with a Firm capacity and are, in fact, solicitations at the outset. Instead, it will monitor for compliance with the requirement that the contra-side order be a solicitation rather than a facilitation through surveillance, as it does today for non-FLEX SOM. The applicable rule for the foregoing requirement will be set forth in proposed Supplementary Material .02 to Options 3A, Section 13.

¹⁵⁸ See proposed Section 12(e)(2)(A), which is identical to ISE Options 3A, Section 12(e)(2)(A).

¹⁵⁹ See proposed Section 12(e)(2)(B). See *infra* note 156. Phlx PIXL has the same allocation process pursuant to Options 3, Section 12(b)(5)(B)(i). See also Securities Exchange Act Release No. 103667 (August 8, 2025), 90 FR 39042 (August 13, 2025) (SR-Phlx–2025–35) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend PIXL and Adopt New Auctions).

¹⁶⁰ See proposed Section 12(e)(2), which is identical to ISE Options 3A, Section 12(e)(2).

¹⁶¹ See proposed Section 12(e)(3), which is identical to ISE Options 3A, Section 12(e)(3).

¹⁶² See proposed Section 12(e)(4), which is identical to ISE Options 3A, Section 12(e)(4). The Exchange notes that the proposed guaranteed allocation percentages of 50% (if there is a response(s) from one other Member) and 40% (if there are responses from two or more Members) for FLEX PIXL will differ from the current guaranteed allocation percentage of 40% for standard PIXL. Phlx has a consistent guaranteed allocation percentage for its non-FLEX price improvement auctions at Options 3, Section 13(b)(5)(B).

¹⁶³ See ISE Options 3A, Section 12(e)(5) for identical rule text.

¹⁶⁴ See ISE Supplementary Material .01 to Options 3A, Section 12 for identical rule text.

¹⁶⁵ General 9, Section 1(c) provides that no Member shall engage in acts or practices inconsistent with just and equitable principles of trade. Persons associated with Members shall have the same duties and obligations as Members under the Rules of General 9.

¹⁶⁶ See ISE Options 3A, Section 12(e) for identical rule text.

in a permissible FLEX option series that complies with Section 3 above.¹⁷⁰

- *Marking.* The Initiating Member must mark an Agency Order for FLEX SOM auction processing.

- *Size.* The Agency Order must be for at least the minimum size designated by the Exchange (which may not be less than 500 standard option contracts). For complex FLEX Orders, this minimum size requirement will apply to each leg. The Solicited Order must be for the same size as the Agency Order. The System handles each of the Agency Order and the Solicited Order as all-or-none.¹⁷¹

- *Minimum Increment.* The price of the Agency Order and Solicited Order for simple FLEX Orders must be in an increment the Exchange determines on a class basis (which may not be smaller than the amounts set forth in Section 5 above). If the Agency Order and Solicited Order are complex orders, the price must be a net price for the complex strategy.¹⁷² The Exchange proposes to align the minimum increment requirements for stock-tied FLEX complex strategies with the existing requirements for stock-tied non-FLEX complex strategies as set forth in Options 3, Section 14(c)(1). As such, proposed Options 3A, Section 12(a)(5) will further provide that the prices of Complex Options Strategies (as defined in Options 3, Section 14) may be expressed in one cent (\$0.01) increments, and the options leg of Complex Options Strategies may be executed in no smaller than one cent (\$0.01) increments, regardless of the minimum increments otherwise applicable to the individual options legs of the order. Prices of Stock-Option Strategies or Stock-Complex Strategies (each as defined in Options 3, Section 14) may be expressed in any decimal price determined by the Exchange.¹⁷³

¹⁷⁰ See ISE Options 3A, Section 13(a)(2) for identical rule text.

¹⁷¹ See ISE Options 3A, Section 13(a)(3) for identical rule text. Of note, the Exchange will not allow the Solicited Order to be comprised of multiple solicited orders in FLEX SOM to be consistent with current non-FLEX SOM functionality in Options 3, Section 11(d).

¹⁷² See ISE Options 3A, Section 13(a)(5) for identical rule text. The existing minimum increment requirements noted in this rule text for non-FLEX complex orders align the proposed FLEX functionality with non-FLEX functionality.

¹⁷³ The prices for FLEX Stock-Option Strategies and FLEX Stock-Complex Strategies can be expressed to four decimal places, which is identical to how the stock portion of a non-FLEX Stock-Option Strategy and a non-FLEX Stock-Complex Strategy can be priced today. Phlx's Complex Order functionality was amended in SR-Phlx-2025-17. See Options 3, Section 14 which was amended by SR-Phlx-2025-17. See Securities Exchange Act Release No. 102862 (April 15, 2025), 90 FR 16731 (April 21, 2025) (SR-Phlx-2025-17) (Notice of

and the stock leg of a Stock-Option Strategy or Stock-Complex Strategy may be executed in any decimal price permitted in the equity market. The options leg of a Stock-Option Strategy or Stock-Complex Strategy may be executed in no smaller than one cent (\$0.01) increments, regardless of the minimum increments otherwise applicable to the individual options legs of the order. Similar to stock-tied complex orders today, the Exchange believes that smaller minimum increments are appropriate for complex FLEX Orders that contain a stock component as the stock component can trade at finer decimal increments permitted by the equity market.

- An Initiating Member may only submit an Agency Order to a FLEX SOM auction after trading in FLEX Options is open pursuant to proposed Section 8.

The System will reject or cancel both an Agency Order and Solicited Order submitted to a FLEX SOM auction that do not meet the conditions in proposed paragraph (a) as described above.

Pursuant to proposed Section 13(b), the Solicited Order must stop the entire Agency Order at a specified price. If the Agency Order and Solicited Order are complex orders, the price must be a net price for the complex strategy. The Initiating Member must specify a single price at which it seeks to execute the Agency Order against the Solicited Order. Otherwise, the System will reject or cancel both an Agency Order and Solicited Order submitted to a FLEX SOM auction that do not meet this condition.¹⁷⁴

Proposed Section 13(c) will govern the FLEX SOM auction process. Specifically, upon receipt of an Agency Order that meets the conditions in paragraphs (a) and (b) as described above, the FLEX SOM auction process commences. Proposed subparagraphs (c)(1)(A) and (B) will describe concurrent FLEX SOM auctions for simple Agency Orders and complex Agency Orders, identical to ISE Options 3A, Section 13(c).

One or more FLEX SOM auctions in the same FLEX Option series or same complex strategy (as applicable) may occur at the same time.¹⁷⁵ To the extent

Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx's Complex Order Functionality). SR-Phlx-2025-17 proposed the same operative date as this proposal as they are both part of the same technology migration. See *supra* note 101.

¹⁷⁴ See ISE Options 3A, Section 13(b) for identical rule text.

¹⁷⁵ Further, for complex Agency Orders, SOM auctions in different complex strategies may be ongoing at any given time, even if the complex strategies have overlapping components. A FLEX SOM auction in a complex strategy may be ongoing

there is more than one FLEX SOM auction in a FLEX Option series or complex strategy (as applicable) underway at the same time, the FLEX SOM auctions will conclude sequentially based on the times at which the FLEX SOM auction periods end. At the time each FLEX SOM auction concludes, the System allocates the Agency Order pursuant to proposed paragraph (e) as described below, and takes into account all FLEX SOM responses received during the FLEX SOM auction period. As noted above, the proposed concurrent FLEX SOM auction feature are identical to ISE concurrent FLEX SOM auction features in ISE Options 3A, Section 13(c)(1) and also consistent with the concurrent auction feature proposed above for FLEX Auctions and FLEX PIXL. For the same reasons stated above for FLEX Auctions and FLEX PIXL, the Exchange believes that providing this concurrent auction functionality for FLEX SOM may provide additional opportunities for execution of FLEX Orders by encouraging Members to use FLEX SOM.

Pursuant to proposed Section 13(c)(2), the System initiates the FLEX SOM auction process by sending a FLEX SOM auction notification message detailing the side, size, price, capacity, auction ID, the length of the FLEX SOM auction period, and FLEX Option series or complex strategy, as applicable, of the Agency Order to all Members that elect to receive FLEX SOM auction notification messages. Similar to all other auction notifications, FLEX SOM auction notification messages will not be disseminated to OPRA. These provisions are identical to ISE Options 3A, Section 13(c)(2).

Proposed Section 13(c)(3) will describe the "FLEX SOM Auction period," and is based on an identical ISE rule at Options 3A, Section 13(c)(3). The FLEX SOM Auction period will be defined as a period of time that must be designated by the Initiating Member, which may be no less than three seconds and no more than five minutes. Similar to the exposure interval for electronic FLEX Auctions in Section 11(b) and the FLEX PIXL Auction period in Section 12(c)(3) as discussed above, the Initiating Member will be required to identify a length of time within the specified parameters for FLEX SOM as there will be no default for the FLEX SOM Auction period. Otherwise, their FLEX Order will be

at the same time as a FLEX SOM auction in any component of the complex strategy. See proposed subparagraph (c)(1)(B)(i) of Options 3A, Section 13 which is identical to ISE subparagraph (c)(1)(B)(i) of Options 3A, Section 13.

rejected by the System. If the auction time periods for a FLEX SOM exceed the market close, the Exchange would accept the FLEX SOM order, but the FLEX SOM auction would terminate at the market close without an execution.¹⁷⁶ In doing so, the Exchange's proposal will promote executions in FLEX SOM (instead of cancelling the FLEX Order) while also preventing executions from occurring after the market close.

Proposed Section 13(c)(4) will provide that an Initiating Member may not modify an Agency Order or Solicited Order after submission to a FLEX SOM auction. This will be identical to ISE Options 3A, Section 13(c)(4). In allowing Initiating Members to cancel their Agency Orders and Solicited Orders upon submission into a FLEX SOM, this rule text will align with current SOM functionality.¹⁷⁷

Proposed Section 13(c)(5) will govern the requirements for FLEX SOM responses. Specifically:

- Any Member other than the Initiating Member (the response cannot have the same badge/mnemonic as the Agency Order) may submit responses to a FLEX SOM auction that are properly marked specifying size, side, price, and the auction ID for the FLEX SOM auction to which the Member is submitting the response. A FLEX SOM response may only participate in the FLEX SOM auction with the auction ID specified in the response.¹⁷⁸

- The minimum price increment for FLEX SOM responses is the same as the one the Exchange determines for a class pursuant to proposed Section 12(a)(5) above. A response to a FLEX SOM auction of a complex Agency Order must have a net price. The System will reject a FLEX SOM response that is not in the applicable minimum increment.¹⁷⁹

- A Member using the same badge/mnemonic may only submit a single FLEX SOM response per auction ID for a given auction. If an additional SOM response is submitted for the same auction ID from the same badge/mnemonic, then that FLEX SOM

response will automatically replace the previous FLEX SOM response.¹⁸⁰

- The System will cap the size of a FLEX SOM response at the size of the Agency Order (*i.e.*, the System will ignore size in excess of the size of the Agency Order when processing the FLEX SOM auction).¹⁸¹
- FLEX SOM responses must be on the opposite side of the market as the Agency Order. The System rejects a FLEX SOM response on the same side of the market as the Agency Order.¹⁸²
- FLEX SOM responses will not be visible to FLEX SOM auction participants or disseminated to OPRA.¹⁸³
- A Member may modify or cancel its FLEX SOM responses during a FLEX SOM auction.¹⁸⁴
- FLEX SOM responses in a complex strategy with a stock component that are through the Stop Price must improve such Stop Price by at least one cent.¹⁸⁵

Pursuant to proposed Section 13(d), a FLEX SOM auction concludes at the earliest to occur of the following times: (1) the end of the FLEX SOM auction period; and (2) any time the Exchange halts trading in the affected underlying, provided, however, that in such instance the FLEX SOM auction concludes without execution.¹⁸⁶

Proposed Section 13(e) will govern how executions will occur in FLEX SOM. In particular, at the end of the FLEX SOM auction, the System will

¹⁸⁰ See proposed Options 3A, Section 13(c)(5)(B), which is identical to ISE Options 3A, Section 13(c)(5)(B). Of note, the Exchange will not allow Members to submit multiple FLEX SOM responses using the same badge/mnemonic, and will not aggregate all of the Member's FLEX SOM responses similar to standard non-FLEX rules at Options 3, Section 13(b)(1)(K). See also Securities Exchange Act Release No. 103667 (August 8, 2025), 90 FR 39042 (August 13, 2025) (SR-Phlx-2025-35) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend PIXL and Adopt New Auctions).

¹⁸¹ See proposed Options 3A, Section 13(c)(5)(C), which is identical to ISE Options 3A, Section 13(c)(5)(C). Of note, the Exchange will not allow Members to submit multiple FLEX SOM responses using the same badge/mnemonic, and will not aggregate all of the Member's FLEX SOM responses. As noted above, this will align to current non-FLEX auction functionality, including SOM auctions in Options 3, Section 11(d).

¹⁸² See proposed Options 3A, Section 13(c)(5)(D), which is identical to ISE Options 3A, Section 13(c)(5)(D).

¹⁸³ See proposed Options 3A, Section 13(c)(5)(E), which is identical to ISE Options 3A, Section 13(c)(5)(E).

¹⁸⁴ See proposed Options 3A, Section 13(c)(5)(F), which is identical to ISE Options 3A, Section 13(c)(5)(F).

¹⁸⁵ See proposed Options 3A, Section 13(c)(5)(G). The Exchange notes that ISE does not have a similar sentence but intends to file a rule change to add this language to its corresponding rule.

¹⁸⁶ See ISE Options 3A, Section 13(d) for identical rule text.

execute the Agency Order against the Solicited Order or FLEX SOM responses at the best price(s) as follows. For purposes of ranking the Solicited Order and FLEX SOM responses when determining how to allocate the Agency Order against the Solicited Order and those responses, the term "price" refers to the dollar and decimal amount of the order or response bid or offer.¹⁸⁷ Proposed subparagraphs (e)(1)–(3) details the FLEX SOM allocation methodology for the following scenarios:

- Execution Against Solicited Order:** The System executes the Agency Order against the Solicited Order at the stop price if there are no Public Customer FLEX SOM responses and the aggregate size of FLEX SOM responses at an improved price(s) is insufficient to satisfy the Agency Order.¹⁸⁸

- Execution Against FLEX SOM Responses:** The System executes the Agency Order against FLEX SOM responses if (1) there is a Public Customer FLEX SOM response and the aggregate size of that response and all other FLEX SOM responses is sufficient to satisfy the Agency Order or (2) the aggregate size of FLEX SOM responses at an improved price(s) is sufficient to satisfy the Agency Order. The Agency Order executes against FLEX SOM responses at each price level. At the price at which the balance of the Agency Order can be fully executed, in the following order:

- Public Customer FLEX SOM responses (in time priority);¹⁸⁹ and
- All other FLEX SOM responses, allocated on a Size Pro-Rata basis (as defined in Options 3, Section 10(a)(1)(E) and (F)).¹⁹⁰
- No Execution:** The System will cancel the Agency Order and Solicited

¹⁸⁷ See ISE Options 3A, Section 13(e) for identical rule text.

¹⁸⁸ See proposed Section 13(e)(1), which is identical to ISE Options 3A, Section 13(e)(1).

¹⁸⁹ See proposed Section 13(e)(2)(A), which is materially identical to Cboe Rule 5.74(e)(2)(A).

¹⁹⁰ See proposed Section 13(e)(2)(B). Phlx's allocation model differs from ISE's allocation model, although the Exchange notes that Size Pro-Rata (as defined in Options 3, Section 10(a)) is similar to pro-rata as referenced in ISE Options 3, Section 10(c). Phlx's allocation model allocates to Market Maker pursuant to Options 3, Section 10(a)(1)(E), after allocating to Public Customers, and thereafter allocates to all other remaining non-Public Customer, non-Market Maker interest based on a size pro-rata basis. The Exchange notes that Public Customers on Phlx will continue to have priority over other market participants. Phlx SOM has the same allocation process pursuant to Options 3, Section 11(d)(3)(C). See also Securities Exchange Act Release No. 103667 (August 8, 2025), 90 FR 39042 (August 13, 2025) (SR-Phlx-2025-35) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend PIXL and Adopt New Auctions).

¹⁷⁶ While this behavior is not explicitly stated in the current Rules, the Exchange's proposal will be consistent with current non-FLEX auction behavior, including current PIXL and SOM behavior.

¹⁷⁷ This feature is not explicitly stated in the current SOM rules in Options 3, Section 11(d), but it is consistent with current SOM functionality.

¹⁷⁸ See proposed Options 3A, Section 13(c)(5), which is identical to ISE Options 3A, Section 13(c)(5).

¹⁷⁹ See proposed Options 3A, Section 13(c)(5)(A), which is identical to ISE Options 3A, Section 13(c)(5)(A).

Order with no execution if there is a Public Customer FLEX SOM response and the aggregate size of that response and other FLEX SOM responses is insufficient to satisfy the Agency Order.¹⁹¹

Pursuant to proposed Section 13(e)(4), the System cancels any unexecuted FLEX SOM responses (or unexecuted portions) at the conclusion of a FLEX SOM auction.¹⁹²

Lastly, the Exchange proposes a number of policies applicable to FLEX SOM as Supplementary Materials to Options 3A, Section 13. Specifically, proposed Supplementary Material .01 will provide that prior to entering Agency Orders into a FLEX SOM auction on behalf of customers, Initiating Members must deliver to the customer a written notification informing the customer that its order may be executed using the FLEX SOM Auction. The written notification must disclose the terms and conditions contained in this Rule and be in a form approved by the Exchange.¹⁹³ Proposed Supplementary Material .02 will provide that under this Rule, Initiating Members may enter contra-side orders that are solicited. FLEX SOM provides a facility for Members that locate liquidity for their customer orders. Members may not use the FLEX SOM auction to circumvent Options 3, Section 22(b) limiting principal transactions. This may include, but is not limited to, Members entering contra-side orders that are solicited from (1) affiliated broker-dealers, or (2) broker-dealers with which the Member has an arrangement that allows the Member to realize similar economic benefits from the solicited transaction as it would achieve by executing the customer order in whole or in part as principal. Additionally, any solicited contra-side orders entered by Members to trade against Agency Orders may not be for the account of an Exchange Market Maker that is assigned to the options class.¹⁹⁴ Lastly, proposed Supplementary Material .03 will provide that if an allocation would result in less than one contract, then one contract will be allocated. This aligns to

how the Exchange currently allocates contracts in SOM.¹⁹⁵

O. Risk Protections (Section 14)

The Exchange proposes in Options 3A, Section 14 to specify which of the Exchange's risk protections apply to FLEX trading. Risk protections are protections in our System to help minimize risk. The risk protections specified in proposed Options 3A, Sections 14(a) and 14(b) are mandatory whereas the risk protections specified in proposed Options 3A, Section 14(c) are optional. Proposed Section 14(a) will provide that the following simple order risk protections (as described in Options 3, Section 15) are available to FLEX Options: Market Wide Risk Protection at Options 3, Section 15(a)(3) and Size Limitation at Options 3, Section 15(b)(2).¹⁹⁶ The Market Wide Risk Protections are mandatory activity-based protections that allow Members to establish limits for order entry and execution rate during a specified period of time. The System maintains separate counts for each of the thresholds specified in the rule over rolling periods of time.¹⁹⁷ Upon triggering the specified limits, the System will either delete all open orders and prevent entry of new orders for the Member, or prevent entry of new orders for the Member. Similar to how Market Wide Risk Protection assists Members in better managing their risk in the standard non-FLEX market on ISE today, the Exchange believes that applying Market Wide Risk Protection to its FLEX market will be beneficial for Members using FLEX trading.

Proposed Section 14(b) will provide that the following complex order risk

protections (as described in Options 3, Section 16) are available to FLEX Options: Strategy Protections (only to FLEX Auctions and FLEX responses in proposed Options 3A, Section 11(b)), Size Limitation,¹⁹⁸ the Price Limit for Complex Order protections as applicable to the stock component (as described in Options 3, Section 16(a), except that DNTT will not apply for the stock component),¹⁹⁹ the Stock-Tied NBBO protections (only to FLEX Auctions and FLEX responses in Section 11(b) above)²⁰⁰ (as described in Options 3, Section 16(d)),²⁰¹ and the Stock-Tied Reg SHO protections (as described in Options 3, Section 16(e)).²⁰² The

¹⁹⁸ Size Limitation for complex orders is a limit on the number of contracts (and shares in the case of a Stock-Option Strategy or Stock-Complex Strategy) any single leg of an incoming Complex Order may specify. Orders that exceed the maximum number of contracts (or shares) are rejected. The maximum number of contracts (or shares), which shall not be less than 10,000 (or 100,000 shares), is established by the Exchange from time-to-time. See Options 3, Section 16 (c)(2) which was amended by SR-Phlx-2025-17. See Options 3, Section 14 which was amended by SR-Phlx-2025-17. See Securities Exchange Act Release No. 102862 (April 15, 2025), 90 FR 16731 (April 21, 2025) (SR-Phlx-2025-17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx's Complex Order Functionality). SR-Phlx-2025-17 proposed the same operative date as this proposal as they are both part of the same technology migration.

¹⁹⁹ The Exchange introduced the Price Limit for Complex Order protections in Options 3, Section 16(a) for its standard non-FLEX complex market as part of the technology migration to enhanced Nasdaq functionality discussed above. Options 3, Section 16 was amended by SR-Phlx-2025-17. See Securities Exchange Act Release No. 102862 (April 15, 2025), 90 FR 16731 (April 21, 2025) (SR-Phlx-2025-17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx's Complex Order Functionality). SR-Phlx-2025-17 proposed the same operative date as this proposal as they are both part of the same technology migration.

²⁰⁰ The language describing "only to FLEX Auctions and FLEX responses in Section 11(b) above" is not currently in ISE Options 3A, Section 14(b). This additional language provides greater clarity to the risk protections. ISE will separately file to add this rule text.

²⁰¹ The Exchange introduced the Stock-Tied NBBO protections in Options 3, Section 16(d) for its standard non-FLEX complex market as part of the technology migration to enhanced Nasdaq functionality discussed above. See Options 3, Section 16 which was amended by SR-Phlx-2025-17. See Securities Exchange Act Release No. 102862 (April 15, 2025), 90 FR 16731 (April 21, 2025) (SR-Phlx-2025-17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx's Complex Order Functionality). SR-Phlx-2025-17 proposed the same operative date as this proposal as they are both part of the same technology migration.

²⁰² The Exchange introduced the Stock-Tied Reg SHO protections in Options 3, Section 16(e) for its standard non-FLEX complex market as part of the technology migration to enhanced Nasdaq functionality discussed above. See Options 3, Section 16 which was amended by SR-Phlx-2025-17. See Securities Exchange Act Release No. 102862 (April 15, 2025), 90 FR 16731 (April 21, 2025) (SR-Phlx-2025-17) (Notice of Filing and Immediate

¹⁹¹ See proposed Section 13(e)(3), which is identical to ISE Options 3A, Section 13(e)(3).

¹⁹² See ISE Options 3A, Section 13(e)(4) for identical text.

¹⁹³ See ISE Supplementary Material .01 to Options 3A, Section 13 for identical text.

¹⁹⁴ See ISE Supplementary Material .03 to Options 3, Section 13 for identical text. The Exchange is also adding a prohibition against solicited contra-side orders being for the account of an Exchange Market Maker assigned to the options class to align with the current prohibition in Supplementary Material .03 to Options 3, Section 11.

¹⁹⁵ See Supplementary Material .09 to Options 3, Section 11.

¹⁹⁶ Size Limitation for simple orders is a limit on the number of contracts an incoming order may specify. Orders that exceed the maximum number of contracts are rejected. The maximum number of contracts, which shall not be less than 10,000, is established by the Exchange from time-to-time.

¹⁹⁷ As set out in Options 3, Section 15(a)(3), the Market Wide Risk Protection will have counting programs that will maintain separate counts, over rolling time periods specified by the Member for each count, of: (1) the total number of orders entered in the regular order book; (2) the total number of Complex Option Orders entered in the complex order book; (3) the total number of Stock-Option and Stock-Complex Orders entered into the complex order book; (4) the total number of contracts traded in regular orders; (5) the total number of contracts traded in Complex Options Orders; and (6) the total number of contracts traded in Stock-Option and Stock-Complex Orders entered into the complex order book. See Securities Exchange Act Release No. 101989 (December 30, 2024), 89 FR 106888 (December 30, 2024) (SR-Phlx-2024-71). SR-Phlx-2024-71 is effective but not yet operative. SR-Phlx-2024-71 would be operative at the same time as this rule change as they are both part of the same technology migration.

Exchange notes that the phrase “except that DNTT is not available for the stock component” does not appear at ISE Options 3A, Section 14(b). The Exchange proposes this rule text to make clear that DNTT will not apply to the stock component of the order.²⁰³ Since Complex Orders have no NBBO, DNTT could only apply to the stock component and with a FLEX Option there is no market to trade-through.

The Strategy Protections listed in Options 3, Section 16(b) are the Vertical Spread Protection,²⁰⁴ Calendar Spread Protection,²⁰⁵ Butterfly Spread Protection,²⁰⁶ and Box Spread Protection.²⁰⁷ These Strategy

Effectiveness of Proposed Rule Change to Amend Phlx’s Complex Order Functionality). SR–Phlx–2025–17 proposed the same operative date as this proposal as they are both part of the same technology migration.

²⁰³ ISE will add the identical rule text in a separate rule change.

²⁰⁴ The Vertical Spread Protection will apply to a vertical spread. A vertical spread is an order to buy a call (put) option and to sell another call (put) option in the same security with the same expiration but at a higher (lower) strike price. See Options 3, Section 16(b)(1) which was amended by SR–Phlx–2025–17. See Securities Exchange Act Release No. 102862 (April 15, 2025), 90 FR 16731 (April 21, 2025) (SR–Phlx–2025–17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx’s Complex Order Functionality). SR–Phlx–2025–17 proposed the same operative date as this proposal as they are both part of the same technology migration.

²⁰⁵ The Calendar Spread Protection will apply to a Calendar Spread. A calendar spread is an order to buy a call (put) option with a longer expiration and to sell another call (put) option with a shorter expiration in the same security at the same strike price. See Options 3, Section 16(b)(2) which was amended by SR–Phlx–2025–17. See Securities Exchange Act Release No. 102862 (April 15, 2025), 90 FR 16731 (April 21, 2025) (SR–Phlx–2025–17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx’s Complex Order Functionality). SR–Phlx–2025–17 proposed the same operative date as this proposal as they are both part of the same technology migration.

²⁰⁶ The Butterfly Spread Protection will apply to a butterfly spread. A butterfly spread is a three legged Complex Order with the following: (1) two legs to buy (sell) the same number of calls (puts); (2) one leg to sell (buy) twice the number of calls (puts) with a strike price at mid-point of the two legs to buy (sell); (3) all legs have the same expiration; and (4) each leg strike price is equidistant from the next sequential strike price. See Options 3, Section 16(b)(3) which was amended by SR–Phlx–2025–17. See Securities Exchange Act Release No. 102862 (April 15, 2025), 90 FR 16731 (April 21, 2025) (SR–Phlx–2025–17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx’s Complex Order Functionality). SR–Phlx–2025–17 proposed the same operative date as this proposal as they are both part of the same technology migration.

²⁰⁷ The Box Spread Protection will apply to a box spread. A box spread is a four legged Complex Order with the following: (1) one pair of legs with the same strike price with one leg to buy a call (put) and one leg to sell a put (call); (2) a second pair of legs with a different strike price from the pair described in (1) with one leg to sell a call (put) and one leg to buy a put (call); (3) all legs have the same expiration; and (4) all legs have equal volume. See

Protections are all aimed at preventing the potential execution of the specified complex strategies (*i.e.*, vertical spread, calendar spread, butterfly spread, and box spread) outside of specified price parameters in order to prevent executions at undesirable prices. Today, Strategy Protections do not apply to orders and responses submitted into non-FLEX PIXL and non-FLEX SOM.²⁰⁸ The Exchange will align this application to FLEX such that Strategy Protections would only apply to FLEX Auctions and FLEX responses in proposed Section 11(b) as described above, and not to FLEX Orders and responses submitted into FLEX PIXL and FLEX SOM.

As noted above, the Exchange adopted the Price Limit for Complex Order protections in Options 3, Section 16(a),²⁰⁹ the Stock-Tied NBBO

Options 3, Section 16(b)(4) which was amended by SR–Phlx–2025–17. See Securities Exchange Act Release No. 102862 (April 15, 2025), 90 FR 16731 (April 21, 2025) (SR–Phlx–2025–17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx’s Complex Order Functionality). SR–Phlx–2025–17 proposed the same operative date as this proposal as they are both part of the same technology migration.

²⁰⁸ See Options 3, Section 16(b), which describes the non-applicability of the Strategy Protections to certain auction mechanisms. Options 3, Section 16(b) provides that the Strategy Protections do not apply when a standard non-FLEX complex order includes at least one p.m.-settled leg and at least one a.m.-settled leg. This would likewise be true for complex FLEX Orders (*i.e.*, the Strategy Protections would not apply when a complex FLEX Order includes at least one p.m.-settled leg and at least one a.m.-settled leg). Options 3, Section 16 was amended by SR–Phlx–2025–17. See Securities Exchange Act Release No. 102862 (April 15, 2025), 90 FR 16731 (April 21, 2025) (SR–Phlx–2025–17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx’s Complex Order Functionality). SR–Phlx–2025–17 proposed the same operative date as this proposal as they are both part of the same technology migration.

²⁰⁹ Specifically, Options 3, Section 16(a) states that as provided in Options 3, Section 14(d)(2), the legs of a complex strategy may be executed at prices that are inferior to the prices available on other exchanges trading the same options series. Notwithstanding, the System will not permit any leg of a complex strategy to trade through the NBBO for the series or any stock component by a configurable amount calculated as the lesser of (i) an absolute amount not to exceed \$0.10, and (ii) a percentage of the NBBO not to exceed 500%, as determined by the Exchange on a class, series or underlying basis. A Member can also include an instruction on a Complex Order that each leg of the Complex Order is to be executed only at a price that is equal to or better than the NBBO for the options series or any stock component, as applicable (“Do-Not-Trade-Through” or “DNTT”). As discussed later in this filing, the NBBO price limit for the option series will not apply to complex FLEX orders; however, the NBBO price limit for the stock component will apply. Options 3, Section 16 was amended by SR–Phlx–2025–17. See Securities Exchange Act Release No. 102862 (April 15, 2025), 90 FR 16731 (April 21, 2025) (SR–Phlx–2025–17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx’s Complex Order Functionality). SR–Phlx–2025–17 proposed the same operative date as this proposal as they are both part of the same technology migration.

protections in Options 3, Section 16(d),²¹⁰ and the Stock-Tied Reg SHO protections in Options 3, Section 16(e)²¹¹ (collectively, the “Stock-Tied Risk Protections”) as part of SR–Phlx–2025–17 for its standard non-FLEX complex market. The Exchange is now proposing to apply the Stock-Tied Risk Protections to complex FLEX Orders to the extent the complex FLEX Order has a stock component. The Price Limits for Complex Orders in Options 3, Section 16(a) seek to prevent complex executions from occurring outside of certain price limits that are tied to the NBBO for the options series or for any stock component. Because there will be no book for FLEX trading (and therefore no NBBO for the FLEX Options series),

²¹⁰ Specifically, Options 3, Section 16(d) provides that for Complex Orders in Stock-Option Strategies and Stock-Complex Strategies, the Exchange shall electronically communicate the underlying security component of a Complex Order to Nasdaq Execution Services, LLC (“NES”), its designated broker dealer, for immediate execution. Such execution and reporting will not occur on the Exchange and will be handled by NES pursuant to applicable rules regarding equity trading. NES will ensure that the execution price is within the high-low range for the day in that stock at the time the Complex Order is processed and within a certain price from the current market pursuant to Options 3, Section 16(a). If the stock price is not within these parameters, the Complex Order is not executable and the Exchange will hold the Complex Order on the Order Book, if consistent with Member instructions. This risk protection will apply wholesale to complex FLEX Orders with a stock component. Options 3, Section 16 was amended by SR–Phlx–2025–17. See Securities Exchange Act Release No. 102862 (April 15, 2025), 90 FR 16731 (April 21, 2025) (SR–Phlx–2025–17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx’s Complex Order Functionality). SR–Phlx–2025–17 proposed the same operative date as this proposal as they are both part of the same technology migration.

²¹¹ Specifically, Options 3, Section 16(e) provides that when the short sale price test in Rule 201 of Regulation SHO is triggered for a covered security, NES will not execute a short sale order in the underlying covered security component of a Complex Order if the price is equal to or below the current national best bid. However, NES will execute a short sale order in the underlying covered security component of a Complex Order if such order is marked “short exempt,” regardless of whether it is at a price that is equal to or below the current national best bid. If NES cannot execute the underlying covered security component of a Complex Order in accordance with Rule 201 of Regulation SHO, the Exchange will hold the Complex Order on the Complex Order Book, if consistent with Member instructions. The order may execute at a price that is not equal to or below the current national best bid. For purposes of this paragraph, the term “covered security” shall have the same meaning as in Rule 201(a)(1) of Regulation SHO. This risk protection will apply wholesale to complex FLEX Orders with a stock component. Options 3, Section 16 was amended by SR–Phlx–2025–17. See Securities Exchange Act Release No. 102862 (April 15, 2025), 90 FR 16731 (April 21, 2025) (SR–Phlx–2025–17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx’s Complex Order Functionality). SR–Phlx–2025–17 proposed the same operative date as this proposal as they are both part of the same technology migration.

the Exchange will not apply the price limit protection tied to the NBBO for the options series for FLEX trading. To the extent the complex FLEX Order has a stock component, the Exchange will only apply the price limit protection tied to the NBBO for the stock component. The below is an example of how the Exchange will apply the Options 3, Section 16(a) price protection to complex FLEX Orders.

Scenario illustrating applicability of the stock buffer described in Options 3, Section 16(a) Price Limits for Complex Orders:

IBM Underlying/Stock NBBO is 1.00×2.00

Stock buffer is configured to the lesser of \$0.05 or 5%

FLEX Option NBBO does not exist, but the minimum trading increment/minimum price variation (MPV) for option leg executions is \$0.01

- FLEX Auction is entered in a Stock-Complex Strategy encompassing 2 IBM FLEX Put options: Buy 1 Put (FLEX option leg A) + Buy 1 Put (FLEX option leg B) + Buy 100 shares IBM stock: Buy 110 units of the A + B + Stock strategy @net price of \$1.02
- A firm responds to Sell 110 @net price of \$0.89

FLEX Auction timer passes & auction concludes

- The firm's response trades with the FLEX Auction order 110 @net price of \$0.97 because the stock component cannot trade at any price lower than \$0.95 ($\$1.00 - \$0.05$ [price limit for stock component] = \$0.95) and the FLEX option legs cannot trade at any price lower than \$0.01 as this is the minimum trading increment for option legs; therefore, the minimum stock price of \$0.95 plus the \$0.01 minimum option leg price means that, despite the \$0.89 limit price on the response, the strategy cannot trade below \$0.97 ($\$0.95 + [\$0.01 \times 2 \text{ legs}]$)

As it relates to the other Stock-Tied Risk Protections (*i.e.*, the Stock-Tied NBBO protections and the Stock-Tied Reg SHO protections), these will apply wholesale to complex FLEX Orders with a stock component as noted above.

Proposed Section 14(c) will provide that the optional risk protections in Options 3, Section 28 are available to FLEX Options.²¹² In particular, the

following are optional risk protections in Options 3, Section 28: (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. In sum, Members may set thresholds for each of the foregoing protections in order to limit the quantity and notional value they can send per order and on aggregate for the day.

P. Data Feeds (Section 15)

The Exchange proposes to specify in Options 3A, Section 15 which data feeds it will disseminate auction notifications for simple and complex FLEX Orders. Proposed Section 15(a) will provide that auction notifications for simple FLEX Orders will be disseminated through the Nasdaq Phlx Order Feed, as described in Options 3, Section 23(a)(2).²¹³ Proposed Section 15(b) will provide that auction notifications for complex FLEX Orders will also be disseminated through the Nasdaq Phlx Order Feed, as described in Options 3, Section 23(a)(2).²¹⁴ Today, simple and complex auction notifications inform Members that an auction order has been accepted by the System and that an auction is commencing. Auction notifications also contain all of the relevant information Members need to respond to that particular auction.²¹⁵ As proposed, the

Phlx-2024-71. SR-Phlx-2024-71 is effective but not yet operative. SR-Phlx-2024-71 would be operative at the same time as this rule change as they are both part of the same technology migration.

²¹³ The Nasdaq Phlx Order Feed is a real-time full Limit Order book data feed that provides pricing information for orders on the Phlx Order book for displayed order types as well as market participant capacity. Nasdaq Phlx Order Feed is currently provided as part of the TOPO Plus Orders data product. The Nasdaq Phlx Order[s] Feed provides real-time information to enable users to keep track of the single and complex order book(s). The data provided for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, leg information on complex strategies and whether the option series is available for trading on Phlx and identifies if the series is available for closing transactions only. The feed also provides auction and exposure notifications and order imbalances on opening/reopening (size of matched contracts and size of the imbalance). The Exchange amends the PHLX Orders Fee as part of the technology migration to enhanced Nasdaq functionality discussed above. See Securities Exchange Act Release No. 101989 (December 30, 2024), 89 FR 106888 (December 30, 2024) (SR-Phlx-2024-71). SR-Phlx-2024-71 is effective but not yet operative. SR-Phlx-2024-71 would be operative at the same time as this rule change as they are both part of the same technology migration.

²¹⁴ The Nasdaq PHLX Order Feed provides single-leg and complex order information.

²¹⁵ For example, at the commencement of a standard, non-FLEX PIXL auction, the Exchange sends a broadcast message (*i.e.*, auction

simple and complex FLEX auction notifications will likewise inform Members that a FLEX auction order has been accepted by the System, a FLEX auction is commencing, and will also contain all of the relevant information Members need to respond to that particular FLEX auction.²¹⁶ The FLEX auction notifications will specify that a particular auction is FLEX versus non-FLEX. As is the case today for non-FLEX auctions, FLEX auction notifications disseminated over the Nasdaq Phlx Order Feed will be available to all Members that elect to receive such notification messages.

Q. FLEX Market Makers (Section 16)

Proposed Section 16 will govern FLEX Market Makers on the Exchange. Pursuant to proposed Section 16(a), a FLEX Market Maker will automatically receive an appointment in the same FLEX option class(es) as its non-FLEX class appointments selected pursuant to Options 2, Section 3.²¹⁷ Only the Lead Market Maker in the non-FLEX Option may be the assigned Lead Market Maker in that FLEX Option.²¹⁸ Today, in order for Market Makers to submit auction responses in option classes through SQF, they need to be appointed to that option class.²¹⁹ As such, the Exchange is automatically carrying over the FLEX Market Maker's non-FLEX options class appointment as its FLEX option class appointment in order to allow the FLEX Market Maker to respond to the electronic FLEX Auction, FLEX PIXL, and FLEX SOM as described above.

Proposed Section 16(b) will provide that each FLEX Market Maker must fulfill all the obligations of a Market Maker under Options 2 and must comply with the applicable provisions, except FLEX Market Makers do not need

notification) that includes the series, price and size of the Agency Order, and whether it is to buy or sell, through the Order Feed. See Options 3, Section 13(c).

²¹⁶ For example, at the commencement of a FLEX PIXL Auction, the Exchange would send FLEX PIXL Auction notification message detailing the side, size, auction ID, the length of the FLEX PIXL Auction period, and FLEX Option series or complex strategy, as applicable, of the Agency Order to all Members that elect to receive FLEX PIXL Auction notification messages. See proposed Options 3A, Section 12(c)(2).

²¹⁷ See ISE Options 3A, Section 16(a) for identical text.

²¹⁸ The Exchange notes that this requirement is based on Phlx Options 8, Section 34(d)(1), Phlx's floor FLEX rule, which currently states that only the Lead Market Maker in the non-FLEX option may be the assigned Specialist in that FLEX option.

²¹⁹ See *supra* note 64 describing SQF features available in the Exchange's non-FLEX market today (including the ability for Market Makers to currently send auction responses). As discussed above, the Exchange is proposing to also allow FLEX auction responses through SQF.

²¹² The Exchange introduced the optional risk protections in Options 3, Section 28 as part of the technology migration to enhanced Nasdaq functionality discussed above. See Securities Exchange Act Release No. 101989 (December 30, 2024), 89 FR 106888 (December 30, 2024) (SR-

to provide continuous quotes in FLEX Options.²²⁰

R. Letters of Guarantee (Section 17)

The Exchange proposes in Options 3A, Section 17(a) to provide that no FLEX Market Maker shall effect any transaction in FLEX Options unless one or more effective Letter(s) of Guarantee has been issued by a Clearing Member and filed with the Exchange accepting financial responsibility for all FLEX transactions made by the FLEX Market Maker pursuant to Options 6, Section 4.²²¹

S. Position Limits (Section 18)

The Exchange proposes to detail the position limits for FLEX Options in Options 3A, Section 18. As discussed below, proposed Section 18 will be based on the FLEX Options position limit rules on ISE and its own market.

Proposed Section 18(a) will govern the position limits for FLEX Index Options. Specifically, proposed Section 18(a)(1) will provide that except as provided in proposed Section 18(a)(2)–(4) below, FLEX Index Options shall be subject to the same position limits governing index options as provided for in Options 4A, Section 6.²²² Proposed Section 18(a)(2) will provide that except as otherwise provided in subparagraph (a)(3) of this Rule, in no event shall the position limits for broad-based FLEX Index Options exceed 25,000 contracts on the same side of the market.²²³ Proposed Section 18(a)(3) will provide that there shall be no position limits for broad-based index options listed in Options 4A, Section 6(a).²²⁴ However, each Member (other than FLEX Market Makers) that maintains a FLEX broad-based index option position on the same side of the market in excess of 100,000

contracts in NDX or Nasdaq-100 ESG Index Options,²²⁵ for its own account or for the account of a customer, shall report information as to whether the positions are hedged and provide documentation as to how such contracts are hedged, in the manner and form required by the Exchange. In calculating the applicable contract-reporting amount, reduced-value contracts and micro index contracts will be aggregated with full-value contracts and counted by the amount by which they equal a full-value contract (e.g., 10 MNX options equal 1 NDX full-value contract). The Exchange may impose other reporting requirements as well as the limit at which the reporting requirement may be triggered.²²⁶ Whenever the Exchange determines that additional margin is warranted in light of the risks associated with an under-hedged FLEX NDX or Nasdaq-100 ESG Index options²²⁷ position, the Exchange may impose additional margin upon the account maintaining such under-hedged position pursuant to its authority under Options 6C, Section 5. The clearing firm carrying the account also will be subject to capital charges under Rule 15c3–1 under the Exchange Act to the extent of any margin deficiency resulting from the higher margin requirements.²²⁸

Proposed Section 18(a)(4) will provide that industry-based FLEX Index Options shall be subject to separate position limits of 18,000, 24,000, or 31,500 contracts, depending on the position limit tier determined pursuant to Options 4A, Section 7(a)(1).²²⁹

Proposed Section 18(b) will govern the position limits for FLEX Equity Options. Pursuant to proposed Section 18(b)(1)(A), there will generally be no position limits for FLEX Equity Options with the exceptions noted below.²³⁰

Pursuant to proposed Section 18(b)(2), each Member (other than a Market Maker) that maintains a position on the same side of the market in excess of the standard limit under Options 9, Section 13 for non-FLEX Equity Options of the same class on behalf of its own account or for the account of a customer shall report information on the FLEX Equity option position, positions in any related instrument, the purpose or strategy for the position, and the collateral used by the account. This report shall be in the form and manner prescribed by the Exchange.²³¹ Pursuant to proposed Section 18(b)(3), whenever the Exchange determines that a higher margin requirement is necessary in light of the risks associated with a FLEX Equity option position in excess of the standard limit for non-FLEX Equity options of the same class, the Exchange may consider imposing additional margin upon the account maintaining such under-hedged position, pursuant to its authority under Options 6C, Section 5.²³² Additionally, it should be

ISE Options 9, Sections 13 and 15 to IBIT options. See Securities Exchange Act Release No. 103564 (July 29, 2025), 90 FR 36229 (SR–ISE–2024–62) (Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 2 and 3, Regarding Position and Exercise Limits for Options on the iShares Bitcoin Trust ETF). As a result, position limits for options on IBIT would be subject to the criteria in Options 9, Section 13(d) as well as subsequent six-month reviews to determine future position and exercise limits. Additionally, Phlx adopted rules to eliminate the current 25,000 contract position and exercise limit for options on the Grayscale Bitcoin Mini Trust (“BTC”), on the Bitwise Bitcoin ETF (“BITB”) and on Grayscale Bitcoin Trust ETF (“GBTC”). See Securities Exchange Act Release No. 103678 (August 11, 2025) (SR–Phlx–2025–34) (not yet published). In addition to the approval to eliminate the current 25,000 contract position and exercise limit for options on IBIT, Phlx adopted rules to permit IBIT options to transact as FLEX Equity Options subject to the position limits set forth in Options 9, Section 13, and subject to the exercise limits set forth in Options 9, Section 15 which would be aggregated with positions on the same non-FLEX underlying ETF for the purpose of calculating the position limits set forth in Options 9, Section 13, and the exercise limits set forth in Options 9, Section 15. See Securities Exchange Act Release No. 103565 (July 29, 2025), 90 FR 36233 (August 1, 2025) (SR–Phlx–2024–72) (Order Approving a Proposed Rule Change To Permit the Trading of FLEX Options on Shares of the iShares Bitcoin Trust ETF). Additionally, Phlx adopted rules to permit BTC, BITB, and GBTC options to transact as FLEX Equity Options subject to the position limits set forth in Options 9, Section 13, and subject to the exercise limits set forth in Options 9, Section 15 which would be aggregated with positions on the same non-FLEX underlying ETF for the purpose of calculating the position limits set forth in Options 9, Section 13, and the exercise limits set forth in Options 9, Section 15. See Securities Exchange Act Release No. 103678 (August 11, 2025) (SR–Phlx–2024–34) (not yet published).

²³¹ See ISE Options 3A, Section 18(b)(2) for identical text.

²³² Options 6C, Section 5 provides that the amount of margin prescribed by these Rules is the

²²⁰ See ISE Options 3A, Section 16(b) for identical text.

²²¹ Options 6, Section 4 provides that no Market Maker shall make any transactions on the Exchange unless a Letter of Guarantee has been issued for such Member by a Clearing Member and filed with the Exchange, and unless such Letter of Guarantee has not been revoked pursuant to paragraph (c) of this Rule. A Letter of Guarantee shall provide that the issuing Clearing Member accepts financial responsibilities for all Exchange Transactions made by the guaranteed Member.

²²² Options 4A, Section 6 presently sets forth the position limits for broad-based and industry index options, respectively.

²²³ This separate same side position limit for broad-based FLEX Index Options (except for the ones noted below) is based on the Exchange's same side position limit for its standard market as set forth in Options 4A, Section 6(a).

²²⁴ As such the following broad-based index options listed in Options 4A, Section 6(a) will have no position limits for FLEX Index Options: options on Full Value Nasdaq 100 Options, the Reduced Value Nasdaq 100 Options, the Nasdaq 100-Micro Index Options, and the Nasdaq-100 ESG Index Options.

²²⁵ The Nasdaq-100 ESG Index Options are currently not listed on Phlx.

²²⁶ See Options 4A, Section 9(a)(13) (setting forth the same reporting requirements for the Exchange's standard non-FLEX index options market). See also Choe Rule 8.35(b) for similar reporting requirements.

²²⁷ The Nasdaq-100 ESG Index Options are currently not listed on Phlx.

²²⁸ See Options 4A, Section 6(c) (setting forth the same stipulation for the Exchange's standard index options market). See also ISE Options 4A, Section 9(a)(14).

²²⁹ The proposed position limits align to the Exchange's non-FLEX position limits for industry index options in Options 4A, Section 6(b)(i).

²³⁰ See ISE Options 3A, Section 18(b) for identical text. Of note, the Exchange's rule will have exceptions for the aggregation of FLEX positions (proposed Section 18(c)) and for position limits for cash-settled FLEX Equity Options where the underlying security is an ETF (proposed Section 18(b)(1)(B), which will be discussed later in this filing). Recently, Phlx received approval to eliminate the 25,000 contract position and exercise limits and apply the position and exercise limits in

noted that the clearing firm carrying the account will be subject to capital charges under Rule 15c3-1 under the Exchange Act to the extent of any margin deficiency resulting from the higher margin requirement.²³³

Proposed Section 18(c) will govern the aggregation of FLEX positions. Specifically, for purposes of the position limits and reporting requirements set forth in this Section 18, FLEX Option positions shall not be aggregated with positions in non-FLEX Options other than as provided in this Section 18(c) and in Section 18(b)(1)(B),²³⁴ positions in FLEX Index Options on a given index shall not be aggregated with options on any stocks included in the index or with FLEX Index Option positions on another index, and positions in FLEX Currency Options shall be aggregated with positions in non-FLEX Currency Options.²³⁵ Pursuant to proposed Section 18(c)(1), commencing at the close of trading two business days prior to the last trading day of the calendar quarter, positions in P.M.-settled FLEX Index Options (*i.e.*, the settlement value for FLEX Index Options is derived from closing prices on the expiration date) shall be aggregated with positions in Quarterly Options Series on the same index with the same expiration and shall be subject to the position limits set forth in Options 4A, Section 6, as applicable.²³⁶ Pursuant to proposed Section 18(c)(2), commencing at the close of trading two business days prior to the last trading day of the week, positions in FLEX Index Options that are cash settled²³⁷ shall be aggregated with positions in Short Term Option Series on the same underlying (*e.g.*, same underlying index as a FLEX Index Option) with the same means for determining exercise settlement value (*e.g.*, opening or closing prices of the underlying index) and same expiration, and shall be subject to the position

minimum which must be required initially and subsequently maintained with respect to each account affected thereby; but nothing in these Rules shall be construed to prevent a Member from requiring margin in an amount greater than that specified. Further, the Exchange may at any time impose higher margin requirements with respect to such positions when it deems such higher margin requirements to be advisable.

²³³ See ISE Options 3A, Section 18(b)(3) for identical text.

²³⁴ Proposed Section 18(b)(1)(B) will set forth the position limits for cash-settled FLEX ETF options and will be discussed later in this filing.

²³⁵ See ISE Options 3A, Section 18(c) and Phlx Options 8, Section 34(i)(4) (FLEX Currency Options), respectively, for identical text.

²³⁶ See ISE Options 3A, Section 18(c)(1) for substantially similar rule text. The citations for ISE are to Options 4A, Section 6 and 7.

²³⁷ The Exchange notes that all FLEX Index Options will be cash settled.

limits set forth in Options 4A, Section 6 (for broad-based index options and narrow-based index options), as applicable.²³⁸ Pursuant to proposed Section 18(c)(3), as long as the options positions remain open, positions in FLEX Options that expire on a third Friday-of-the-month expiration day shall be aggregated with positions in non-FLEX Options on the same underlying, and shall be subject to the position limits set forth in Options 4A, Section 6, or Options 9, Section 13, as applicable, and the exercise limits set forth in Options 9, Section 15, as applicable.²³⁹

T. Exercise Limits (Section 19)

The Exchange proposes to detail the exercise limits for FLEX Options in Options 3A, Section 19. As discussed below, proposed Section 19 will be based on the FLEX Options exercise limit rules on ISE and Phlx.

Proposed Section 19(a) will provide that exercise limits for FLEX Options shall be equivalent to the FLEX position limits prescribed in proposed Section 18.²⁴⁰ There shall be no exercise limits for broad-based FLEX Indexes (including reduced value option contracts) on broad-based index options listed in Options 4A, Section 6(a).²⁴¹

Proposed Section 19(a)(1) will require that the minimum value size for FLEX Equity Option and FLEX Currency Option exercises be 25 contracts or the remaining size of the position, whichever is less.²⁴² Proposed Section 19(a)(2) will require that the minimum value size for FLEX Index Option exercises be \$1 million Underlying Equivalent Value (as defined below) or the remaining Underlying Equivalent Value of the position, whichever is less.²⁴³ Proposed Section 19(a)(3) will stipulate that except as provided in proposed Section 18(b)(1)(B) and Section 18(c) above,²⁴⁴ FLEX Options

²³⁸ See ISE Options 3A, Section 18(c)(2) for substantially similar rule text. The citations for ISE are to Options 4A, Section 6 and 7.

²³⁹ See ISE Options 3A, Section 18(c)(3) for substantially similar rule text. The citations for ISE are to Options 4A, Section 6 and 7.

²⁴⁰ See ISE Options 3A, Section 19(a) for identical text.

²⁴¹ As such the following broad-based index options listed in Options 4A, Section 6(a)(i) will have no exercise limits for FLEX Index Options: Full Value Nasdaq 100 Options, the Reduced Value Nasdaq 100 Options, the Nasdaq 100-Micro Index Options, and the Nasdaq-100 ESG Index Options.

²⁴² See ISE Options 3A, Section 19(a)(1) and Phlx Options 8, Section 34(j)(a) (FLEX Currency Options) for identical text.

²⁴³ See ISE Options 3A, Section 19(a)(2) for identical text.

²⁴⁴ As described above, proposed Section 18(c) will govern the aggregation of FLEX positions generally, while proposed Section 18(b)(1)(B) will

shall not be taken into account when calculating exercise limits for non-FLEX Option contracts.²⁴⁵ Lastly, proposed Section 19(a)(4) will set forth the definition of Underlying Equivalent Value as the aggregate value of a FLEX Index Option (index multiplier times the current index value) multiplied by the number of FLEX Index Options.²⁴⁶

U. Capacity and Surveillances

The Exchange has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority (“OPRA”) have the necessary systems capacity to handle the additional message traffic associated with the listing of new series that may result from the introduction of FLEX Options.²⁴⁷

Additionally, the Exchange believes it has an adequate surveillance program in place and intends to apply the same program procedures to FLEX Options that is applied to the Exchange’s other options products, as applicable. FLEX Option products and their respective symbols will be integrated into the Exchange’s existing surveillance system architecture and will be subject to the relevant surveillance processes. The Exchange believes that any potential risk of manipulative activity is mitigated by these existing surveillance technologies, procedures, and reporting requirements, which allow the Exchange to properly identify disruptive and/or manipulative trading activity. Additionally, taking into consideration that FLEX Options have unique characteristics, the Exchange has reviewed its catalog of patterns and updated a number of patterns to include FLEX Options transactions for when they begin trading. The Exchange will periodically review its surveillance procedures and make any changes that the Exchange believes are necessary for FLEX trading.

As discussed in more detail in the “Cash-Settled FLEX ETFs” section below, the Exchange is also a member of the Intermarket Surveillance Group (“ISG”),²⁴⁸ and works with other self-

govern the aggregation of cash-settled FLEX Equity Options specifically and that positions in such cash-settled FLEX Equity Options will be aggregated with positions in physically settled options on the same underlying ETF. Cash-settled FLEX Equity Options will be discussed later in this filing.

²⁴⁵ See ISE Options 3A, Section 19(a)(3) for identical text.

²⁴⁶ See ISE Options 3A, Section 19(a)(4) for identical text.

²⁴⁷ The Exchange will report FLEX Option trades and, if necessary, trade cancellations to OPRA.

²⁴⁸ ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by cooperatively sharing regulatory

regulatory organizations and exchanges on intermarket surveillance related issues through its participation in the ISG. As discussed in the “Cash-Settled FLEX ETFs” section below, the Exchange and all other ISG members can and do share information for regulatory purposes.

V. Cash-Settled FLEX ETFs

The Exchange proposes to include rule text in proposed Options 3A, Section 3(c) and Section 18, each as discussed above, to allow for cash settlement of certain FLEX Equity Options. Generally, as discussed above, FLEX Equity Options will be settled by physical delivery of the underlying security,²⁴⁹ while all FLEX Index Options will be settled by delivery in cash.²⁵⁰ The Exchange proposes to allow FLEX Equity Options where the underlying security is an ETF to be settled by delivery in cash if the underlying security meets prescribed criteria. The Exchange notes that cash-settled FLEX ETF Options will be subject to the same trading rules and procedures described above that will govern the trading of other FLEX Options on the Exchange, with the exception of the rules to accommodate the cash-settlement feature proposed as follows. Today, NYSE American Rule 903G,²⁵¹ Cboe Rule 4.21(b)(5)(A)²⁵² and ISE Options 3A, Section 3(c)(5)(A)²⁵³ allow for cash-settled FLEX ETF Options as well. The Exchange’s proposed rule changes for cash-settled ETF Options will be based on NYSE

American Rule 903G, Cboe Rule 4.21(b)(5)(A) and ISE Options 3A, Section 3(c)(5)(A).

To permit cash settlement of certain FLEX ETF Options, the Exchange proposes rule text in Section 3(c)(5)(A)(ii) to provide that the exercise settlement for a FLEX ETF Option may be settled by physical delivery of the underlying ETF or by delivery in cash if the underlying security, measured over a defined six-month period,²⁵⁴ has an average daily notional value of \$500 million or more and a national average daily volume (“ADV”) of at least 4,680,000 shares.²⁵⁵

The Exchange also proposes in Section 3(c) that a FLEX Equity Option overlying an ETF (cash- or physically-settled) may not be the same type (put or call) and may not have the same exercise style, expiration date, and exercise price as a non-FLEX Equity Option overlying the same ETF.²⁵⁶ In other words, regardless of whether a FLEX Equity Option overlying an ETF is cash or physically settled, at least one of the exercise style (*i.e.*, American-style or European-style), expiration date, and exercise price of that FLEX Option must differ from those terms of a non-FLEX Option overlying the same ETF in order to list such a FLEX Equity Option. For example, suppose a non-FLEX SPY option (which is physically settled, p.m.-settled and American-style) with a specific September expiration and exercise price of 475 is listed for trading. A FLEX Trader could not submit an order to trade a FLEX SPY option that is cash-settled (or physically settled) and American-style with the same September expiration and exercise price of 475.

In addition, the Exchange proposes new subparagraph (a) to Section 3(c)(5)(A)(ii), which would provide that the Exchange will determine bi-annually the underlying ETFs that satisfy the notional value and trading volume requirements in Section 3(c)(5)(A)(ii) by using trading statistics for the defined six-month period.²⁵⁷ The

proposed rule would further provide that the Exchange will permit cash settlement as a contract term on no more than 50 underlying ETFs that meet the criteria in this subparagraph (ii) and that if more than 50 underlying ETFs satisfy the notional value and trading volume requirements, then the Exchange would select the top 50 ETFs that have the highest average daily volume.²⁵⁸

Proposed new subparagraph (b) to Section 3(c)(5)(A)(ii) would further provide that if the Exchange determines pursuant to the bi-annual review that an underlying ETF ceases to satisfy the requirements under proposed Section 3(c)(5)(A)(ii), any new position overlying such ETF entered into will be required to have exercise settlement by physical delivery, and any open cash-settled FLEX ETF Option positions may be traded only to close the position.²⁵⁹

The Exchange believes it is appropriate to introduce cash settlement as an alternative contract term to the select group of ETFs because they are among the most highly liquid and actively traded ETF securities. As described more fully below, the Exchange believes that the deep liquidity and robust trading activity in the ETFs identified by the Exchange as meeting the criteria mitigate against historic concerns regarding susceptibility to manipulation.

Characteristics of ETFs

ETFs are funds that have their value derived from assets owned. The net asset value (“NAV”) of an ETF is a daily calculation that is based off the most recent closing prices of the assets in the fund and an actual accounting of the total cash in the fund at the time of calculation. The NAV of an ETF is calculated by taking the sum of the assets in the fund, including any securities and cash, subtracting out any liabilities, and dividing that by the number of shares outstanding.

each year. The results of the bi-annual review will be announced via an Options Trader Alert and any new securities that qualify would be permitted to have cash settlement as a contract term beginning on February 1 and August 1 of each year. If the Exchange initially begins listing cash-settled FLEX Equity Options on a different date (*e.g.*, September 1), it would initially list securities that qualified as of the last bi-annual review (*e.g.*, the one conducted on July 1).

²⁵⁸ See proposed Options 3A, Section 3(c)(5)(A)(ii)(a), which is identical to ISE Options 3A, Section 3(c)(5)(A)(ii)(a).

²⁵⁹ See proposed Options 3A, Section 3(c)(5)(A)(ii)(b), which is identical to ISE Options 3A, Section 3(c)(5)(A)(ii)(b). If a listing is closing only, pursuant to ISE Options 4, Section 4(a), opening transactions by Market Makers executed to accommodate closing transactions of other market participants are permitted. Phlx’s Options 4 rules are incorporated by reference to ISE’s Options 4 rules.

information pursuant to a written agreement between the parties. The goal of the ISG’s information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

²⁴⁹ See proposed Options 3A, Section 3(c)(5)(A)(i).

²⁵⁰ See proposed Options 3A, Section 3(c)(5)(B). As discussed below, cash settlement is also permitted in the OTC market. Trading in cash-settled FLEX ETF Options will not commence until the related reporting requirements are finalized.

²⁵¹ See Securities Exchange Act Release No. 88131 (February 5, 2020), 85 FR 7806 (February 11, 2020) (SR–NYSEAmer–2019–38) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Allow Certain Flexible Equity Options To Be Cash Settled).

²⁵² Cboe also filed an immediately effective rule change to allow certain FLEX Options to be cash settled. See Securities Exchange Act Release No. 98044 (August 2, 2023), 88 FR 53548 (August 8, 2023) (SR–Cboe–2023–036) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Allow Certain Flexible Exchange Equity Options To Be Cash Settled).

²⁵³ See also Securities Exchange Act No. 101720 (November 22, 2024), 89 FR 94986 (November 29, 2024) (SR–ISE–2024–12) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt Rules To List and Trade FLEX Options).

²⁵⁴ As noted below, the Exchange plans to conduct the bi-annual review on January 1 and July 1 of each year. As such, the six-month periods will be from January to June, and from July to December each year.

²⁵⁵ See ISE Options 3A, Section 3(c)(5)(A)(ii) for identical text.

²⁵⁶ See ISE Options 3A, Section 3(c) for identical text. All non-FLEX Equity Options (including on ETFs) are physically settled. Note all FLEX and non-FLEX Equity Options (including ETFs) are p.m.-settled.

²⁵⁷ See proposed Options 3A, Section 3(c)(5)(A)(ii)(a), which is identical to ISE Options 3A, Section 3(c)(5)(A)(ii)(a). The Exchange plans to conduct the bi-annual review on January 1 and July 1 of each year. As such, the six-month periods will be from January to June, and from July to December

Additionally, each ETF is subject to a creation and redemption mechanism to ensure the price of the ETF does not fluctuate too far away from its NAV—which mechanisms the Exchange believes reduce the potential for manipulative activity. Each business day, ETFs are required to make publicly available a portfolio composition file that describes the makeup of their creation and redemption “baskets” (*i.e.*, a specific list of names and quantities of securities or other assets designed to track the performance of the portfolio as a whole). ETF shares are created when an Authorized Participant,²⁶⁰ typically a market maker or other large institutional investor, deposits the daily creation basket or cash with the ETF issuer. In return for the creation basket or cash (or both), the ETF issues to the Authorized Participant a “creation unit” that consists of a specified number of ETF shares. For instance, IWM is designed to track the performance of the Russell 2000 Index. An Authorized Participant will purchase all the Russell 2000 constituent securities in the exact same weight as the index prescribes, then deliver those shares to the ETF issuer. In exchange, the ETF issuer gives the Authorized Participant a block of equally valued ETF shares, on a one-for-one fair value basis. This process can also work in reverse. A redemption is achieved when the Authorized Participant accumulates a sufficient number of shares of the ETF to constitute a creation unit and then exchanges these ETF shares with the ETF issuer, thereby decreasing the supply of ETF shares in the market.

The principal, and perhaps most important, feature of ETFs is their

reliance on an “arbitrage function” performed by market participants that influences the supply and demand of ETF shares and, thus, trading prices relative to NAV. As noted above, new ETF shares can be created and existing shares redeemed based on investor demand; thus, ETF supply is open-ended. This arbitrage function helps to keep an ETF’s price in line with the value of its underlying portfolio, *i.e.*, it minimizes deviation from NAV. Generally, in the Exchange’s view, the higher the liquidity and trading volume of an ETF, the more likely the price of the ETF will not deviate from the value of its underlying portfolio, making such ETFs less susceptible to price manipulation.

Trading Data for the ETFs Proposed for Cash Settlement

The Exchange believes that average daily notional value is an appropriate proxy for selecting underlying securities that are not readily susceptible to manipulation for purposes of establishing a settlement price. Average daily notional value considers both the trading activity and the price of an underlying security. As a general matter, the more expensive an underlying security’s price, the less cost-effective manipulation could become. Further, manipulation of the price of a security encounters greater difficulty the more volume that is traded. To calculate average daily notional value (provided in the table below), the Exchange summed the notional value of each trade for each symbol (*i.e.*, the number of shares times the price for each execution in the security) and divided that total by the number of trading days in the six-month period (from January 1,

2025 through June 30, 2025) reviewed by the Exchange.

Further, the Exchange proposes that qualifying ETFs also meet an ADV standard. The purpose for this second criteria is to prevent unusually expensive underlying securities from qualifying under the average daily notional value standard while not being one of the most actively traded securities. The Exchange believes an ADV requirement of 4,680,000 shares a day is appropriate because it represents average trading in the underlying ETF of 200 shares per second. While no security is immune from all manipulation, the Exchange believes that the combination of average daily notional value and ADV as prerequisite requirements would limit cash settlement of FLEX ETF Options to those underlying ETFs that would be less susceptible to manipulation in order to establish a settlement price.

The Exchange believes that the proposed objective criteria would ensure that only the most robustly traded and deeply liquid ETFs would qualify to have cash settlement as a contract term. As provided in the below table, from January 1, 2025 through June 30, 2025 the Exchange would be able to provide cash settlement as a contract term for FLEX ETF Options on 50 underlying ETFs, as only this group of securities would currently meet the requirement of \$500 million or more average daily notional value and a minimum ADV of 4,680,000 shares. The table below provides the list of the 50 ETFs that, for the period covering January 1, 2025 through June 30, 2025, would be eligible to have cash settlement as a contract term.

Symbol	Security name	Average daily notional value (in dollars) (01/01/25–06/30/25)	Average daily volume (in shares) (01/01/25–06/30/25)
AGG	iShares Core U.S. Aggregate Bond ETF	\$8,699,833.00	\$851,832,576.12
ARKK	ARK Innovation ETF	643,094,760.54	11,636,050.00
BIL	SPDR Bloomberg 1–3 Month T-Bill ETF	11,455,300.00	1,049,004,625.19
BND	Vanguard Total Bond Market Index Fund ETF	6,972,184.00	506,391,840.38
EEM	iShares MSCI Emerging Markets ETF	26,928,444.00	1,183,523,732.62
EFA	iShares MSCI EAFE ETF	15,257,630.00	1,258,317,969.73
EMB	iShares JPMorgan USD Emerging Markets Bond ETF	6,392,138.00	576,324,752.09
EWZ	iShares MSCI Brazil ETF	626,130,542.30	24,085,357.00
FXI	iShares China Large-Cap ETF	1,648,482,158.97	48,278,257.00
GDX	VanEck Gold Miners ETF	964,960,046.99	21,190,831.00
GLD	SPDR Gold Shares	3,040,973,761.83	10,578,410.00
HYG	iShares iBoxx High Yield Corporate Bond ETF	3,458,742,769.77	43,934,595.00
IBIT	iShares Core MSCI Emerging Markets ETF	2,444,160,416.54	45,262,581.00
IEF	iShares 7–10 Year Treasury Bond ETF	838,636,187.01	8,888,803.00
IEFA	iShares Core MSCI EAFE ETF	877,992,879.01	11,486,955.00
IEMG	iShares Core MSCI Emerging Markets ETF	604,482,851.56	11,048,003.00
IJH	iShares Core S&P Mid-Cap ETF	594,185,677.81	10,004,433.00

²⁶⁰ “Authorized Participant” means a member or participant of a clearing agency registered with the Commission, which has a written agreement with

the exchange-traded fund or one of its service providers that allows the authorized participant to

place orders for the purchase and redemption of creation units. *See* SEC Rule 6c–11(a)(1).

Symbol	Security name	Average daily notional value (in dollars) (01/01/25–06/30/25)	Average daily volume (in shares) (01/01/25–06/30/25)
IVV	iShares Core S&P 500 ETF	3,956,330,969.59	6,884,382.00
IWM	iShares Russell 2000 ETF	6,621,708,117.27	32,220,788.00
KRE	SPDR S&P Regional Banking ETF	766,145,682.51	13,394,042.00
KWEB	KraneShares CSI China Internet ETF	782,540,679.07	23,611,762.00
LQD	Shares iBoxx Investment Grade Corporate Bond ETF	3,003,836,168.46	27,935,827.00
MUB	iShares National Muni Bond ETF	607,671,564.00	5,806,927.00
NVDL	GraniteShares 2x Long NVDA Daily ETF	1,142,344,013.02	23,444,552.00
QQQ	Invesco QQQ Trust	22,453,225,320.87	45,324,821.00
RSP	Invesco S&P 500 Equal Weight ETF	1,657,278,524.11	9,543,887.00
SGOV	iShares 0–3 Month Treasury Bond ETF	1,094,471,379.90	10,888,840.00
SLV	iShares Silver Trust	626,451,875.06	20,969,906.00
SMH	VanEck Semiconductor ETF	1,827,681,038.22	7,907,172.00
SOXL	Direxion Daily Semiconductor Bull 3x Shares	2,608,869,731.95	155,313,463.00
SOXS	Direxion Daily Semiconductor Bear 3x Shares	1,300,312,913.91	74,333,226.00
SPLG	SPDR® Portfolio S&P 500® ETF	691,197,284.83	10,311,961.00
SPY	SPDR S&P 500 ETF Trust	39,825,410,549.78	69,665,746.00
QQQ	ProShares UltraPro Short QQQ ETF	2,907,450,691.44	92,864,283.00
TLT	iShares 20+ Year Treasury Bond ETF	3,502,549,497.38	39,759,038.00
TQQQ	ProShares UltraPro QQQ	5,682,017,747.81	89,617,983.00
TSLL	Direxion Daily TSLA Bull 2X Shares	2,143,237,531.15	170,152,425.00
TSLQ	Tesla Inc	550,334,801.97	19,311,857.00
USHY	iShares Broad USD High Yield Corporate Bond ETF	504,230,715.47	13,734,881.00
VCIT	Vanguard Intermediate-Term Corp Bond Idx Fund ETF	619,497,556.24	7,641,263.00
VEA	Vanguard Tax Managed Fund FTSE Developed Markets ETF	698,674,764.63	13,501,246.00
VOO	Vanguard S&P 500 ETF	3,926,170,825.14	7,489,441.00
XBI	SPDR S&P Biotech ETF	894,522,471.65	10,779,949.00
XLB	Materials Select Sector SPDR Fund	518,464,677.66	6,078,047.00
XLE	Energy Select Sector SPDR Fund	1,582,987,109.88	18,369,894.00
XLF	Financial Select Sector SPDR Fund	2,312,210,164.47	46,902,066.00
XLI	Industrial Select Sector SPDR Fund	1,391,124,943.29	10,327,188.00
XLP	Consumer Staples Select Sector SPDR Fund	1,101,445,442.72	13,671,681.00
XLU	Utilities Select Sector SPDR Fund	889,607,111.47	11,322,522.00

The Exchange believes that permitting cash settlement as a contract term for FLEX ETF Options for the ETFs in the above table would broaden the base of investors that use FLEX Equity Options to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options, where settlement restrictions do not apply.

The Exchange notes that the SEC has previously approved a rule filing of another exchange that allowed for the trading of cash-settled options²⁶¹ and,

specifically, cash-settled FLEX ETF Options (which the Exchange proposes to list in the same manner as that exchange).²⁶²

Today, equity options are settled physically at The Options Clearing Corporation (“OCC”), *i.e.*, upon exercise, shares of the underlying security must be assumed or delivered. Physical settlement may possess certain risks with respect to volatility and movement of the underlying security at expiration against which market

participants may need to hedge. The Exchange believes cash settlement may be preferable to physical delivery in some circumstances as it does not present the same risk. If an issue with the delivery of the underlying security arises, it may become more expensive (and time consuming) to reverse the delivery because the price of the underlying security would almost certainly have changed. Reversing a cash payment, on the other hand, would not involve any such issue because reversing a cash delivery would simply involve the exchange of cash.

Additionally, with physical settlement, market participants that have a need to generate cash would have to sell the underlying security while incurring the costs associated with liquidating their position as well as the risk of an adverse movement in the price of the underlying security.

With respect to position and exercise limits, cash-settled FLEX ETF Options would be subject to the position limits set forth in proposed Options 3A, Section 18. Accordingly, the Exchange proposes to add subparagraph (b)(1)(B) of Options 3A, Section 18, which would provide that a position in cash-settled FLEX Equity Options where the underlying security is an ETF pursuant

²⁶¹ See, e.g., PHLX FX Options traded on Nasdaq PHLX and S&P 500® Index Options traded on Cboe Options Exchange. The Commission approved, on a pilot basis, the listing and trading of RealDay™ Options on the SPDR S&P 500 Trust on the BOX Options Exchange LLC (“BOX”). See Securities Exchange Act Release No. 79936 (February 2, 2017), 82 FR 9886 (February 8, 2017) (“RealDay Pilot Program”). The RealDay Pilot Program was extended until February 2, 2019. See Securities Exchange Act Release No. 82414 (December 28, 2017), 83 FR 577 (January 4, 2018) (SR–BOX–2017–38). The RealDay Pilot Program was never implemented by BOX. See also Securities Exchange Act Release Nos. 56251 (August 14, 2007), 72 FR 46523 (August 20, 2007) (SR–Amex–2004–27) (Order approving listing of cash-settled Fixed Return Options (“FROs”)); and 71957 (April 16, 2014), 79 FR 22563 (April 22, 2014) (SR–NYSEMKT–2014–06) (Order approving name change from FROs to ByRDs and re-launch of these products, with certain modifications).

²⁶² See Securities Exchange Act Release Nos. 88131 (February 5, 2020), 85 FR 7806 (February 11, 2020) (SR–NYSEAMER–2019–38) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Allow Certain Flexible Equity Options To Be Cash Settled); 97231 (March 31, 2023), 88 FR 20587 (April 6, 2023) (SR–NYSEAMER–2023–22) (Notice of Filing and Immediate Effectiveness of Proposed Change to Make a Clarifying Change to the Term Settlement Style Applicable to Flexible Exchange Options); and 98044 (August 2, 2023), 88 FR 53548 (August 8, 2023) (SR–Cboe–2023–036) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Allow Certain Flexible Exchange Equity Options To Be Cash Settled. ISE also received approval for cash-settled FLEX ETF options. See also Securities Exchange Act No. 101720 (November 22, 2024), 89 FR 94986 (November 29, 2024) (SR–ISE–2024–12) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt Rules To List and Trade FLEX Options).

to Options 3A, Section 3(c)(5)(A)(ii) shall be subject to the position limits set forth in Options 9, Section 13, and subject to the exercise limits set forth in Options 9, Section 15.²⁶³ The proposed rule would further state that positions in such cash-settled FLEX Equity Options shall be aggregated with positions in physically settled options on the same underlying ETF for the purpose of calculating the position limits set forth in Options 9, Section 13 and the exercise limits set forth in Options 9, Section 15.²⁶⁴ The Exchange further proposes to add in subparagraph (b)(1)(A) of Section 18 a cross-reference to subparagraph (b)(1)(B) of Section 18, as subparagraph (b)(1)(B) would also contain provisions about position limits for FLEX Equity Options that would be exceptions to the statement in Options 3A, Section 18(b)(1)(A) that FLEX Equity Options have no position limits. The Exchange also proposes to add in paragraph (c) of Section 18, a cross-reference to proposed subparagraph (b)(1)(B), as the proposed rule adds language regarding aggregation of positions for purposes of position limits, which will be covered by paragraph (c). Given that each of the underlying ETFs that would currently be eligible to have cash-settlement as a contract term have established position and exercise limits applicable to physically settled options, the Exchange believes it is appropriate for the same position and exercise limits to also apply to cash-settled options. Accordingly, of the 50 underlying securities that would currently be eligible to have cash settlement as a FLEX contract term, 30 would have a position limit of 250,000 contracts pursuant to Options 9, Section 13(d)(5).²⁶⁵ Further, pursuant to

Supplementary Material .01 to Options 9, Section 13, six would have a position limit of 500,000 contracts (EWZ, TLT, HYG, XLF, LQD, and GDX); four (EEM, FXI, IWM, and EFA) would have a position limit of 1,000,000 contracts; one (QQQ) would have a position limit of 1,800,000 contracts; and one (SPY) would have a position limit of 3,600,000.²⁶⁶

The Exchange understands that cash-settled ETF options are currently traded in the OTC market by a variety of market participants, *e.g.*, hedge funds, proprietary trading firms, and pension funds.²⁶⁷ These options are not fungible with the exchange listed options. The Exchange believes some of these market participants would prefer to trade comparable instruments on an exchange, where they would be cleared and settled through a regulated clearing agency. The Exchange expects that users of these OTC products would be among the primary users of exchange-traded cash-settled FLEX ETF Options. The Exchange also believes that the trading of cash-settled FLEX ETF Options would allow these same market participants to better manage the risk associated with the volatility of underlying equity positions given the enhanced liquidity that an exchange-traded product would bring.

In the Exchange's view, cash-settled FLEX ETF Options traded on the Exchange would have three important advantages over the contracts that are traded in the OTC market. First, as a result of greater standardization of contract terms, exchange-traded contracts should develop more liquidity. Second, counter-party credit risk would be mitigated by the fact that the contracts are issued and guaranteed by OCC. Finally, the price discovery and dissemination provided by the Exchange and its members would lead to more transparent markets. The Exchange believes that its ability to offer cash-settled FLEX ETF Options would aid it in competing with the OTC market and at the same time expand the universe of products available to interested market participants. The Exchange believes that an exchange-traded alternative may provide a useful risk management and trading vehicle for market participants and their customers.

the underlying security must have at least 300 million shares currently outstanding.

²⁶⁶ These were based on position limits as of January 28, 2025. Position limits are available on at <https://www.theocc.com>. Position limits for ETFs are always determined in accordance with the Exchange's Rules regarding position limits.

²⁶⁷ As noted above, other options exchanges have received approval to list certain cash-settled FLEX ETF Options. *See supra* notes 251–253.

Further, the Exchange believes listing cash-settled FLEX ETF Options would provide investors with competition on an exchange platform, as other options exchanges have received Commission approval to list the same options.²⁶⁸

The Exchange notes that OCC has received approval from the Commission for rule changes that will accommodate the clearance and settlement of cash-settled ETF options, and is now clearing these products.²⁶⁹ The Exchange has also analyzed its capacity and represents that it and The Options Price Reporting Authority (“OPRA”) have the necessary systems capacity to handle the additional traffic associated with the listing of cash-settled FLEX ETF Options. The Exchange believes any additional traffic that would be generated from the introduction of cash-settled FLEX ETF Options would be manageable. The Exchange expects that members will not have a capacity issue as a result of this proposed rule change. The Exchange also does not believe this proposed rule change will cause fragmentation of liquidity. The Exchange will monitor the trading volume associated with the additional options series listed as a result of this proposed rule change and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange's automated systems.

The Exchange does not believe that allowing cash settlement as a contract term would render the marketplace for equity options more susceptible to manipulative practices. The Exchange believes that manipulating the settlement price of cash-settled FLEX ETF Options would be difficult based on the size of the market for the underlying ETFs that are the subject of this proposed rule change. The Exchange notes that each underlying ETF in the table above is sufficiently active to alleviate concerns about potential manipulative activity. Further, in the Exchange's view, the vast liquidity in the 50 underlying ETFs that would currently be eligible to be traded as cash-settled FLEX options under the proposal ensures a multitude of market participants at any given time. Moreover, given the high level of participation among market participants that enter quotes and/or orders in physically settled options on these ETFs, the Exchange believes it would be very difficult for a single participant to alter the price of the underlying ETF or options overlying such ETF in any

²⁶⁸ *See supra* notes 251–253.

²⁶⁹ *See* Securities Exchange Act Release No. 34–94910 (May 13, 2022), 87 FR 30531 (May 19, 2022) (SR–OCC–2022–003).

²⁶³ The Exchange proposes to add to proposed Options 3A, Section 18(b)(1)(A) a cross reference to proposed paragraph (c) of Section 18, as proposed Section 18(c) also contains provisions about position limits for FLEX Equity Options that would be exceptions to the statement in proposed Section 18(b)(1)(A) that FLEX Equity Options have no position limits (in addition to the language in proposed Section 18(b)(1)(B)). The Exchange also proposes to add to proposed Section 18(c) a cross-reference to proposed subparagraph (b)(1)(B) of Section 18, as the proposed rule adds language regarding aggregation of positions for purposes of position limits, which will be covered in proposed Section 18(c).

²⁶⁴ *See* proposed Options 3A, Section 18(b)(1)(B), which is identical to ISE Options 3A, Section 18(b)(1)(B). The aggregation of position and exercise limits would include all positions on physically settled FLEX and non-FLEX Options on the same underlying ETFs.

²⁶⁵ Options 9, Section 13(g)(i) provides that to be eligible for the 250,000 contract limit, either the most recent six (6) month trading volume of the underlying security must have totalled at least 100 million shares or the most recent six-month trading volume of the underlying security must have totalled at least seventy-five (75) million shares and

significant way without exposing the would-be manipulator to regulatory scrutiny. The Exchange further believes any attempt to manipulate the price of the underlying ETF or options overlying such ETF would also be cost prohibitive. As a result, the Exchange believes there is significant participation among market participants to prevent manipulation of cash-settled FLEX ETF Options.

Still, the Exchange believes it has an adequate surveillance program in place and intends to apply the same program procedures to cash-settled FLEX ETF Options that it applies to the Exchange's other options products.²⁷⁰ The Exchange will periodically review its surveillance procedures and make any changes that the Exchange believes are necessary for FLEX trading. FLEX options products and their respective symbols will be integrated into the Exchange's existing surveillance system architecture and will thus be subject to the relevant surveillance processes, as applicable. The Exchange believes that the existing surveillance procedures at the Exchange are capable of properly identifying unusual and/or illegal trading activity, which procedures the Exchange would utilize to surveil for aberrant trading in cash-settled FLEX ETF Options.

With respect to regulatory scrutiny, the Exchange believes its existing surveillance technologies and procedures adequately address potential concerns regarding possible manipulation of the settlement value at or near the close of the market. The Exchange notes that the regulatory program operated by and overseen by Phlx²⁷¹ includes cross-market surveillance designed to identify manipulative and other improper trading, including spoofing, algorithm gaming, marking the close and open, as well as more general, abusive behavior related to front running, wash sales, and quoting/routing, which may occur on the Exchange or other markets.²⁷² These

cross-market patterns incorporate relevant data from various markets beyond the Exchange and its affiliates and from markets not affiliated with the Exchange. The Exchange represents that, today, its existing trading surveillances are adequate to monitor trading in the underlying ETFs and subsequent trading of options on those securities listed on the Exchange. Further, with the introduction of cash-settled FLEX ETF Options, the Exchange would leverage its existing surveillances to monitor trading in the underlying ETFs and subsequent trading of options on those securities listed on the Exchange with respect to cash-settled FLEX ETF options.²⁷³

Additionally, for options, the Exchange utilizes an array of patterns that monitor manipulation of options, or manipulation of equity securities (regardless of venue) for the purpose of impacting options prices on the Exchange (*i.e.*, mini-manipulation strategies). That surveillance coverage is initiated once options begin trading on the Exchange. Accordingly, the Exchange believes that the cross-market surveillance performed by the Exchange or FINRA, on behalf of the Exchange, coupled with Phlx's own monitoring for violative activity on the Exchange comprise a comprehensive surveillance program that is adequate to monitor for manipulation of the underlying ETF and overlying option. Furthermore, the Exchange believes that the existing surveillance procedures at the Exchange are capable of properly identifying unusual and/or illegal trading activity, which the Exchange would utilize to surveil for aberrant trading in cash-settled FLEX ETF Options.

In addition to the surveillance procedures and processes described above, improvements in audit trails (*i.e.*, the Consolidated Audit Trail), recordkeeping practices, and inter-exchange cooperation over the last two decades have greatly increased the

Exchange's ability to detect and punish attempted manipulative activities. In addition, the Exchange is a member of the ISG. The ISG members work together to coordinate surveillance and investigative information sharing in the stock and options markets. For surveillance purposes, the Exchange would therefore have access to information regarding trading activity in the pertinent underlying securities.

The proposed rule change is designed to allow investors seeking to effect cash-settled FLEX ETF Options with the opportunity for a different method of settling option contracts at expiration if they choose to do so. As noted above, market participants may choose cash settlement because physical settlement possesses certain risks with respect to volatility and movement of the underlying security at expiration that market participants may need to hedge against. The Exchange believes that offering innovative products flows to the benefit of the investing public. A robust and competitive market requires that exchanges respond to members' evolving needs by constantly improving their offerings. Such efforts would be stymied if exchanges were prohibited from offering innovative products for reasons that are generally debated in academic literature. The Exchange believes that introducing cash-settled FLEX ETF Options would further broaden the base of investors that use FLEX Equity Options to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options, where settlement restrictions do not apply. The proposed rule change is also designed to encourage market makers to shift liquidity from the OTC market onto the Exchange, which, it believes, would enhance the process of price discovery conducted on the Exchange through increased order flow. The Exchange also believes that this may open up cash-settled FLEX ETF Options to more retail investors. The Exchange does not believe that this proposed rule change raises any unique regulatory concerns because existing safeguards—such as position limits (and the aggregation of cash-settled positions with physically-settled positions), exercise limits (and the aggregation of cash-settled positions with physically-settled positions), and reporting requirements—would continue to apply. The Exchange believes the proposed position and exercise limits may further help mitigate the concerns that the limits are designed to address about the potential for manipulation and market disruption in

²⁷⁰ For example, the regulatory program for the Exchange includes surveillance designed to identify manipulative and other improper options trading, including, spoofing, marking the close, front running, wash sales, etc.

²⁷¹ Phlx maintains a Regulatory Services Agreement or "RSA" with Financial Industry Regulatory Authority, Inc. ("FINRA") whereby FINRA provides certain regulatory services to the exchanges, including cross-market surveillance, investigation, and enforcement services.

²⁷² As it relates to Reg SHO violations, the Exchange will enforce this through its Stock-Tied Reg SHO price protections in Options 3, Section 16(e). See *supra* note 211 for Stock-Tied Reg SHO discussion. NES will only execute Stock-Option Strategies and Stock-Complex Strategies if the underlying covered security component is in accordance with Rule 201 of Regulation SHO.

Additionally, FINRA's regulatory program addresses Reg SHO compliance for its member firms (which includes Exchange Members). was amended by SR-Phlx-2025-17. Options 3, Section 16 was amended by SR-Phlx-2025-17. See Securities Exchange Act Release No. 102862 (April 15, 2025), 90 FR 16731 (April 21, 2025) (SR-Phlx-2025-17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx's Complex Order Functionality). SR-Phlx-2025-17 proposed the same operative date as this proposal as they are both part of the same technology migration.

²⁷³ Such surveillance procedures generally focus on detecting securities trading subject to opening price manipulation, closing price manipulation, layering, spoofing or other unlawful activity impacting an underlying security, the option, or both. The Exchange has price movement alerts, unusual market activity and order book alerts active for all trading symbols.

the options and the underlying securities.²⁷⁴

Given the novel characteristics of cash-settled FLEX ETF Options, the Exchange will conduct a review of the trading in cash-settled FLEX ETF Options over an initial five-year period. The Exchange will furnish five reports to the Commission based on this review, the first of which would be provided within 60 days after the first anniversary of the initial listing date of the first cash-settled FLEX ETF Option under the proposed rule and each subsequent annual report to be provided within 60 days after the second, third, fourth and fifth anniversary of such initial listing. At a minimum, each report will provide a comparison between the trading volume of all cash-settled FLEX ETF Options listed under the proposed rule and physically settled options on the same underlying security, the liquidity of the market for such options products and the underlying ETF, and any manipulation concerns arising in connection with the trading of cash-settled FLEX ETF Options under the proposed rule. The Exchange will also provide additional data as requested by the Commission during this five year period. The reports will also discuss any recommendations the Exchange may have for enhancements to the listing standards based on its review. The Exchange believes these reports will allow the Commission and the Exchange to evaluate, among other things, the impact such options have, and any potential adverse effects, on price volatility and the market for the underlying ETFs, the component securities underlying the ETFs, and the options on the same underlying ETFs and make appropriate recommendations, if any, in response to the reports.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁷⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act.²⁷⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁷⁷ 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.

The Exchange believes that the adoption of the proposed rules allowing FLEX Options to trade on Phlx in the manner specified above is consistent with the goals of the Act to remove impediments to and perfect the mechanism of a free and open market because it will benefit market participants by providing an additional venue for market participants to provide and seek liquidity for FLEX Options. As the Commission noted in its order granting FLEX trading on Cboe and what was then the Pacific Stock Exchange (now NYSE Arca), trading FLEX Options on an exchange is an alternative to trading customized options in OTC markets and carries with it the advantages of exchange markets such as transparency, parameters and procedures for clearance and settlement, and a centralized counterparty clearing agency.²⁷⁸ Therefore, the Exchange believes the proposed rule change will promote these same benefits for the market as a whole by providing an additional venue for market participants to trade customized FLEX Options. The Exchange believes that providing an additional venue for FLEX Options will be beneficial by increasing competition for order flow and executions.

In general, transactions in FLEX Options will be subject to many of the same rules that currently apply to non-FLEX Options traded on the Exchange. In order to provide investor with the flexibility to designate terms of the options and accommodate the special trading of FLEX Options, however, the Exchange is proposing to add new rules in proposed Options 3A that will apply solely to FLEX Options. As noted above, the proposed rules are substantially identical to ISE's rules pertaining to electronic FLEX Options, with certain intended differences regarding the allocation methodologies that are intended to align to current System behavior (and especially current auction behavior) to provide increased consistency for Members trading FLEX Options and non-FLEX Options on Phlx, each as discussed above and below.

The Exchange further believes that its proposal is designed to prevent fraudulent and manipulative acts and practices as the Exchange believes that

it has an adequate surveillance program in place and intends to apply the same program procedures to FLEX Options that are applied to the Exchange's other options products, as applicable. As described above, FLEX Option products and their respective symbols will be integrated into the Exchange's existing surveillance system architecture and will be subject to the relevant surveillance processes, thereby allowing the Exchange to properly identify disruptive and/or manipulative trading activity.

A. General Provisions (Section 1)

The Exchange believes that proposed Section 1(a) setting forth the applicability of Exchange Rules will make clear that unless otherwise provided in proposed Options 3A the Exchange's existing rules will continue to apply to FLEX Options, which will provide consistency for Members trading both FLEX Options and non-FLEX Options on ISE.

The Exchange believes that the defined terms proposed in Section 1(b) will provide increased clarity to Members by specifying definitions like "FLEX Option" and "FLEX Order" that are used throughout Options 3A. The Exchange further believes that adding the definition of "FLEX Order" in Options 3, Section 7(z) will add transparency as to which order types would be available on Phlx. Lastly, the non-substantive change proposed in Options 3, Section 7(y) will bring clarity and avoid potential confusion for market participants.

B. Hours of Business (Section 2)

The Exchange believes that specifying the trading hours for FLEX Options in proposed Section 2(a) will provide increased clarity that the trading hours for FLEX Options will generally be the same as the trading hours for corresponding non-FLEX Options as set forth in Options 3, Section 1. As noted above, the proposed language is identical to ISE Options 3A, Section 2.

As it relates to the Exchange's proposed discretion relating to the trading hours for FLEX Options, this is identical to ISE Options 3A, Section 2. The Exchange believes that because of the unique nature of FLEX, in contrast to the non-FLEX market, it is reasonable to permit the Exchange, in its discretion, to narrow or otherwise restrict the trading hours for FLEX Options, so long as such trading hours occur within the normal options trading hours of the Exchange described above. The Exchange would provide adequate advance notification to its Members of such changes in FLEX trading hours.

²⁷⁴ See *supra* note 264.

²⁷⁵ 15 U.S.C. 78f(b).

²⁷⁶ 15 U.S.C. 78f(b)(5).

²⁷⁷ 15 U.S.C. 78f(b)(5).

²⁷⁸ See Securities Exchange Act Release No. 36841 (February 14, 1996), 61 FR 6666 (February 21, 1996) (SR-CBOE-95-43) (SR-PSE-95-24) (Order Approving the Trading of Flexibly Structured Equity Options by CBOE and PSE).

C. FLEX Option Classes and Permissible Series (Section 3(a) and (b))

The Exchange believes that the proposed rule text in Sections 3(a) and 3(b) will provide greater transparency around the Exchange's listing standards for FLEX Option classes and FLEX Option series.

Proposed Section 3(b)(1), which will prevent FLEX Options and non-FLEX Options with the same terms from trading concurrently by System enforcing this restriction, is consistent with the Act because this restriction will address concerns that FLEX Options would act as a surrogate for the trading of non-FLEX Options. In particular, a non-FLEX Option trading pursuant to Options 3 has different priority rules than a FLEX Option trading pursuant to proposed Options 3A.²⁷⁹ Allowing an option with the same terms to trade under both rules concurrently would result in inconsistent order handling and could allow the order priority of non-FLEX Orders to be circumvented. Therefore, the Exchange proposes to prevent this situation by permitting FLEX Options transactions only in options with a different term (exercise style, expiration date, or exercise price) than a non-FLEX Option on the same underlying security or index that is already listed for trading. As noted above, the proposed language in Section 3(a) and Section 3(b) is substantially similar to Cboe Rule 4.20, Rule 4.21(a), and Rule 4.22(c) respectively, except the Exchange is clarifying in proposed Section 3(b)(2) that on the expiration date, a FLEX Order for the expiring FLEX Option series may only be submitted to close out a position in such expiring FLEX Option series.²⁸⁰

D. FLEX Options Terms (Section 3(c))

The Exchange believes that the terms of FLEX Options pursuant to proposed Options 3A, Section 3(c) serve to perfect the mechanism of a free and open market and a national market system because they will permit investors to customize some of the terms of their

FLEX Options to implement more precise trading strategies, which may not be possible using non-FLEX Options. These investors may have improved capability to execute strategies to meet their specific investment objectives by using customized FLEX Options. However, only certain terms as specified in proposed Section 3(c) are subject to flexible structuring by the parties to the FLEX Option transactions, and most of such terms have a specified number of alternative configurations. The Exchange believes that these restrictions are reasonable and designed to further the objectives of the Act and to promote just and equitable principles of trade because limiting FLEX Option terms enables the efficient, centralized clearance and settlement and active secondary trading of opened FLEX Options.

As discussed above, the Exchange is proposing to allow the listing of FLEX PM Third Friday Options on ISE, consistent with the Commission's recent approval of Cboe's proposal to make its pilot a permanent program.²⁸¹ The Exchange believes that aligning to Cboe will allow ISE to compete effectively with Cboe's product offering. Like Cboe, the Exchange believes that FLEX PM Third Friday Options will provide investors with greater trading opportunities and flexibility. The Exchange notes that the Commission recently approved proposals to make other pilots permitting p.m.-settlement of index options permanent after finding those pilots were consistent with the Act and the options subject to those pilots had no significant impact on the market.²⁸²

The Exchange further believes that permitting ISE to list FLEX PM Third Friday Options, similar to Cboe, will

remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors, while maintaining a fair and orderly market. As described in the FLEX Settlement Pilot Approval, Cboe observed no significant adverse market impact or identified any meaningful regulatory concerns during the nearly 14-year operation of the FLEX PM Third Friday Program as a pilot nor during the 15 years since P.M.-settled index options (SPX) were reintroduced to the marketplace.²⁸³

As discussed in the FLEX Settlement Pilot Approval, the DERA staff study²⁸⁴ and corresponding Cboe study concluded that a significantly larger amount of non-FLEX p.m.-settled index options had no significant adverse market impact and caused no meaningful regulatory concerns. Therefore, Cboe concluded that the relatively small amount of FLEX Index Option volume would similarly have no significant adverse market impact or cause no meaningful regulatory concerns.²⁸⁵

Cboe also concluded that the introduction of FLEX PM options had no significant impact on the market quality of corresponding a.m.-settled options or other options. As discussed in the FLEX Settlement Pilot Approval, Cboe's analysis conducted after the

²⁸³ Notably, Cboe did not identify any significant economic impact (including on pricing or volatility or in connection with reversals) on related futures, the underlying indexes, or the underlying component securities of the underlying indexes surrounding the close as a result of the quantity of FLEX PM Third Friday Options or the amount of expiring open interest in FLEX PM Third Friday Options, nor any demonstrated capacity for options hedging activity to impact volatility in the underlying markets. See *supra* note 54.

²⁸⁴ See FLEX Settlement Pilot Approval, citing to Securities and Exchange Commission, Division of Economic Risk and Analysis, Memorandum dated February 2, 2021 on Cornerstone Analysis of PM Cash-Settled Index Option Pilots (September 16, 2020), available at: https://www.sec.gov/files/Analysis_of_PM_Cash_Settled_Index_Option_Pilots.pdf.

²⁸⁵ See *supra* note 54. Additionally, these studies measured any impact on related futures, the underlying indexes, or the underlying component securities of the underlying indexes surrounding the close. Despite FLEX SPX options (which represent approximately half of the year-to-date 2023 volume of FLEX Index Options but only approximately 0.3% of total SPX volume) not being included in the DERA staff study and corresponding Cboe study, those studies concluded that during the time periods covered (which included the period of time in which the Pilot Program has been operating), there was no significant economic impact on the underlying index or related products. Therefore, Cboe concluded that any FLEX SPX Options that executed during the timeframes covered by the studies had no significant impact on the underlying index or related products, as neither DERA staff nor Cboe observed any significant economic impact on the underlying index or related product.

²⁷⁹ For example, the Exchange's order books will be inapplicable to FLEX Orders and thus certain priority provisions in Options 3, Section 10 applicable to non-FLEX Orders will not be applicable to FLEX Orders, such as the enhanced Lead Market Maker priority in Section 10(c)(1)(B), Preferred Market Maker priority in Section 10(c)(1)(C), and entitlement for orders of 5 contracts or fewer in Section 10(c)(1)(D). FLEX Options will instead be subject to the priority provisions in Options 3A, Section 11(b)(3)(A) (electronic FLEX Auctions), Section 12(e) (FLEX PIXL), and Section 13(e) (FLEX SOM).

²⁸⁰ The Exchange will System enforce this provision such that it will reject an opening position in an expiring FLEX Option series on the day of expiration.

²⁸¹ See *supra* note 53.

²⁸² See Securities Exchange Act Release Nos. 98454 (September 20, 2023) (SR-CBOE-2023-005) (order approving proposed rule change to make permanent the operation of a program that allows the Exchange to list p.m.-settled third Friday-of-the-month SPX options series) ("SPXPM Approval"); 98455 (September 20, 2023) (SR-CBOE-2023-019) (order approving proposed rule change to make permanent the operation of a program that allows the Exchange to list p.m.-settled third Friday-of-the-month XSP and MRUT options series) ("XSP and MRUT Approval"); and 98456 (September 20, 2023) (SR-CBOE-2023-020) (order approving proposed rule change to make the nonstandard expirations pilot program permanent) ("Nonstandard Approval"). See also Securities Exchange Act Release Nos. 98450 (September 20, 2023), 88 FR 66111 (September 26, 2023) (SR-ISE-2023-08) (order approving proposed rule change to make permanent certain p.m.-settled pilots); and 98935 (November 14, 2023), 88 FR 80792 (November 20, 2023) (SR-ISE-2023-20) (order approving a proposed rule change to permit the listing and trading of p.m.-settled Nasdaq-100 Index® Options with a third-Friday-of-the-month expiration).

introduction of SPXW options with Tuesday and Thursday expirations demonstrated no statistically significant impact on the bid-ask or effective spreads of SPXW options with Monday, Wednesday, and Friday expirations after trading in the SPXW options with Tuesday and Thursday expirations began.²⁸⁶ Further, Cboe concluded that large FLEX PM Third Friday Options trades had no material negative impact (and likely no impact) on quote quality of non-FLEX a.m.-settled options overlying the same index with similar terms as the FLEX PM Third Friday Option upon evaluating data that showed that the spreads were relatively stable before and after large trades.²⁸⁷ Therefore, Cboe concluded that it is likely that FLEX PM Third Friday Options have had no significant negative impact on the market quality of non-FLEX Options with a.m.-settlement.²⁸⁸

Additionally, Cboe noted that the significant changes in the closing procedures of the primary markets in recent decades, including considerable advances in trading systems and technology, has significantly minimized risks of any potential impact of FLEX PM Third Friday Options on the underlying cash markets. As such, Cboe concluded that listing FLEX PM Third Friday Options did not raise any unique or prohibitive regulatory concerns and that such trading has not, and will not, adversely impact fair and orderly markets on expiration Fridays for the underlying indexes or their component securities.

The Exchange notes that p.m.-settled options were previously approved on ISE's standard market,²⁸⁹ including p.m.-settled third-Friday-of-the-month

expirations for NDX options.²⁹⁰ In the P.M.-Settled Pilot Permanency Approval, the Commission stated it believed that the evidence contained in the Exchange's filing, the Exchange's pilot data and reports, and the DERA staff study²⁹¹ analysis demonstrate that the Exchange's pilot programs have benefitted investors and other market participants by providing more flexible trading and hedging opportunities while also having no disruptive impact on the market.²⁹² The Commission also stated that the market for p.m.-settled options has grown in size over the course of the Exchange's pilot programs, and analysis of the pilot data did not identify any significant economic impact on the underlying component securities surrounding the close as a result of expiring p.m.-settled options nor did it indicate a deterioration in market quality (as measured by relative quoted spreads) for an existing product when a new p.m.-settled expiration was introduced.²⁹³ Further, the Commission stated that significant changes in closing procedures in the decades since index options moved to a.m. settlement may also serve to mitigate the potential impact of p.m.-settled index options on the underlying cash markets.²⁹⁴

In support of its proposal to list p.m.-settled third-Friday-of-the-month expirations for NDX options on its standard market, the Exchange pointed to, among other things, the data it provided underlying the P.M.-Settled Pilot Permanency Approval.²⁹⁵ In reviewing this data from the Exchange (and other options exchanges in support of similar proposals to list and trade certain p.m.-settled broad-based index options) as well as the DERA staff study analysis, the Commission concluded that analysis of the pilot data did not identify any significant economic impact on the underlying component securities surrounding the close as a

result of expiring p.m.-settled options nor did it indicate a deterioration in market quality for an existing product when a new p.m.-settled expiration was introduced.²⁹⁶ Further, the Commission made similar findings as those in the P.M.-Settled Pilot Permanency Approval that significant changes in closing procedures in the decades since index options moved to a.m. settlement may also serve to mitigate the potential impact of p.m.-settled index options on the underlying cash markets.²⁹⁷ The Exchange has observed no significant adverse market impact or identified any meaningful regulatory concerns since the introduction of p.m.-settled index options on its standard market.²⁹⁸ Given that the Exchange anticipates FLEX PM Third Friday Options to have a relatively smaller amount of volume compared to its standard non-FLEX p.m.-settled index options market, the Exchange believes that introducing FLEX PM Third Friday coupled with the other findings in Cboe's FLEX Settlement Pilot Approval would likely have no significant adverse market impact or cause any meaningful regulatory concerns as well.

E. FLEX Fungibility (Section 3(d))

The Exchange believes that the FLEX fungibility provisions in proposed Options 3A, Section 3(d) are consistent with the Act by preventing new FLEX Option positions from being opened when a non-FLEX Option with the same terms is listed for trading. Pursuant to proposed Section 3(d)(1), a FLEX Option with the same terms as a subsequently added non-FLEX Option would become fungible with the non-FLEX Option. Accordingly, once a non-FLEX Option is added with the same terms as an outstanding FLEX Option, the FLEX Option would effectively become a standardized, non-FLEX Option and trade under the same rules and procedures that apply to any other standard non-FLEX Option. The Exchange believes that enforcing consistent order handling for identical and fungible options prevents fraudulent and manipulative acts and practices, and promotes just and equitable principles of trade to protect investors and the public interest by ensuring consistent treatment of these

²⁸⁶ See *supra* note 54.

²⁸⁷ Specifically, Cboe evaluated each FLEX PM Third Friday Options trade for more than 500 contracts that occurred on Cboe during a two-year timeframe and analyzed the market quality (specifically, the average time-weighted quote spread and size 30 minutes prior to the trade and the average time-weighted quote spread and size 30 minutes after the trade) of series non-FLEX a.m.-settled options overlying the same index with similar terms as the FLEX PM Third Friday Option that traded (time to expiration, type (call or put), and strike price) as set forth in the Cboe's data. See *supra* note 54.

²⁸⁸ Cboe acknowledged that, while FLEX PM Third Friday Options has historically represented a very small percentage of overall volume, it is possible trading in these options may grow in the future. See *supra* note 54.

²⁸⁹ See Securities Exchange Act Release No. 98450 (September 20, 2023), 88 FR 66111 (September 26, 2023) (SR-ISE-2023-08) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Make Permanent Certain P.M.-Settled Pilots) ("P.M.-Settled Pilot Permanency Approval").

²⁹⁰ See Securities Exchange Act Release No. 98935 (November 14, 2023), 88 FR 80792 (November 20, 2023) (SR-ISE-2023-20) (Order Approving a Proposed Rule Change To Permit the Listing and Trading of P.M.-Settled Nasdaq-100 Index® Options With a Third-Friday-of-the-Month Expiration) ("P.M. Third Friday NDX Options Approval").

²⁹¹ See P.M.-Settled Pilot Permanency Approval, citing to Securities and Exchange Commission, Division of Economic Risk and Analysis, Memorandum dated February 2, 2021 on Cornerstone Analysis of PM Cash-Settled Index Option Pilots (September 16, 2020) (also referred to therein as the "Pilot Memo"), available at: https://www.sec.gov/files/Analysis_of_PM_Cash_Settled_Index_Option_Pilots.pdf.

²⁹² See P.M.-Settled Pilot Permanency Approval.

²⁹³ See *id.*

²⁹⁴ See *id.*

²⁹⁵ See P.M.-Settled Pilot Permanency Approval and P.M. Third Friday NDX Options Approval in notes 274 and 276, respectively.

²⁹⁶ See P.M. Third Friday NDX Options Approval.

²⁹⁷ See *id.*

²⁹⁸ While the Exchange has received approval to list p.m.-settled third Friday-of-the-month expirations for NDX options on its standard market pursuant to the Third Friday NDX Options Approval, the Exchange has not listed them to date. The Exchange will launch p.m.-settled third-Friday-of-the-month expirations on NDX options on or before the launch of electronic FLEX on ISE.

options. As noted above, proposed Section 3(d)(1) is identical to ISE Options 3A, Section 3(d)(1).

Additionally, pursuant to proposed Section 3(d)(2)(A), if a non-FLEX Option series²⁹⁹ is added intraday, for the balance of that trading day, a position established under the FLEX trading procedures may be closed using the FLEX trading procedures in this Options 3A against another closing only FLEX position. No FLEX Orders may be submitted into an electronic auction pursuant to Options 3A, Sections 11(b), 12, or 13 for a FLEX Option series with the same terms as the non-FLEX Option series, unless the FLEX Order is a closing order, and it is the day on which the non-FLEX Option series was added intraday; Members may only submit responses that close out existing FLEX positions. The Exchange notifies Members when a FLEX Option series is restricted to closing only transactions. The System will reject a transaction in such a restricted series that does not conform to these requirements.

This proposed rule will prevent an option with the same terms from trading both a FLEX Option series and a non-FLEX Option series concurrently, while providing a narrow exception for closing positions. The Exchange believes that providing a narrow exception to permit such closing only transactions will help investors close out their outstanding FLEX Option positions the same day as the identical non-FLEX Option is added. As noted above, proposed Section 3(d)(2) is identical to ISE Options 3A, Section 3(d)(2).

F. Units of Trading; Minimum Trading Increments (Sections 4 and 5)

The Exchange believes that the proposed rule text in Section 4(a) provides clear, transparent language regarding how bids and offers for FLEX Options must be expressed.

The Exchange similarly believes that proposed Section 5(a) provides clarity to market participants that the Exchange will determine the minimum increments for bids and offers on FLEX Options on a class-by-class basis, which may be no smaller than \$0.01 for the options leg of a FLEX Option. Allowing FLEX Options to trade in increments as small as \$0.01 is consistent with the Act because it provides investors with increased ability to meet their specific investment objectives and allows for increased opportunities for price improvement through a finer trading increment. The Exchange is also

proposing to clarify in proposed Section 5(b) that the stock leg of a FLEX Option will be subject to the minimum increment rules in proposed Options 3A, Section 11(b)(1)(G), Section 12(a)(5), and Section 13(a)(5) for greater transparency around how minimum increments for complex FLEX Orders (including complex FLEX Orders with a stock component) would be handled.

G. Types of Orders; Order and Quote Protocols (Section 6)

The Exchange believes that specifying in proposed Section 6(a) that it may make the order types and TIFs specified in Options 3, Section 7 available on a class or System basis for FLEX Orders is consistent with the Exchange's existing authority to designate the availability of order types and times-in-force for non-FLEX Orders.³⁰⁰ As noted above, only the following order types in Options 3, Section 7 would apply to FLEX at this time: Limit Orders and Cancel and Replace Orders. Also as noted above, only the Immediate-or-Cancel TIF described in Supplementary Material .02(d) would apply to FLEX. Given that FLEX Orders will only be eligible to be submitted into an electronic FLEX Auction, FLEX PIXL, or FLEX SOM, and not rest on the order book or route away (for which most of the order types and TIFs set forth in Options 3, Section 7 are relevant), the Exchange believes that these are appropriate designations for FLEX Orders. Because there is no existing market for FLEX Options on the Exchange, the Exchange believes that permitting FLEX Options to be submitted as limit orders is appropriate to ensure execution of FLEX Orders at reasonable prices (*i.e.*, at the Member's specified price or better). The Exchange also believes that it is appropriate to allow FLEX Orders to be submitted as Cancel and Replace orders so that Members can cancel and replace their FLEX Order in a single message. The Exchange further believes that it is appropriate to allow FLEX Orders to have a TIF of Immediate-or-Cancel because that is how the Exchange currently treats all auction orders in its standard non-FLEX market today. Specifically, the Exchange considers all orders that are entered into one of its non-FLEX auction mechanisms (*e.g.*, SOM Orders and PIXL Orders) to have a TIF of Immediate-or-Cancel. By their terms, these orders will be: (1) executed either on entry or after an exposure period, or (2) cancelled.³⁰¹ Because

FLEX Orders may only be submitted into one of the proposed auctions described above (FLEX Auction, FLEX PIXL, FLEX SOM), the Exchange will likewise consider FLEX Orders like its non-FLEX auction orders today.

The Exchange further believes proposed Section 6(b) will provide greater transparency as to which existing order and quote protocols would be available for FLEX Orders, FLEX auction notifications, and FLEX auction responses.

H. Complex Orders (Section 7)

The Exchange believes the proposed Section 7 will provide investors with additional transparency regarding order entry requirements for complex FLEX Options. As noted above, the proposed complex FLEX Order entry requirements will be identical to ISE Options 3A, Section 7.

The Exchange also believes that allowing the submission of complex FLEX Orders with any ratio will remove impediments to and perfect the mechanism of a free and open market and benefit investors, because it will provide Members with additional flexibility and precision in their investment strategies. ISE offers this feature for complex FLEX Orders, so the Exchange believes that the proposed changes will promote a free and open market and a national market system by providing an additional venue for market participants to execute complex FLEX Orders with any ratio.³⁰²

I. Opening of FLEX Trading (Section 8)

The Exchange believes that proposed Section 8, which will specify that there will be no Opening Process in FLEX Options and that Members may begin submitting FLEX Orders into an electronic FLEX Auction, a FLEX PIXL, or a FLEX SOM when the underlying security is open for trading, will provide clarity to market participants regarding the mechanisms available for FLEX trading. The Exchange will not conduct an Opening Process in FLEX Options due to the customized nature of these products and the fact that there will be no requirement for specific FLEX Option series to be quoted or traded each day. ISE also does not hold an opening trading rotation in FLEX Options.³⁰³

The Exchange also believes that allowing Member to begin submitting FLEX Orders once the underlying security is open is appropriate. Because market participants incorporate

³⁰⁰ See introductory paragraph to Options 3, Section 7.

³⁰¹ See Supplementary Material .02(d)(3) to Options 3, Section 7.

³⁰² See *supra* note 82.

³⁰³ See ISE Options 3A, Section 8 for identical text.

²⁹⁹ ISE Options 3A, Section 3(d)(2)(A) has identical text.

transaction prices of underlying securities or the values of underlying indexes when pricing options (which will include FLEX Options), the Exchange believes it will benefit investors for FLEX Options trading to not be available until that information has begun to be disseminated in the market. Because the Exchange will have no electronic book of resting orders for FLEX Options (and no Opening Process), being “open” for FLEX trading merely means that Members may submit FLEX Orders into one of the specified FLEX auction mechanisms once the underlying is open, at the conclusion of which executions in those auction mechanisms may occur (which are all discussed in the respective FLEX Auction, FLEX PIXL, and FLEX SOM sections above).

J. Trading Halts (Section 9)

The Exchange believes that proposed Section 9 will provide clarity as to when the Exchange would halt trading in FLEX Options. The reasons why the Exchange would halt trading in a non-FLEX Option class (e.g., trading in the underlying security is halted) would generally be reasons why the Exchange would halt a FLEX Option class, and therefore the Exchange will always halt trading in a FLEX Option class when trading in a non-FLEX Option class with the same underlying equity security or index is halted on the Exchange. Proposed Section 9 also provides the Exchange with authority to halt trading in a FLEX Option, even if trading in a non-FLEX Option with the same underlying is not halted. While such situation would be rare, there may be unusual circumstances that would cause the Exchange to halt trading in the FLEX Option. As noted above, the proposed halt provisions are identical to ISE Options 3A, Section 9.

K. Exchange Order Books (Section 10)

The Exchange believes that specifying in proposed Section 10 that the Exchange’s simple and complex order books will not be available for transactions in FLEX Options will make clear what mechanisms would be available for FLEX trading (or not). FLEX Orders may only be submitted into a FLEX Auction, FLEX PIXL, or FLEX SOM. As noted above, proposed Section 10 is consistent with the FLEX rules of other options exchanges that similarly do not contemplate the interaction of their respective order books with FLEX transactions.³⁰⁴

L. FLEX Options Trading (Section 11)

The Exchange believes that proposed Section 11(a), which specifies the requirements for submitting FLEX Orders for trading, is consistent with the Act. Proposed Section 11(a) will set forth which mechanisms would be available for FLEX Orders (i.e., electronic FLEX Auction, FLEX PIXL, or FLEX SOM) and the order entry requirements for simple and complex FLEX Orders. The Exchange believes that System-enforcing the stipulation that it will not accept simple or complex FLEX Orders if the order or leg, as applicable, has identical terms as a non-FLEX Option series that is already listed for trading will prevent options with the same terms to trade as both a FLEX Options and non-FLEX Option, thereby eliminating any potential concerns around inconsistent order handling.

The Exchange believes that the electronic FLEX Auction as described in proposed Section 11(b) will remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest. The proposed FLEX Auction will offer market participants with an auction mechanism for the execution of FLEX Options at potentially improved prices that is identical to ISE Options 3A, Section 11(b), except for certain intended differences to align to current auction functionality in order to allow the proposed FLEX Auction to fit more seamlessly into the Exchange’s market. The Exchange will align the proposed FLEX Auction allocation methodology (i.e., Public Customer Size Pro-Rata and one contract allocation and non-Public Customer allocation in accordance with Options 3, Section 10(a)(1)(A), (E), and (F))³⁰⁵ with current auction functionality in Phlx Options 3, Section 10. The Exchange believes that the proposed priority and allocation rules for the FLEX Auction will ensure a fair and orderly market by maintaining the priority of orders and protecting Public Customer orders, while still affording the opportunity for price improvement during each FLEX Auction commenced on the Exchange. As noted above, all of the foregoing features are harmonized with the Exchange’s current auction functionality for non-FLEX Orders, including PIXL and SOM, so the Exchange believes that this will promote consistency for Members participating across different auctions on Phlx.

Of note, the Exchange will instead disseminate the duration of the exposure interval, instead of calculating and disseminating what time the

auction will conclude, and will not offer an Attributable designation for FLEX Orders. Otherwise, the general framework of the proposed electronic FLEX Auction in Section 11(b) (such as the eligibility requirements, the auction process and conclusion, and execution provisions) is identical to ISE Options 3A, Section 11(b).

The Exchange believes that the proposed auction exposure interval periods strike an appropriate balance between allowing executions of FLEX Orders to be completed in a timely fashion and providing Members sufficient time to price the unique terms of FLEX Options. As noted above, the submitting Member must designate the length of the exposure interval (which will be included in the auction notification message) to be between three seconds and five minutes, which is identical to ISE’s range of exposure intervals for their electronic FLEX Auctions in ISE Options 3A, Section 11(b)(1)(F). The Exchange believes it is appropriate to require the submitting Member to establish the length of the auction period (which will be included in the auction notification message), as the Member is in the best position to determine a reasonable period of time to provide other Members to respond based on the complexity of the FLEX Option series that is the subject of the auction, as well as based on market conditions (for example, in a volatile market, the Member may believe it is in the best interests of a customer to have a shorter auction period given quickly changing prices).

The Exchange believes that the proposed rule change to allow multiple electronic FLEX Auctions overlap will benefit investors, as it may lead to an increase in Exchange volume and permit the Exchange to compete with the OTC market, while providing for additional opportunities for price discovery and execution. Although electronic FLEX Auctions will be allowed to overlap, the Exchange does not believe that this raises any issues that are not addressed through the proposal as described above. For example, although overlapping, each auction will be started in a sequence and with a time that will determine its processing. Thus, even if there are two auctions that commence and conclude, at nearly the same time, each auction will have a distinct conclusion at which time the auction will be allocated. Additionally, FLEX Orders submitted into an electronic FLEX Auction will be able to execute only against FLEX responses submitted to that auction. If market participants desire to have interest execute against both FLEX

³⁰⁴ See ISE Options 3A, Section 10 for identical rule text. See *infra* note 90.

³⁰⁵ See proposed Options 3A, Sections 11(b)(3)(A)(i) and (iii).

Orders subject to concurrent FLEX Auctions, market participants may submit responses to both auctions. Additionally, the proposed concurrent auction feature is materially identical to ISE Options 3A, Section 11(b)(2)(B).

M. FLEX PIXL and FLEX SOM (Sections 12 and 13)

The Exchange believes that the FLEX PIXL and FLEX SOM Auctions as described in proposed Sections 12 and 13, respectively, will remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest. The proposed FLEX PIXL and FLEX SOM Auctions will offer market participants with auction mechanisms for the execution of FLEX Options at potentially improved prices that are identical to ISE's FLEX PIXL at Options 3A, Section 12 and FLEX SOM at Options 3A, Section 13, except for certain intended differences to align to the Exchange's current PIXL and SOM auction functionality to allow the proposed FLEX PIXL and SOM Auctions to fit more seamlessly into the Exchange's market. The Exchange will align the proposed FLEX PIXL allocation methodology with its current non-FLEX PIXL allocation methodology in that the allocation methodology for remaining contracts, once Public Customer contracts have been allocated, will align with Phlx Options 3, Section 10(a)(1)(A), (E), and (F) as compared to ISE's allocation methodology at ISE Options 3, Section 10.³⁰⁶ For both FLEX PIXL and FLEX SOM, the Exchange will also specify that if an allocation would result in less than one contract, then one contract will be allocated.³⁰⁷ This would align to current SOM and PIXL allocation.³⁰⁸ As noted above, all of the foregoing features are consistent with the Exchange's current PIXL and SOM auction functionality for non-FLEX Orders, so the Exchange believes that this will promote consistency for

Members participating across different auctions on Phlx.

As it relates to FLEX PIXL's proposed guaranteed allocation percentages of 50% (if there is a response(s) from one other Member) or 40% (if there are responses from two or more Members), these percentages will align ISE Options 3A, Section 12(e) and Phlx's non-FLEX PIXL at Options 3, Section 13(b)(5).

The general frameworks of the proposed FLEX PIXL and FLEX SOM Auctions in Sections 12 and 13 (such as the eligibility requirements, stop price requirements, auction process and conclusion, and execution provisions) are identical to ISE Options 3A, Sections 12 and 13. The clarity in how FLEX PIXL and FLEX SOM will function and their consistency with similar auctions at another exchange will help promote a fair and orderly national options market system. For example, the proposed range for the length of each of the FLEX PIXL and FLEX SOM Auction periods is consistent with the range for the auction periods of ISE's FLEX PIM and FLEX SOM Auctions in Options 3A, Section 12 and 13. The Exchange believes it is appropriate to provide a reasonable and sufficient amount of time in which market participants may submit responses because of the unique terms of FLEX Options. Therefore, the Exchange is proposing that the minimum length of a FLEX PIXL or FLEX SOM Auction be three seconds. The Exchange also proposes a maximum length of an auction period to be five minutes, as the Exchange also believes it is appropriate to provide for efficient and timely executions so that customers do not potentially miss a market. The proposed rule change also requires the Initiating Member to establish the length of the auction period (which will be included in the auction notification message), as the Member is in the best position to determine a reasonable period of time to provide other Members to respond based on the complexity of the FLEX Option series that is the subject of the auction, as well as based on market conditions (for example, in a volatile market, the Member may believe it is in the best interests of a customer to have a shorter auction period given quickly changing prices).

The proposal will also allow FLEX PIXL and FLEX SOM Auctions to occur concurrently with other FLEX PIXL and FLEX SOM Auctions. The Exchange does not believe that allowing FLEX PIXL and FLEX SOM Auctions to overlap would raise any issues that are not addressed by proposal. For example, although overlapping, each FLEX PIXL or FLEX SOM Auction will be started in

a sequence and with a duration that determines its processing. Thus, even if there are two FLEX PIXL or FLEX SOM Auctions that commence and conclude, at nearly the same time, each Auction will have a distinct conclusion at which time the Auction will be allocated, and only against responses submitted into that Auction. As discussed above, each FLEX PIXL or FLEX SOM response is required to specifically identify the FLEX PIXL or FLEX SOM Auction, respectively, for which it is targeted and if not fully executed, will be cancelled back at the conclusion of the Auction. Thus, responses will be specifically considered and executed only in the specified Auction. As a general matter, issues with concurrent auctions can relate to the interaction of auctioned orders with contra-side interest resting on the book at the end of various auctions. As noted above, there will be no order book available for FLEX trading, so there can be no conflict among contra-side interest resting on the book and FLEX PIXL or FLEX SOM responses with respect to executions. Further, because there is no book for FLEX Options, there are no events that cause a FLEX PIXL or FLEX SOM to conclude prior to the end of auction exposure period that would result in an execution, and therefore, the same event could not cause multiple auctions to conclude early.

The Exchange will apply a Size Pro-Rata execution algorithm with a Public Customer overlay for FLEX PIXL and FLEX SOM pursuant to Options 3, Section 10(a)(1)(A),³⁰⁹ except that the allocation for non-Public Customer Orders will allocate pursuant to Phlx Options 3, Section 10(a)(1)(E) and (F). The Exchange believes that the proposed priority and allocation rules for FLEX PIXL and FLEX SOM will ensure a fair and orderly market by maintaining the priority of orders and protecting Public Customer orders, while still affording the opportunity for price improvement during each FLEX PIXL and FLEX SOM Auction commenced on the Exchange.

N. Risk Protections (Section 14)

The Exchange believes that specifying the risk protections in proposed Options 3A, Section 14 will benefit investors with additional transparency regarding which of the Exchange's risk protections in Options 3, Sections 15 (simple order risk protections, 16 (complex order risk

³⁰⁶ Phlx's allocation model differs from ISE's allocation model, although the Exchange notes that Size Pro-Rata (as defined in Options 3, Section 10(a)) is similar to pro-rata as referenced in ISE Options 3, Section 10(c). Phlx's allocation model allocates to Market Maker pursuant to Options 3, Section 10(a)(1)(E), after allocating to Public Customers, and thereafter allocates to all other remaining non-Public Customer, non-Market Maker interest pursuant to Options 3, Section 10(a)(1)(F) based on a size pro-rata basis. The Exchange notes that Public Customers on Phlx will continue to have priority over other market participants.

³⁰⁷ See proposed Supplementary Material .03 to Options 3A, Section 11 and Supplementary Material .03 to Options 3A, Section 12.

³⁰⁸ See Supplementary Material .09 to Options 3, Section 11 and Supplementary Material .10 to Options 3, Section 13).

³⁰⁹ See proposed Options 3A, Sections 12(e) and 13(e). As noted above, this is also consistent with the Exchange's current priority and allocation methodology for non-FLEX auctions, including SOM and PIXL. See Options 3, Section 11(d)(3)(C) and Section 13(d).

protections),³¹⁰ and 28 (optional risk protections)³¹¹ would apply to FLEX trading. The Exchange also believes that applying the foregoing risk protections to FLEX Options will protect investors and the public interest, and maintain fair and orderly markets, by providing market participants with more tools to manage their risk. In addition, providing Members with more tools for managing risk facilitates transactions in FLEX Options because Members will have more confidence that risk protections are in place. As a result, apply the foregoing risk protections has the potential to promote just and equitable principles of trade.

O. Data Feeds (Section 15)

The Exchange believes that specifying the data feeds in proposed Options 3A, Section 15 will benefit investors with additional transparency regarding which data feeds it will disseminate auction notifications for simple and complex FLEX Orders. As discussed above, the Exchange proposes to disseminate auction notifications for simple and complex FLEX Orders through the through the Nasdaq Phlx Order Feed, as described in Options 3, Section 23(a)(2),³¹² which will be consistent with how non-FLEX simple

³¹⁰ See Securities Exchange Act Release No. 102862 (April 15, 2025), 90 FR 16731 (April 21, 2025) (SR-Phlx-2025-17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx's Complex Order Functionality). SR-Phlx-2025-17 proposed the same operative date as this proposal as they are both part of the same technology migration.

³¹¹ See Securities Exchange Act Release No. 101989 (December 30, 2024), 89 FR 106888 (December 30, 2024) (SR-Phlx-2024-71). SR-Phlx-2024-71 is effective but not yet operative. SR-Phlx-2024-71 would be operative at the same time as this rule change as they are both part of the same technology migration.

³¹² The Nasdaq Phlx Order Feed is a real-time full Limit Order book data feed that provides pricing information for orders on the Phlx Order book for displayed order types as well as market participant capacity. Nasdaq Phlx Order Feed is currently provided as part of the TOPO Plus Orders data product. The Nasdaq Phlx Order(s) Feed provides real-time information to enable users to keep track of the single and complex order book(s). The data provided for each options series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, leg information on complex strategies and whether the option series is available for trading on Phlx and identifies if the series is available for closing transactions only. The feed also provides auction and exposure notifications and order imbalances on opening/reopening (size of matched contracts and size of the imbalance). The Exchange amend the PHLX Orders Fee as part of the technology migration to enhanced Nasdaq functionality discussed above. See Securities Exchange Act Release No. 101989 (December 30, 2024), 89 FR 106888 (December 30, 2024) (SR-Phlx-2024-71). SR-Phlx-2024-71 is effective but not yet operative. SR-Phlx-2024-71 would be operative at the same time as this rule change as they are both part of the same technology migration.

and complex auction notifications are disseminated today.

P. FLEX Market Makers and Letters of Guarantee (Sections 16 and 17)

The Exchange believes that the proposed FLEX Market Maker provisions in Section 16 will provide clarity and transparency as to how FLEX Market Makers are appointed and their related obligations. As noted above, these provisions are identical to ISE Options 3A, Sections 16 and 17.

Pursuant to proposed Section 17, the Exchange will ensure that all FLEX transactions effected by FLEX Market Makers will be covered by an effective Letter of Guarantee.³¹³ The Exchange believes that the Letter of Guarantee will protect investors and the public interest because it signifies that the clearing member has accepted financial responsibility for transactions in all options entered into by the Market Maker, which will protect the counterparties of those trades and such protections will flow to other clearing members and ultimately to the OCC as the central counterparty and guarantor of both FLEX and non-FLEX Option transactions. The Exchange will notify all clearing members of the new FLEX rules to confirm that all clearing members' Letters of Guarantee will cover all financial responsibilities for all FLEX transactions by FLEX Market Makers, and will require additions to their effective Letters of Guarantee to provide full coverage, where necessary. The Exchange believes this will ensure that all FLEX Market Makers will be covered by effective Letters of Guarantee for their FLEX transactions.

Q. Position and Exercise Limits (Sections 18 and 19)

Position and exercise limits are designed to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. While position and exercise limits should address and discourage the potential for manipulative schemes and adverse market impact, if such limits are set too low, participation in the options market may be discouraged. The Exchange believes that any decision regarding imposing position and exercise limits for FLEX Options must therefore be balanced between mitigating concerns of any potential manipulation and the cost of inhibiting

potential hedging activity that could be used for legitimate economic purposes.

As it relates to FLEX Index Options, the Exchange believes that the proposed position and exercise limits in Sections 18(a), 18(c), and 19(a) are reasonably designed to prevent a Member from using FLEX Index Options to evade the position limits applicable to comparable non-FLEX Index Options. Further, by establishing the proposed position and exercise limits for FLEX Index Options and, importantly, aggregating such positions in the manner described in proposed Sections 18(c)(1), (c)(2), and 19(a)(3), the Exchange believes that the position and exercise limit requirements for FLEX Index Options should help to ensure that the trading of FLEX Index Options would not increase the potential for manipulation or market disruption and could help to minimize such incentives. The Exchange also notes that proposed position and exercise limits are consistent with the rules of another options exchanges that offer FLEX Index Options, as well as the rules of its own standard non-FLEX index options market, and therefore raise no novel issues for the Commission.³¹⁴

As it relates to FLEX Equity Options, while no position limits are proposed for FLEX Equity Options, there are several mitigating factors, which include aggregation of FLEX Equity Option and non-FLEX Equity Option positions that expire on a third Friday-of-the-month and subjecting those positions to position and exercise limits, and daily monitoring of market activity. Similar to the other exchanges that trade FLEX Equity Options, the Exchange believes that eliminating position and exercise limits for FLEX Equity Options, while requiring positions in FLEX Equity Options that expire on a third Friday-of-the-month to be aggregated with positions in non-FLEX Equity Options on the same underlying security,³¹⁵ removes impediments to and perfects the mechanism of a free and open market and a national market system because it allow the Exchange to create a product and market that is an improved but comparable alternative to the OTC market in customized options. OTC transactions occur through bilateral agreements, the terms of which are not publicly disclosed to the

³¹⁴ See Cboe Rules 8.35(a), (b), (d), and 8.42(g) and ISE Options 4A, Sections 6(a), 7(a)(1), 9(a)(13), and 9(a)(14).

³¹⁵ See proposed Options 3A, Section 18(c)(3) and Section 19(a)(3). See also Cboe Rules 8.35(d)(3) and 8.42(g)(3); NYSE Arca Rules 5.35-O(a)(iii), (b) and 5.36-O; NYSE American Rules 906G and 907G; and Phlx Options 8, Section 34(e) and (f) (FLEX Currency Options). See also Options 3A, 18(c)(1).

³¹³ Today, all Phlx Market Makers are required to enter into a Letter of Guarantee pursuant to Options 6, Section 4.

marketplace. As such, OTC transactions do not contribute to the price discovery process that exists on a public exchange.

The Exchange believes that the proposed elimination of position and exercise limits for FLEX Equity Options may encourage market participants to transfer their liquidity demands from OTC markets to exchanges and enable liquidity providers to provide additional liquidity to Phlx through transactions in FLEX Equity Options. The Exchange notes that the Commission previously approved the elimination of position and exercise limits for FLEX Equity Options, finding that such elimination would allow exchanges “to better compete with the growing OTC market in customized equity options, thereby encouraging fair competition among brokers and dealers and exchange markets.”³¹⁶ The Commission has also stated that the elimination of position and exercise limits for FLEX Equity Options “could potentially expand the depth and liquidity of the FLEX equity market without significantly increasing concerns regarding intermarket manipulations or disruptions of the options or the underlying securities.”³¹⁷

Additionally, the Exchange believes that requiring positions in FLEX Equity Options that expire on a third Friday-of-the-month to be aggregated with positions in non-FLEX Equity Options on the same underlying security subjects FLEX Equity Options and non-FLEX Equity Options to the same position and exercise limits on third Friday-of-the-month expirations. These limitations are intended to serve as a safeguard against potential adverse effects of large FLEX Equity Option positions expiring on the same day as non-FLEX Equity Option positions. As noted above, ISE Options 3A, Section 18(c)(1) has identical rule text.

The Exchange believes that any potential risk of manipulative activity is mitigated by existing surveillance technologies, procedures, and reporting requirements at the Exchange, which allows the Exchange to properly identify disruptive and/or manipulative trading activity. In addition to its own surveillance programs, the Exchange also works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in ISG, the Exchange shares information

and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. The Exchange also notes that FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement.³¹⁸ The Exchange also represents that it is reviewing its procedures to detect potential manipulation in light of any changes required for FLEX Options to confirm appropriate surveillance coverage and would make any changes that the Exchange believes are necessary for FLEX trading. These procedures utilize daily monitoring of market activity via automated surveillance techniques to identify unusual activity in both options and their underlying securities and are designed to protect investors and the public interest by ensuring that the Exchange has an adequate surveillance program in place.

The Exchange believes that proposed Section 18(b)(2) and (3) further mitigates concerns for potential market manipulation and/or disruption in the underlying markets and thus protects investors and the public interest because position reporting will be required (other than for a Market Maker) and the Exchange may determine that a higher margin requirement is necessary in light of the risks associated with a FLEX Equity Option position in excess of the standard limit for non-FLEX Equity Options of the same class. The Exchange may, pursuant to its authority under Options 6C, Section 5, impose additional margin upon the account maintaining such under-hedged position as a safeguard against potential adverse effects of large FLEX Equity Option positions. The Exchange notes that the clearing firm carrying the account will be subject to capital charges under SEC Rule 15c3–1 to the extent of any margin deficiency resulting from a higher margin requirement imposed by the Exchange.

Lastly, the Exchange notes that ISE has identical position and exercise limits described above at Options 3A, Sections 18 and 19.

R. Cash-Settled FLEX ETF Options

Introducing cash-settled FLEX ETF Options will increase order flow to the Exchange, increase the variety of options products available for trading, and provide a valuable tool for investors to manage risk.

The Exchange believes that the proposal to permit cash settlement as a contract term for options on the specified group of equity securities would remove impediments to and perfect the mechanism of a free and open market as cash-settled FLEX ETF Options would enable market participants to receive cash in lieu of shares of the underlying security, which would, in turn provide greater opportunities for market participants to manage risk through the use of a cash-settled product to the benefit of investors and the public interest. The Exchange does not believe that allowing cash settlement as a contract term for options on the specified group of equity securities would render the marketplace for equity options more susceptible to manipulative practices. As illustrated in the table above, each of the qualifying underlying securities is actively traded and highly liquid and thus would not be susceptible to manipulation because, over a six-month period, each security had an average daily notional value of at least \$500 million and an ADV of at least 4,680,000 shares, which indicates that there is substantial liquidity present in the trading of these securities, and that there is significant depth and breadth of market participants providing liquidity and of investor interest. The Exchange believes the proposed bi-annual review to determine eligibility for an underlying ETF to have cash settlement as a contract term would remove impediments to and perfect the mechanism of a free and open market as it would permit the Exchange to select only those underlying ETFs that are actively traded and have robust liquidity as each qualifying ETF would be required to meet the average daily notional value and average daily volume requirements, as well as to select the same underlying ETFs on which other exchanges may list cash-settled FLEX ETF Options.³¹⁹

The Exchange believes the proposed change that, for FLEX ETF Options, at least one of exercise style, expiration date, and exercise price must differ from options in the non-FLEX market will provide clarity and eliminate confusion regarding permissible terms of FLEX ETF Options, including the proposed cash-settled FLEX ETF Options.

The Exchange believes that the data provided by the Exchange supports the supposition that permitting cash settlement as a FLEX term for the 50 underlying ETFs that would currently qualify to have cash settlement as a contract term would broaden the base of investors that use FLEX Equity Options

³¹⁶ See Securities Exchange Act Release No. 42223 (December 10, 1999), 64 FR 71158, 71159 (December 20, 1999) (SR-Amex-99-40) (SR-PCX-99-41) (SR-CBOE-99-59) (Order Granting Accelerated Approval to Proposed Rule Change Relating to the Permanent Approval of the Elimination of Position and Exercise Limits for FLEX Equity Options).

³¹⁷ See *id.*

³¹⁸ The Exchange notes that it is responsible for FINRA's performance under this Regulatory Services Agreement.

³¹⁹ See *supra* notes 251–253.

to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options, where settlement restrictions do not apply.

The Exchange believes that the proposal to permit cash settlement for certain FLEX ETF options would remove impediments to and perfect the mechanism of a free and open market because the proposed rule change would provide members and member organizations with enhanced methods to manage risk by receiving cash if they choose to do so instead of the underlying security. In addition, this proposal would promote just and equitable principles of trade and protect investors and the general public because cash settlement would provide investors with an additional tool to manage their risk. Further, the Exchange notes that other exchanges have received approval that allows for the trading of cash-settled options, and, specifically, cash-settled FLEX ETF Options in an identical manner as the Exchange proposes to list them pursuant to this rule filing.³²⁰ The proposed rule change therefore should not raise issues for the Commission that it has not previously addressed.

The proposed rule change to permit cash settlement as a contract term for options on up to 50 ETFs is designed to promote just and equitable principles of trade in that the availability of cash settlement as a contract term would give market participants an alternative to trading similar products in the OTC market. By trading a product in an exchange-traded environment (that is currently traded in the OTC market), the Exchange would be able to compete more effectively with the OTC market. The Exchange believes the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that it would lead to the migration of options currently trading in the OTC market to trading on the Exchange. Also, any migration to the Exchange from the OTC market would result in increased market transparency. Additionally, the Exchange believes the proposed rule change is designed to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest in that it should create greater trading and hedging opportunities and flexibility. The proposed rule change should also result in enhanced efficiency in initiating and closing out positions and heightened contra-party creditworthiness due to the

role of OCC as issuer and guarantor of the proposed cash-settled options. Further, the proposed rule change would result in increased competition by permitting the Exchange to offer products that are currently available for trading only in the OTC market and are approved to trade on another options exchange.

The Exchange believes that establishing position limits for cash-settled FLEX ETF Options to be the same as physically settled options on the same underlying security, and aggregating positions in cash-settled FLEX ETF Options with physically settled options on the same underlying security for purposes of calculating position limits is reasonable and consistent with the Act. By establishing the same position limits for cash-settled FLEX ETF Options as for physically settled options on the same underlying security and, importantly, aggregating such positions, the Exchange believes that the position limit requirements for cash-settled FLEX ETF Options should help to ensure that the trading of cash-settled FLEX ETF Options would not increase the potential for manipulation or market disruption and could help to minimize such incentives. For the same reasons, the Exchange believes the proposed exercise limits are reasonable and consistent with the Act.

Finally, the Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in cash-settled FLEX ETF Options and the underlying ETFs. Regarding the proposed cash settlement, the Exchange would use the same surveillance procedures currently utilized for the Exchange's other FLEX Options. For surveillance purposes, the Exchange would have access to information regarding trading activity in the pertinent underlying ETFs. The Exchange believes that limiting cash settlement to no more than 50 underlying ETFs (currently, 50 ETFs would be eligible to have cash-settlement as a contract term) would minimize the possibility of manipulation due to the robust liquidity in both the equities and options markets.

As a self-regulatory organization, the Exchange recognizes the importance of surveillance, among other things, to detect and deter fraudulent and manipulative trading activity as well as other violations of Exchange rules and the federal securities laws. As discussed above, Phlx has adequate surveillance procedures in place to monitor trading in cash-settled FLEX ETF Options and the underlying securities, including to detect manipulative trading activity in

both the options and the underlying ETF.³²¹ The Exchange further notes the liquidity and active markets in the underlying ETFs, and the high number of market participants in both the underlying ETFs and existing options on the ETFs, helps to minimize the possibility of manipulation. The Exchange further notes that under Section 19(g) of the Act, the Exchange, as a self-regulatory organization, is required to enforce compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, and the rules of the Exchange.³²² The Exchange believes its surveillance, along with the liquidity criteria and position and exercise limits requirements, are reasonably designed to mitigate manipulation and market disruption concerns and will permit it to enforce compliance with the proposed rules and other Exchange rules in accordance with Section 19(g) of the Act. The Exchange performs ongoing evaluations of its surveillance program to ensure its continued effectiveness and will continue to review its surveillance procedures on an ongoing basis and make any necessary enhancements and/or modifications that may be needed for the cash settlement of FLEX ETF Options.

Additionally, the Exchange will monitor any effect additional options series listed under the proposed rule change will have on market fragmentation and the capacity of the Exchange's automated systems. The Exchange will take prompt action, including timely communication with the Commission and with other self-regulatory organizations responsible for oversight of trading in options, the

³²¹ Among other things, Phlx's regulatory program include cross-market surveillance designed to identify manipulative and other improper trading, including spoofing, algorithm gaming, marking the close and open, as well as more general abusive behavior related to front running, wash sales, and quoting/routing, which may occur on the Exchange and other markets. Furthermore, the Exchange stated that it has access to information regarding trading activity in the pertinent underlying securities as a member of ISG. As it relates to Reg SHO violations, the Exchange will enforce this through its Stock-Tied Reg SHO price protections in Options 3, Section 16(e). Options 3, Section 16 was amended by SR-Phlx-2025-17. was amended by SR-Phlx-2025-17. See Securities Exchange Act Release No. 102862 (April 15, 2025), 90 FR 16731 (April 21, 2025) (SR-Phlx-2025-17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx's Complex Order Functionality). SR-Phlx-2025-17 proposed the same operative date as this proposal as they are both part of the same technology migration. See *supra* note 211 for Stock-Tied Reg SHO discussion. NES will only execute Stock-Option Strategies and Stock-Complex Strategies if the underlying covered security component is in accordance with Rule 201 of Regulation SHO.

³²² 15 U.S.C. 78s(g).

³²⁰ See *supra* notes 251–253.

underlying ETFs, and the ETFs' component securities, should any unanticipated adverse market effects develop.

Section 11(a) Analysis

The Exchange believes that the proposed FLEX rules in Options 3A, including the proposed electronic FLEX Auction in Options 3A, Section 11(b), proposed FLEX PIXL in Options 3A, Section 12, and proposed FLEX SOM in Options 3A, Section 13, are consistent with Section 11(a)(1) of the Act³²³ and the rules promulgated thereunder. Generally, Section 11(a)(1) of the Act restricts any member of a national securities exchange from effecting any transaction on such exchange for (i) the member's own account, (ii) the account of a person associated with the member, or (iii) an account over which the member or a person associated with the member exercises investment discretion (collectively referred to as "covered accounts"), unless a specific exemption is available. Examples of common exemptions include the exemption for transactions by broker dealers acting in the capacity of a market maker under Section 11(a)(1)(A),³²⁴ the "G" exemption for yielding priority to non-members under Section 11(a)(1)(G) of the Act and Rule 11a1-1(T) thereunder,³²⁵ and the "Effect vs. Execute" exemption under Rule 11a2-2(T) under the Act.³²⁶ The "Effect vs. Execute" exemption permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. To comply with Rule 11a2-2(T)'s conditions, a member: (i) must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;³²⁷ (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as

provided in the Rule. For the reasons set forth below, the Exchange believes that Members entering orders and responses into the electronic FLEX Auction pursuant to proposed Options 3A, Section 11(b), FLEX PIXL pursuant to proposed Options 3A, Section 12, and FLEX SOM pursuant to proposed Options 3A, Section 13 would satisfy the requirements of Rule 11a2-2(T).

Rule 11a2-2(T)'s first requirement is that orders for covered accounts be transmitted from off the exchange floor. While the Exchange operates a physical trading floor, the proposed auctions would only be traded electronically. Today, FLEX is permitted on Phlx's trading floor pursuant to Options 8, Section 34. In the context of automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.³²⁸ The Exchange represents that the System and the proposed FLEX auction mechanisms described above will receive all FLEX Orders and FLEX responses electronically through remote terminals or computer-to-computer interfaces. The Exchange represents that FLEX Orders and FLEX responses for covered accounts from Members will be transmitted from a remote location directly to the proposed FLEX auction mechanisms described above by electronic means.

The second condition of Rule 11a2-2(T) requires that neither a member nor an associated person participate in the execution of its order once the order is transmitted to the floor for execution. The Exchange represents that, upon submission to the FLEX Auction, FLEX PIXL, or FLEX SOM, a FLEX Order or FLEX response will be executed automatically pursuant to the rules set forth in proposed Options 3A, Section 11(b) (for FLEX Auctions), Section 12 (for FLEX PIXL), and Section 13 (for

FLEX SOM). In particular, execution of a FLEX Order (including the Agency and the Initiating or Solicited Order, as applicable) or a FLEX response sent to the applicable auction mechanism depends not on the Member entering the FLEX Order or FLEX response, but rather on what other FLEX responses are present and the priority of those FLEX responses. Thus, at no time following the submission of a FLEX Order or FLEX response is a Member or any associated person of such Member able to acquire control or influence over the result or timing of the FLEX Order or FLEX response execution.³²⁹ Once the FLEX Order (including the Agency Order and Initiating or Solicited Order (as applicable)) has been transmitted, the Member that transmitted such order into the FLEX Auction, FLEX PIXL, or FLEX SOM (as applicable) will not participate in the execution of the FLEX Order. Members submitting the FLEX Orders (including the Agency Orders and Initiating or Solicited Orders (as applicable)) into the applicable FLEX auction mechanisms will relinquish control to cancel their FLEX Orders entered into the FLEX Auction, or modify or cancel their Agency Orders and Initiating or Solicited Orders (as applicable) entered into FLEX PIXL and FLEX SOM.³³⁰ Further, no Member, including the Member submitting the FLEX Order into the applicable FLEX auction mechanisms described above, will see FLEX responses submitted into any of the FLEX auction mechanisms and therefore will not be able to influence or guide the execution of their FLEX Orders or FLEX responses, as applicable.

³²⁹ The submitting Member may cancel a FLEX Auction prior to the end of the exposure interval. See proposed Options 3A, Section 11(b)(2)(C). Members may modify or cancel FLEX responses during the exposure interval. See Options 3A, Section 11(b)(2)(D)(v). An Initiating Member may not cancel or modify an Agency Order or Initiating Order after it has been submitted into FLEX PIXL, except to improve the price of the Initiating Order. See proposed Options 3A, Section 12(c)(4). Members may modify or cancel their responses after being submitted to into a FLEX PIXL. See proposed Options 3A, Section 12(c)(5)(F). An Initiating Member may not modify an Agency Order or Solicited Order after it has been submitted into FLEX SOM. See proposed Options 3A, Section 13(c)(4). Members may modify or cancel their responses after being submitted to into a FLEX SOM. See proposed Options 3A, Section 12(c)(5)(F). The Commission has stated that the nonparticipation requirement does not preclude members from cancelling or modifying orders, or from modifying instructions for executing orders, after they have been transmitted so long as the modifications or cancellations are also transmitted from off the floor. See Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542, 11547 (the "1978 Release").

³³⁰ See *id.*

³²³ 15 U.S.C. 78k(a). Section 11(a)(1) prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises investment discretion unless an exception applies.

³²⁴ 15 U.S.C. 78k(a)(1)(A).

³²⁵ 15 U.S.C. 78k(a)(1)(G) and 17 CFR 240.11a1-1(T).

³²⁶ 17 CFR 240.11a2-2(T).

³²⁷ The member may, however, participate in clearing and settling the transaction.

³²⁸ See, e.g., Securities Exchange Act Release Nos. 95445 (August 8, 2022), 87 FR 49894 (August 12, 2022) (SR-MEMX-2022-10) (approving options trading on MEMX Options); 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR-BATS-2009-031) (approving BATS options trading); 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR-BSE-2008-48) (approving equity securities listing and trading on BSE); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080) (approving NOM options trading); 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131) (approving The Nasdaq Stock Market LLC); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR-PCX-00-25) (approving Archipelago Exchange); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (SR-NYSE-90-52 and SR-NYSE-90-53) (approving NYSE's Off-Hours Trading Facility); and 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) ("1979 Release").

Rule 11a2-2(T)'s third condition requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that the requirement is satisfied when automated exchange facilities, such as the FLEX Auction, FLEX PIXL, and FLEX SOM are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.³³¹ The Exchange represents that the FLEX Auction, FLEX PIXL, and FLEX SOM are designed so that no Member has any special or unique trading advantage in the handling of its FLEX Orders after transmitting its FLEX Orders to the applicable FLEX auction mechanism.

Rule 11a2-2(T)'s fourth condition requires that, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2-2(T) thereunder.³³² The Exchange recognizes that Members relying on Rule 11a2-2(T) for transactions effected pursuant to the proposed FLEX rules,

³³¹ In considering the operation of automated execution systems operated by an exchange, the Commission noted that, while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2-2(T). See 1979 Release.

³³² See 17 CFR 240.11a2-2(T)(a)(2)(iv). In addition, Rule 11a2-2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement which amount must be exclusive of all amounts paid to others during that period for services rendered to effect such transactions. See also 1978 Release, at 11548 (stating "[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests").

and in particular through the applicable FLEX auction mechanisms described above, must comply with this condition of the Rule and the Exchange will enforce this requirement pursuant to its obligations under Section 6(b)(1) of the Act to enforce compliance with federal securities laws.

The Exchange therefore believes that the proposed rules in Options 3A governing FLEX trading, including the proposed FLEX Auction, FLEX PIXL, and FLEX SOM, are consistent with Rule 11a2-2(T).

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 intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, as all Members who wish to trade FLEX Options will be able to trade such options in the same manner. Additionally, positions in FLEX Options of all Members will be subject to the same position limits, and such positions will be aggregated in the same manner as described in proposed Section 18(c).

The Exchange also does not believe that the proposed rule change will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, other options exchanges currently offer electronic FLEX trading and cash-settled FLEX ETF Options on their respective markets. The Exchange believes that its proposal will allow Phlx to compete with these other exchanges and provide an additional execution venue for these transactions for market participants. Thus, the Exchange believes that its proposal will promote inter-market competition by increasing the number of exchanges where electronic FLEX trading and cash-settled FLEX ETF Options will be available. The proposal also promotes inter-market competition by providing another alternative (*i.e.*, exchange markets) to bilateral OTC trading of options with flexible terms. Exchange markets, in contrast with bilateral OTC trading, are centralized, transparent, and have the guarantee of OCC for options traded.

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 Act³³³ and subparagraph (f)(6) of Rule 19b-4 thereunder.³³⁴

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-2025-38 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

³³³ 15 U.S.C. 78s(b)(3)(A)(iii).

³³⁴ 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.

All submissions should refer to file number SR-Phlx-2025-38. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing 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-2025-38 and

should be submitted on or before September 16, 2025.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³⁵

Vanessa A. Countryman,
Secretary.

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³³⁵ 17 CFR 200.30-3(a)(12).



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Part III

Environmental Protection Agency

40 CFR Part 84

Phasedown of Hydrofluorocarbons: Review and Renewal of Eligibility for Application-Specific Allowances; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 84

[EPA-HQ-OAR-2024-0196; FRL-10782-02-OAR]

RIN 2060-AV98

Phasedown of Hydrofluorocarbons: Review and Renewal of Eligibility for Application-Specific Allowances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is finalizing, pursuant to the statutory framework established in the American Innovation and Manufacturing Act of 2020 (AIM Act), the eligibility of six applications to continue to receive priority access to allowances to produce or import hydrofluorocarbons. In this final rule, EPA establishes the framework for how EPA interprets the statutory criteria for assessing whether to renew the eligibility of applications to receive application-specific allowances and sets out determinations to renew or not renew each of the six applications that currently receive application-specific allowances. EPA is also finalizing revisions to the Technology Transitions regulations relevant to the specific applications under review, a procedural process for submitting a petition to designate a new application as eligible for priority access to allowances, the methodology used to allocate allowances to application-specific allowance holders for calendar years 2026 and beyond, and limited revisions to existing regulations. In addition, EPA is authorizing an entity to produce regulated substances for export. Lastly, EPA is finalizing certain regulatory confidentiality determinations for newly reported information.

DATES: This rule is effective on September 25, 2025.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2024-0196. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard-copy form. Publicly available docket materials are available electronically through [https://](https://www.regulations.gov)

www.regulations.gov or in hard copy at the EPA Docket Center, Room 3334, WJC West Building, 1301 Constitution Avenue 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 EPA Docket Center is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Michelle Graff, U.S. Environmental Protection Agency, Stratospheric Protection Division, telephone number: (202) 564-5387; or email address: graff.michelle@epa.gov. You may also visit EPA's website at <https://www.epa.gov/climate-hfcs-reduction> for further information.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever “we,” “us,” “the Agency,” or “our” is used, we mean EPA. Acronyms and abbreviations that are used in this rulemaking that may be helpful include:

2-BTP—2-bromo-3,3,3-trifluoropropene
AAGR—Average Annual Growth Rate
ACE—Automated Commercial Environment
AD/CVD—Anti-dumping and Countervailing Duties
AES—Automated Export System
AIM Act—American Innovation and Manufacturing Act of 2020
AHRI—Air-Conditioning, Heating, and Refrigeration Institute
APU—Auxiliary Power Unit
ASHRAE—American Society for Heating, Refrigerating, and Air-Conditioning Engineers
ASA—Application-specific Allowance
CAA—Clean Air Act
CBI—Confidential Business Information
CBP—U.S. Customs and Border Protection
CFR—Code of Federal Regulations
CGMP—Current Good Manufacturing Practice
CO₂—Carbon Dioxide
COVID—Coronavirus Disease
CRA—Congressional Review Act
CVD—Chemical Vapor Deposition
DOC—U.S. Department of Commerce
DOD—U.S. Department of Defense
EEI—Electronic Export Information
EV—Exchange Value
EVe—Exchange Value Equivalent
EPA—U.S. Environmental Protection Agency
FDA—U.S. Food and Drug Administration
FIFRA—Federal Insecticide, Fungicide, and Rodenticide Act
FR—Federal Register
GDP—Gross Domestic Product
GHG—Greenhouse Gas
GWP—Global Warming Potential
HCFC—Hydrochlorofluorocarbon
HFA—Hydrofluoroalkane
HFC—Hydrofluorocarbon
HFO—Hydrofluoroolefin
HHS—U.S. Department of Health and Human Services
HVM—High Volume Manufacturing
ICR—Information Collection Request

IPCC—Intergovernmental Panel on Climate Change
ITN—Internal Transaction Number
Kg—Kilogram
MCMEU—Mission-Critical Military End Uses
MCTOC—Medical and Chemicals Technical Options Committee
MDI—Metered Dose Inhaler
MT—Metric Ton
MTEVe—Metric Tons of Exchange Value Equivalent
NAICS—North American Industry Classification System
OMB—U.S. Office of Management and Budget
PFAS—Per- and Polyfluoroalkyl Substances
PFC—Perfluorocarbon
PII—Personally Identifiable Information
PRA—Paperwork Reduction Act
PU—Polyurethane
RACA—Request for Additional Consumption Allowance
RFA—Regulatory Flexibility Act
RIA—Regulatory Impact Analysis
RSV—Respiratory Syncytial Virus
SCPPU—Structural Composite Preformed Polyurethane
SNAP—Significant New Alternatives Policy
TCE—Trichloroethylene
TEAP—Technology and Economic Assessment Panel
TSCA—Toxic Substances Control Act
TSD—Technical Support Document
UMRA—Unfunded Mandates Reform Act

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I. Executive Summary

A. Purpose of Regulatory Action

The U.S. Environmental Protection Agency (EPA) is undertaking this action to implement certain provisions of the American Innovation and Manufacturing Act of 2020, codified at 42 U.S.C. 7675 (AIM Act or the Act). The Act directs EPA to implement the phasedown of hydrofluorocarbons (HFCs) by issuing a limited quantity of production and consumption allowances, which entities must expend to produce or import HFCs. Subsection (e)(4)(B) of the Act authorizes EPA to allocate allowances exclusively for the use of HFCs in specific applications for which there is (1) no safe or technically achievable substitute during the applicable period and (2) an insufficient supply of the HFCs used in the application that can be secured from chemical manufacturers to accommodate the application. The Act listed six applications to receive these allowances for a five-year period beginning on December 27, 2020: propellants in metered dose inhalers (MDIs), defense sprays, structural composite preformed polyurethane (SCPPU) foam for marine use and trailer use (hereafter referred to as SCPPU foam for marine and trailer uses), the etching of semiconductor material or wafers and the cleaning of chemical vapor deposition (CVD) chambers within the semiconductor manufacturing sector, mission-critical military end uses (MCMEU), and onboard aerospace fire suppression.¹ EPA has created a

category for these allowances, which EPA refers to as application-specific allowances (ASAs). ASAs provide priority access for eligible applications and are allocated ahead of general pool allowances based on a methodology intended to determine eligible entities' needs for regulated substances (see section VII. of this preamble and the Allocation Framework Rule for more information).² After the total ASA quantity is determined, the remaining allowances are distributed to general pool allowance recipients using the methodology codified in regulation.

Subsection (e)(4)(B)(v) of the AIM Act directs EPA to review applications receiving priority access to allowances not less frequently than once every five years and establishes statutory criteria under which EPA is to review the applications. If an application is deemed to meet the statutory criteria, EPA is to renew the eligibility of the application to receive priority access to allowances for a period of not more than five years. As explained in the proposed rule, 89 FR 75898 (September 16, 2024), EPA is undertaking this review in this rulemaking, and therefore this final rule establishes how the Agency is interpreting the statutory criteria for reviewing applications receiving ASAs. EPA is also making decisions to renew or not renew each of the six applications that currently receive ASAs.

Separately, subsection (i) of the Act authorizes EPA, by rulemaking, to restrict the use of HFCs in sectors or subsectors where the regulated substances are used. Based on this provision, EPA promulgated a final rule entitled “*Phasedown of Hydrofluorocarbons: Restrictions on the Use of Certain Hydrofluorocarbons Under the American Innovation and Manufacturing Act of 2020*” (hereafter referred to as the “2023 Technology Transitions Rule”; 88 FR 73098, October 24, 2023), which established restrictions for three sectors and numerous

Framework Rule”) (86 FR 55116, October 5, 2021). 40 CFR 84.13(a). Accordingly, EPA made the final allocation under the preexisting regulations when it allocated calendar year 2025 allowances on October 1, 2024. See “*Phasedown of Hydrofluorocarbons: Notice of 2025 Allowance Allocations for Production and Consumption of Regulated Substances Under the American Innovation and Manufacturing Act of 2020, and Notice of Final Actions Establishing Administrative Consequences*” (89 FR 84583, October 23, 2024).

² EPA first codified the allocation methodology for general pool and ASA holders in the Allocation Framework Rule. The methodology for general pool allowance holders was subsequently updated in “*Phasedown of Hydrofluorocarbons: Allowance Allocation Methodology for 2024 and Later Years*” (hereafter referred to as the “2024 Allocation Rule”; 88 FR 46836, July 20, 2023); the ASA methodology was not updated in the 2024 Allocation Rule.

¹ EPA codified that application-specific allowances are available to entities using regulated substances in the statutorily listed applications for calendar years 2022, 2023, 2024, and 2025 in “*Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program Under the American Innovation and Manufacturing Act*” (hereafter referred to as the “Allocation

subsectors. The rule exempted applications currently eligible to receive ASAs for the year or years in which that application receives an ASA. As such, if an application is no longer eligible to receive ASAs, it would become subject to the restrictions established in the 2023 Technology Transitions Rule. Therefore, as part of this rulemaking, EPA considered whether there are any appropriate changes to make specific to applications under review in this rule, and if so, whether to finalize those modifications to the Technology Transitions regulations, codified at 40 CFR part 84, subpart B.³

The Act also allows members of the public to petition EPA to designate an application as eligible for priority access to allowances. EPA is finalizing a procedure for submitting a petition under this provision and defining minimum required elements of such a petition. In addition, EPA is making narrow revisions in this final rule to the methodology used to allocate allowances to ASA holders for calendar years 2026 and beyond as well as other limited revisions to the existing 40 CFR part 84, subpart A regulations.

EPA is also authorizing an entity to produce regulated substances for export for application-specific uses pursuant to subsection (e)(5) of the Act, which authorizes EPA to permit the production in excess of allowances held by an entity so long as the excess production is solely for export purposes and meets additional requirements in the Act. Lastly, EPA is finalizing certain regulatory confidentiality determinations for newly reported information.

B. Summary of Final Actions

Application-specific allowance eligibility review: EPA is finalizing its

interpretation of the criteria under subsection (e)(4)(B) of the AIM Act and applying that interpretation to evaluate the six categories of ASA holders listed in subsection (e)(4)(B)(v) of the Act. EPA is renewing the following applications for the full five-year period from 2026–2030: propellants in MDIs, SCPPU foams for marine and trailer uses, the etching of semiconductor material or wafers and the cleaning of CVD chambers within the semiconductor manufacturing sector, MCMEU, and onboard aerospace fire suppression. EPA is also finalizing the option set out in the proposed rule of not renewing the eligibility of defense sprays for ASAs beginning with calendar year 2026 allowances,⁴ and is excluding defense sprays from Technology Transitions restrictions that would otherwise apply under the current regulation.

Application-specific allowance eligibility petitions: EPA is finalizing the process and information requirements for submitting petitions under subsection (e)(4)(B) of the AIM Act which seek the designation of an application as eligible for priority allowance access consistent with EPA’s proposal.

Application-specific allowance methodology: EPA is making targeted revisions to the existing ASA methodology as proposed: to require companies to provide a total request for allowances for the calendar year, to expand permissible scenarios that could qualify as unique circumstances, to use a different allocation methodology for certain very small users of HFCs and entities with irregular HFC usage history, to account for inventory in allocation decisions, and to establish a set-aside of allowances for situations that meet the criteria for unique

circumstances related to medical conditions treated by MDIs. EPA is also finalizing new requirements for conferrals of MCMEU allowances in line with the proposed rule.

Other regulatory revisions: EPA is finalizing amendments to existing regulations as proposed to: clarify the ability of the federal government to pursue, if appropriate, auctioning illegally imported HFCs that are seized by enforcement officials, require exporting companies to report “Internal Transaction Numbers” (ITNs) quarterly, and simplify the reporting on “date of purchase” for a Request for Additional Consumption Allowances (RACA).

Authorization of production for export: As proposed, EPA is authorizing an entity to produce regulated substances for export for application-specific uses abroad.

Handling of confidentiality for newly reported information: EPA is finalizing certain regulatory confidentiality determinations for newly reported information.

II. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you use HFCs in one of the six applications eligible for an allocation under section (e)(4)(B)(iv) of the AIM Act. You may also potentially be affected if you produce, import, export, purify, destroy, reclaim, package, or otherwise distribute HFCs for end users in one of these six applications or are a current HFC allowance holder. Potentially affected categories, North American Industry Classification System (NAICS) codes, and examples of potentially affected entities are included in table 1.

TABLE 1—NAICS CLASSIFICATION OF POTENTIALLY AFFECTED ENTITIES

NAICS Code	NAICS industry description
325120	Industrial Gas Manufacturing.
325199	All Other Basic Organic Chemical Manufacturing.
325211	Plastics Material and Resin Manufacturing.
325412	Pharmaceutical Preparation Manufacturing.
325414	Biological Product (except Diagnostic) Manufacturing.
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing.
326220	Rubber and Plastics Hoses and Belting Manufacturing.
326150	Urethane and Other Foam Product.
326299	All Other Rubber Product Manufacturing.
333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.
333511	Industrial Mold Manufacturing.
334413	Semiconductor and Related Device Manufacturing.
334419	Other Electronic Component Manufacturing.

³ Through a separate rulemaking, EPA announced reconsideration of the Technology Transitions requirements for certain refrigeration applications, including in supermarket systems and at

semiconductor fabrication plants. See <https://www.epa.gov/newsreleases/trump-epa-takes-action-lower-costs-american-families-grocery-store-reconsidering>.

⁴ Entities without ASAs can continue to purchase and use HFCs in accordance with the overall requirements established in 40 CFR part 84.

TABLE 1—NAICS CLASSIFICATION OF POTENTIALLY AFFECTED ENTITIES—Continued

NAICS Code	NAICS industry description
334510	Electromedical and Electrotherapeutic Apparatus Manufacturing.
336212	Truck Trailer Manufacturing.
336214	Travel Trailer and Camper Manufacturing.
336411	Aircraft Manufacturing.
336611	Ship Building and Repairing.
336612	Boat Building.
336992	Military Armored Vehicle, Tank, and Tank Component Manufacturing.
SIC 373102	Military Ships, Building, and Repairing..
339112	Surgical and Medical Instrument Manufacturing.
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers.
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers.
423740	Refrigeration Equipment and Supplies Merchant Wholesalers.
423830	Industrial Machinery and Equipment Merchant Wholesalers.
423840	Industrial Supplies Merchant Wholesalers.
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers.
424690	Other Chemical and Allied Products Merchant Wholesalers.
488510	Freight Transportation Arrangement.
541380	Testing Laboratories.
541714	Research and Technology in Biotechnology (except Nanobiotechnology).
562111	Solid Waste Collection.
562211	Hazardous Waste Treatment and Disposal.
562920	Materials Recovery Facilities.
922160	Fire Protection.

This table is not intended to be exhaustive, but rather provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this section could also be affected. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is EPA's authority for taking this action?

On December 27, 2020, the AIM Act was enacted as section 103 in Division S, Innovation for the Environment, of the Consolidated Appropriations Act, 2021 (codified at 42 U.S.C. 7675). In subsection (k)(1)(A), the AIM Act provides EPA with the authority to promulgate necessary regulations to carry out EPA's functions under the Act, including its obligations to ensure that the Act's requirements are satisfied (42 U.S.C. 7675(k)(1)(A)). Subsection (k)(1)(C) of the Act also provides that Clean Air Act (CAA) sections 113, 114, 304, and 307 apply to the AIM Act and any regulations EPA promulgates under the AIM Act as though the AIM Act were part of title VI of the CAA. Accordingly, this rulemaking is subject to CAA section 307(d) (42 U.S.C. 7607(d)(1)(I)), which applies to "promulgation or revision of regulations under subchapter VI of this chapter (relating to stratosphere and ozone protection)."

The AIM Act authorizes EPA to address HFCs in three main ways: phasing down HFC production and consumption through an allowance

allocation program, promulgating certain regulations for purposes of maximizing reclaiming and minimizing releases of HFCs from equipment and ensuring the safety of technicians and consumers, and facilitating the transition to next-generation technologies by restricting use of these HFCs in the sector or subsectors in which they are used. This rulemaking relates to the first area and also addresses restrictions in the third area solely for impacted subsectors.

The Act required EPA, for the five-year period beginning on December 27, 2020, to allocate the full quantity of allowances necessary, based on projected, current, and historical trends, for the production or consumption of regulated substances for the exclusive use in six applications: propellants in MDIs, defense sprays, SCPPU foam for marine and trailer uses, the etching of semiconductor material or wafers and the cleaning of CVD chambers within the semiconductor manufacturing sector, MCMEU, and onboard aerospace fire suppression (42 U.S.C. 7675(e)(4)(B)(iv)(I)). EPA has defined these allowances as ASAs.

Subsection (e)(4)(B)(v) of the AIM Act requires EPA to review applications receiving allocations pursuant to subsection (e)(4)(B)(iv) at least every five years. If pursuant to this review EPA determines that the requirements of two statutory criteria are met, EPA shall authorize production or consumption, as applicable, of regulated substances for exclusive use in the application for renewable periods of not more than five

years. Specifically, EPA must determine whether: (1) no safe or technically achievable substitute will be available during the applicable period for the application; and (2) the supply of the regulated substance that manufacturers or users of the regulated substance for that application are capable of securing from chemical manufacturers is insufficient to accommodate the application.

Separately, an entity may file a petition for an application to receive ASAs. The AIM Act outlines timeframes and deadlines for EPA to act on such a petition and describes how the Agency should assess such a petition (42 U.S.C. 7675(e)(4)(B)(ii)). Specifically, not later than 180 days after receiving a petition, EPA must propose and seek public comment on whether to provide ASAs for the application. Not later than 270 days after EPA receives a petition, the Agency must take final action on the petition. Any application determined to be eligible for ASAs would also be subject to the periodic eligibility review established in subsection (e)(4)(B)(v).

Subsection (i) of the AIM Act, "Technology Transitions," provides that "the Administrator may by rule restrict, fully, partially, or on a graduated schedule, the use of a regulated substance in the sector or subsector in which the regulated substance is used" (42 U.S.C. 7675(i)(1)). However, rules promulgated under subsection (i) "shall not apply to . . . an essential use under clause (i) or (iv) of subsection (e)(4)(B), including any use for which the production or consumption of the

regulated substance is extended under clause (v)(II) of that subsection” (42 U.S.C. 7675(i)(7)(B)(i)). Therefore, per subsection (i)(7)(B)(i), the Technology Transitions regulations are not currently applicable to any application receiving an ASA (40 CFR 84.56(a)(2)). In this final rule, EPA is clarifying how the 40 CFR part 84, subpart B restrictions will apply to an application no longer receiving an ASA, based on EPA’s consideration of the factors listed in subsection (i)(4) of the AIM Act.

III. Background

HFCs are anthropogenic⁵ fluorinated chemicals that have no known natural sources. HFCs are used in a variety of applications such as refrigeration and air conditioning, foam blowing agents, solvents, aerosols, and fire suppression. HFCs have 100-year global warming potentials (GWPs)⁶ (a measure of the relative climatic impact of a greenhouse gas (GHG)) that can be hundreds to thousands of times that of carbon dioxide (CO₂). There are hundreds of possible HFC compounds. The 18 HFCs listed as regulated substances by the AIM Act are some of the most commonly used HFCs (neat and in blends). These 18 HFCs are all saturated, meaning they have only single bonds between their atoms, and therefore have longer atmospheric lifetimes than fluorinated compounds that are unsaturated. More detailed information on HFCs, their uses, and their impacts is available in the Allocation Framework Rule.

IV. How is EPA assessing whether to extend eligibility for application-specific allowances?

As noted in section II.B. of this preamble, the AIM Act directs EPA to undertake a review of applications receiving allowances pursuant to subsection (e)(4)(B)(iv) at least every five years. The statute provides that

access to ASAs shall be authorized for a renewed period if two statutory criteria are met. Specifically: (1) “no safe or technically achievable substitute will be available during the applicable period for that application; and” (2) “the supply of the regulated substance that manufacturers or users of the regulated substance for that application are capable of securing from chemical manufacturers . . . including any quantities of a regulated substance available from production or import, is insufficient to accommodate the application” (42 U.S.C. 7675(e)(4)(B)(i), (e)(4)(B)(v)). In this section, we outline how EPA interprets these criteria, what information the Agency considers in assessing these criteria, and establish a framework for evaluating if an application is eligible for renewal and for what time period. EPA notes that under the statute, these criteria also apply to new applications that may be listed; however, aside from the discussion of the petition process in section VI., this final rule only considers the renewal of existing applications. EPA’s interpretations of the criteria discussed in this section would apply to future actions to add new applications. The AIM Act includes additional evaluation considerations for new applications in subsection (e)(4)(B)(i), but the Agency is not addressing their interpretation in this final rule.

A. How is EPA interpreting the “no safe or technically achievable substitute will be available” criterion?

In order for an application to continue to be eligible to receive ASAs, EPA must determine “no safe or technically achievable substitute will be available” for the application during the time period under review (42 U.S.C. 7675(e)(4)(B)(i)(I)). EPA proposed to interpret this criterion to mean that if there is an available substitute that is both safe *and* technically achievable, an application would not meet this criterion for renewal. In other words, if EPA determines there is a safe substitute, but it is not technically achievable, or the only technically achievable substitutes are not safe, the application would meet the first criterion for renewal. EPA included further explanation regarding this proposed interpretation in the notice of proposed rulemaking (89 FR 75898, September 16, 2024).

In the proposal, EPA explained its intent to consider a wide range of possibilities in assessing whether there was a safe and technically achievable substitute for an application under subsection (e)(4)(B)(i)(I). Specifically, EPA proposed to consider regulated

substances (*i.e.*, other HFCs), alternative substances (*e.g.*, hydrofluoroolefins (HFOs), hydrocarbons), and blends of HFCs and/or HFC alternatives that can perform the same function as the current HFC in use; of these substances, EPA proposed to assess only those with a lower GWP than the regulated substance currently in use. EPA proposed to include substitute chemicals that are both a chemical-for-chemical replacement and those that would require a change in manufacturing process or the product.

In addition to looking at chemicals that could serve as substitutes, EPA also proposed to include in its analysis any potentially available not-in-kind technologies (*e.g.*, finger-pump bottles that would not use any chemical propellant in lieu of aerosol cans) for purposes of subsection (e)(4)(B)(i)(I).

The Agency proposed to assess this criterion, specifically whether a safe and technically achievable substitute(s) is available, on an application-wide basis. For applications that use multiple HFCs, a safe and technically achievable substitute would need to be able to replace all HFCs used (or multiple substitutes that replace all individual HFCs would need to be available). For applications that have sub-applications (*e.g.*, defense sprays include those intended for humans and those intended for animals), there would need to be a safe and technically achievable substitute for known sub-applications that have been relying on ASAs to date.

EPA proposed that its evaluation of each application is not intended to be a company-specific review; the commercialization⁷ of a substitute in one sub-application suggests the substitute is safe or technically achievable for the entire application barring evidence, such as testing data, to the contrary. However, EPA noted at proposal that if there are additional barriers to commercialization, those would be considered when assessing if the identified substitute is available for an entire application and the renewal period, as applicable. In addition, EPA’s interpretation of the statutory language is that applications are intended to be viewed as a whole and not renewed by sub-application.

One commenter requested further clarification regarding EPA’s interpretation of “technically achievable

⁷ EPA is using the term “commercialization” to mean that the substitute is commercially available and actively being used in an application’s equipment or sold on the market (domestically or internationally) for use in the application. “Commercialization” is not intended to be equated with “available,” as explained in more detail in the main text.

⁵ While the overwhelming majority of HFC production is intentional, EPA is aware that HFC-23 can be a byproduct associated with the production of other chemicals, including but not limited to hydrochlorofluorocarbon (HCFC)-22 and other fluorinated gases.

⁶ EPA notes that the exchange values (EVs) listed in the AIM Act for each regulated HFC are numerically identical to the 100-year GWPs of each substance, as given in the Errata to Table 2.14 of the Intergovernmental Panel on Climate Change’s (IPCC) Fourth Assessment Report (AR4). See IPCC, 2007: Summary for Policymakers. In: *Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* [Solomon, S., D. Qin, M. Manning, Z. Chen, M. Marquis, K.B. Averyt, M. Tignor and H.L. Miller (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA. Available at <https://www.ipcc.ch/report/ar4/wg1>.

substitute.”⁸ The commenter noted its support of the sources of information that EPA outlined in the proposed rule in determining the availability of substitutes, specifically noting Significant New Alternatives Policy (SNAP) Program listings (pursuant to section 612 of the CAA) and 2023 Technology Transitions Rule evaluations. However, the commenter stated a need for more clarity on how EPA plans to interpret the phrase “technically achievable substitute.”

EPA disagrees with the commenter that the proposed action lacked sufficient clarity and notes that the commenter does not specify what was unclear in the proposal. As the commenter acknowledges, EPA listed numerous sources of information the Agency intended to draw from in developing its assessment of the availability of a technically achievable substitute for individual applications. How EPA incorporates information from these sources is necessarily source-specific and will vary depending on the information received from the source. For example, EPA listed manufacturer announcements as an information source. If a company within an application has announced that it is commercializing a product using a substitute chemical, that would be meaningful for EPA’s assessment. Conversely, if a company announces it is starting the first stage of testing for use of a substitute chemical, that will also be information EPA will take into account, but the analysis will be different. Similarly, many peer-reviewed technical reports discuss whether substitutes are currently and/or expected to be technically achievable, and how EPA will account for that information will depend on the content of the report.

Moreover, the Technical Support Document (TSD), “Review of Applications in the American Innovation and Manufacturing (AIM) Act Subsection (e)(4)(B)(4),” accompanying the proposed rule demonstrated exactly how this variation would play out. EPA took information from cited sources and then developed an assessment of the availability of substitutes for each individual application. EPA received no adverse comment on its more general approach to analyzing substitute availability in the TSD for the applications as a whole. To the extent any commenter raised

concerns about this application-specific assessment, EPA has accounted for that in the individual application decisions contained in section V. of this preamble to the final rule.

Finally, as the commenter acknowledges, EPA explained in the proposal its intent to consider the listings under the SNAP Program and evaluations carried out for the 2023 Technology Transitions Rule as part of its assessment. This includes listings themselves and the information underlying those decisions. In evaluation of substitutes and related decisions (e.g., to list as acceptable or unacceptable), the SNAP Program carries out a comparative risk evaluation and considers whether a substitute to an ozone-depleting substance presents human health and environmental risks that are lower than or comparable to such risks from other substitutes that are currently or potentially available for the same uses. The analysis undertaken when evaluating a proposed substitute includes ozone depletion potential, GWP, local air quality, toxicity, flammability, and occupational and consumer health/safety. Information and data relied upon in the SNAP Program are directly relevant to EPA’s assessment of substitutes in this rulemaking, and therefore EPA has pulled from and relied upon SNAP Program assessments as appropriate. The 2023 Technology Transitions Rule applied a list of criteria that are similar, but not identical, to the ASA review process (e.g., the availability of substitutes, considering both safety and technological achievability), and EPA has also considered the information prepared for that rule, which is available in the relevant docket.

Another commenter stated that the criteria “no available substitute that is both safe and technically achievable” is ambiguous and restrictive and does not provide an incentive for applications to explore substitutes. EPA acknowledges this comment, but notes that the language cited by the commenter comes directly from the AIM Act. The Agency has no authority to alter the statutory language enacted by Congress. EPA’s role, as an executive branch agency, is to implement the language in such a way to give effect to the text provided by the legislature.

EPA did not receive any further adverse comments on this part of its proposal, including what can be considered a substitute (*i.e.*, the various chemicals that will be considered along with not-in-kind substitutes), the proposal to assess the availability of substitutes on an application-wide basis, and the proposal to not determine

availability of substitutes on a company-specific basis. EPA is therefore finalizing its interpretation of the “no safe or technically achievable substitute will be available” criterion as proposed, which EPA views as the best reading of the statutory text.

In the proposed rule, EPA outlined a range of sources of information it intended to, and did, review in developing the assessment of the availability of safe, technically achievable substitutes for applications under review. EPA’s TSD that accompanied the proposed rule also included detailed information of the substitute assessment for each individual application, including citations to all sources of information considered. Sources include, but are not limited to: manufacturer announcements; information provided by stakeholders under reporting requirements of part 84 of the CFR and other communications; relevant federal and state regulations; evaluations carried out under the 2023 Technology Transitions Rule and the SNAP Program; standards from industry, standard-setting bodies (e.g., American Society for Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE)), and the U.S. Government (e.g., the U.S. Food and Drug Administration’s (FDA) regulations and guidance for MDIs); and peer-reviewed technical reports. EPA did not receive general comment on additional sources to consider, but we note that the Agency may consider additional information as relevant when assessing this criterion in future actions. The TSD accompanying this final rule has detailed information on the sources used in analyzing substitutes for each individual application in this final rulemaking. To the extent any commenter suggested additional sources of information for particular applications, EPA has considered these additional sources and incorporated that information as warranted into the analyses of the individual applications, as outlined in detail in the TSD.

B. How is EPA interpreting the insufficient supply of regulated substances criterion?

Under the second criterion for renewal of an application’s eligibility to receive ASAs, EPA must determine that “the supply of the regulated substance that manufacturers or users of the regulated substance for that application are capable of securing from chemical manufacturers. . . , including any quantities of a regulated substance available from production or import, is insufficient to accommodate the application” (42 U.S.C.

⁸ All comments referenced in this preamble can be found in the “Response to Comments” document in the docket for this rulemaking. EPA has responded to the most significant comments in the final rule preamble. All other comments are only addressed in the Response to Comments document.

7675(e)(4)(B)(i)(II)). In the proposal, EPA described its intention to look at a number of different factors to assess whether an application met this second criterion, including the available domestic supply of the HFC(s) at issue, demand for said HFC(s), and supply chain constraints particular to a given application (*e.g.*, federal requirements related to purity specifications).

EPA proposed to evaluate only the supply of the HFC(s) currently used in an application's equipment or to manufacture the application's products for use; this excludes any HFC(s) currently used exclusively for research and development. For applications that use multiple HFCs, EPA proposed to individually evaluate each HFC for which ASAs are being expended to assess if supply of that HFC is insufficient. EPA proposed to assess insufficient supply on an application-wide basis. In other words, if the supply of at least one of the HFCs evaluated is insufficient to accommodate the application, EPA proposed to consider the criterion met for the application.

EPA discussed in the proposed rule that in assessing supply, the Agency would also consider relevant restrictions, if any, on the type of HFC or supplier of HFCs that would further limit supply to a particular application. For example, FDA regulations govern use of pharmaceutical-grade HFCs by MDI manufacturers. Facilities manufacturing the regulated substances must comply with FDA regulations, and there are a limited number of purifiers.

In addition, per the Agency's best interpretation of the statutory language to consider regulated substances "from chemical manufacturers . . . , including any quantities of a regulated substance available from production or import" in 42 U.S.C. 7675(e)(4)(B)(i)(II), EPA proposed to consider only regulated substances that are supplied by chemical manufacturers in its assessment of supply. EPA proposed this assessment covers both virgin and recovered and reprocessed HFCs, and includes both imported material from foreign HFC producers and regulated substances from domestic producers. Relatedly, EPA proposed that "chemical manufacturers" excludes entities that do not produce or import HFCs and therefore that EPA would not consider HFC supply held by and available to entities that do not produce or import HFCs in its assessment of this criterion. This excludes quantities of HFCs held by entities that do not produce or import HFCs with allowances, potentially including reclaimers,

distributors, HFC blenders,⁹ and HFC repackagers. Further explanation about EPA's interpretation of this statutory language can be found in the proposed rule.

EPA did not receive comments related to the Agency's proposed interpretation of the statutory language in subsection (e)(4)(B)(i)(II). EPA is therefore finalizing its interpretation of the supply criterion as proposed, which EPA views as the best reading of the statutory text.

EPA also discussed in the proposed rule the sources of data it would consider in its evaluation of whether supply of a regulated substance is insufficient to accommodate an application. These include information regarding the total expected HFC consumption in the United States, global production of individual HFCs used in the applications, manufacturer announcements regarding production of specific HFCs, past and projected market trends for an application that can inform projected demand for the HFC(s) it uses, and allowance usage by an application to date, including conferrals, imports, and open market purchases by ASA holders, as well as expenditures of conferred allowances by suppliers to ASA holders. To the extent available, EPA will consider data from all of these sources collectively in order to gain a more complete picture of projected supply for the relevant individual HFC(s), rather than relying on one data point. While EPA did not receive general comment on additional sources to consider, we note this list is not exhaustive and that the Agency may consider additional information as relevant when assessing this criterion. The TSD accompanying this final rule has detailed information on the sources used in analyzing supply related to each individual application. To the extent any commenter suggested supply data to be considered in an individual application's renewal decision, EPA has considered the data sources and incorporated that information as warranted into the analysis of the individual application, as outlined in detail in the TSD.

C. What is EPA's framework for renewing applications?

In outlining the requirement that EPA review the applications eligible for ASAs at least every five years, the AIM

⁹ For a discussion on the difference between producing HFCs consistent with the AIM Act and blending HFCs to make various refrigerant blends, see "Response to Comments," pg 193, Docket ID No. EPA-HQ-OAR-2021-0044, associated with the Allocation Framework Rule and the discussion in the 2024 Allocation Rule.

Act states that if EPA determines "that the requirements described in subclauses (I) and (II) of clause (i) are met" then EPA will renew the application's eligibility to continue to receive ASAs (42 U.S.C. 7675(e)(4)(B)(v)(II)) (*emphasis added*). Accordingly, EPA explained in the proposed rule that the Agency considered the best interpretation of the statutory language to be that both criterion (I) of clause (i) (that a substitute is not available) and criterion (II) (that supply is insufficient) must be met for an application to be renewed as eligible for ASAs. EPA further proposed that an application will no longer be eligible for ASAs at the time at which EPA has determined it does not fulfill one of these criteria.

In practice, this means that if either or both criteria are not met at the beginning of the renewal period, EPA will not renew an application's eligibility to receive ASAs. For example, if, for this review cycle, the Agency determines that supply is not insufficient to accommodate an application as of January 1, 2026 (the beginning of this renewal period), EPA will not renew that application's eligibility for ASAs, regardless of whether a substitute is available.

If both statutory criteria are met as of the beginning of the renewal period, EPA proposed it would assess whether an application's fulfillment of a criterion may change over the following five-year period. The outcome of this assessment would be determinative of how long EPA would determine an application eligible to receive ASAs. For example, if, for this renewal cycle, EPA determines that there is no substitute available as of January 1, 2026, but a substitute will be available by January 1, 2028, then EPA would renew the application's eligibility to receive ASAs for only two years (*i.e.*, calendar years 2026 and 2027). Similarly, if supply is determined to be insufficient to accommodate the application as of January 1, 2026, but the market will change such that supply will not be insufficient to accommodate the application as of January 1, 2028, then EPA would renew the application's eligibility to receive ASAs for only two years (*i.e.*, calendar years 2026 and 2027).

The Agency also proposed that if EPA determines that an application has a safe or technically achievable substitute available that is a regulated substance, EPA would also evaluate the supply of the substitute HFC and assess if supply of the substitute HFC is insufficient to accommodate the application. Further information regarding the Agency's

reasoning can be found in the notice of proposed rulemaking for this action. Under this proposed framework, if EPA determines there is an HFC substitute, but there is insufficient supply of that HFC substitute, EPA would continue to list the application as eligible for ASAs. This approach allows an entity transitioning to a lower-GWP HFC to remain eligible to receive allowances until supply of that lower-GWP HFC is no longer insufficient (or a non-HFC substitute is available).

EPA also proposed that if an application is renewed for ASAs for less than five years, the application would not be reviewed for eligibility for ASAs again as part of the statutorily mandated schedule (*i.e.*, once EPA determines that an application is no longer eligible for ASAs, EPA would not re-review that application), given the direction in the statute. In such a situation, an entity may petition the Agency to be evaluated for ASA eligibility, and the Agency would then undertake the relevant petition review process; see section VI. for further discussion of the petition process requirements.

One commenter suggested that EPA should review applications more frequently than every five years. The commenter points to the statutory text in the AIM Act in subsection (e)(4)(B)(v) that directs EPA to review applications receiving ASAs “not less frequently than once every 5 years” and to authorize renewals of not more than five years. The commenter states that this text allows EPA to review applications more frequently than every five years. The commenter alleges that EPA’s proposal to not do so is inconsistent with EPA’s expectation the HFC market will be dynamic given EPA’s statement at proposal that the Agency “cannot know the full breadth of technologies that will be developed as replacements for the current HFCs in use,” (89 FR 75898, 75904).

EPA notes that the commenter itself acknowledges that the language in the AIM Act is merely permissive of EPA reviewing applications more frequently than every five years and that the commenter does not provide any argument that the best interpretation of the statutory language is that EPA is required to review applications more frequently than every five years. Congress set a clear directive that the Agency review applications receiving ASAs “not less frequently than once every 5 years,” and EPA’s approach clearly aligns with this language. The statute provides EPA discretion to determine the appropriate review period, as long as the Agency reviews at least once every five years.

To the extent the commenter intended to raise a policy or programmatic rather than a legal argument, EPA disagrees with the commenter’s contention that adopting a five-year review period in this final rule is inconsistent with statements EPA made at proposal. The quotation of the proposal language provided by the commenter is from the portion of EPA’s proposal that discusses how EPA will analyze the substitute availability criterion, and specifically what types of chemicals and technologies should be considered as potential substitutes. In that passage of the proposed rule, EPA explained why it would be appropriate to consider various types of chemicals as well as not-in-kind technologies in assessing whether an application had an available substitute. This is distinct from the question of whether EPA has sufficient information to prognosticate whether and how an individual application may meet the two statutory criteria for ASA renewal over the next five-year review period adopted in this final rule. As explained in detail in the proposed rule and the TSD accompanying the proposal, EPA examined the availability of substitutes for each individual application and, if not currently available, when a substitute would be expected to become available for the entire application. While EPA expects the market to be dynamic, based on analysis done for this rulemaking and as detailed in the TSD, EPA has explained why a substitute currently unknown is not reasonably expected to be available within the five-year renewal period, thus making an earlier assessment earlier than the five-year period unnecessary. EPA has demonstrated how this assessment plays out for individual applications in the TSD accompanying the proposal and final rule. In determining a final approach, EPA has taken this in balance with the desire to provide certainty to applications for which Congress provided priority access to HFC allowances.

One commenter suggested that “because the proposed extension period for some applications overlaps the next phasedown year (2029), it may be appropriate to reevaluate the transition to lower GWP alternatives in these applications and adjust allocations accordingly.” Although the intended meaning of this comment is not entirely clear, EPA interprets this comment to suggest that if an application has a safe and technically achievable substitute available that is a lower-GWP HFC, either at the present time or at some point within the five-year renewal

period, EPA should base the application’s allocation levels on that lower GWP–HFC. EPA had proposed this as a possibility for applications that may have had a lower-GWP HFC substitute become available (*see, e.g.*, 89 FR 75898, 75917). However, as described in section V., EPA is not determining this factual situation to be occurring for any application within this renewal period. Therefore, the commenter’s suggestion is not relevant for this particular action at this time. If this situation arises within the next renewal period, EPA may consider whether to adjust allocation levels to meet a lower-GWP HFC substitute.

EPA did not receive comments on the following aspects of its proposal: that applications must meet both criteria to be renewed as eligible for ASAs, that EPA will review the supply of substitute HFCs if they are determined to be available for an application, that EPA will base the renewal timeline on less than five years if an application will fulfill a criterion within the five-year period, and that if an application is renewed as eligible for ASAs for less than five years, the application will not be reviewed for eligibility for ASAs ahead of the next five-year renewal period.

After considering all comments, EPA is finalizing all aspects of this portion of the rule as proposed.

V. Review of the Six Applications Listed in the AIM Act

EPA reviewed the six applications listed in AIM Act subsection (e)(4)(B)(iv)(I)—propellant in MDIs, defense sprays, SCPPU foam for marine use and trailer use, the etching of semiconductor material or wafers and the cleaning of CVD chambers within the semiconductor manufacturing sector, MCMEU, and onboard aerospace fire suppression—as required under subsection (e)(4)(B)(v)(I). Pursuant to that review, EPA evaluated whether the criteria for renewal described in section IV. of this preamble are met for any part, or the entirety, of the 2026–2030 time period. This section contains EPA’s assessment of the criteria for each application and EPA’s decision regarding whether to renew each application’s eligibility to receive ASAs. EPA provides additional information in the TSD available in the docket for this rulemaking. EPA views the decision made for each individual application to be severable from the decisions made for the other applications, as each application determination is based on facts and assessment specific to that application. In the event that a reviewing court overturns EPA’s

determination for an individual application, EPA intends that the determinations for the remaining applications should be considered as severable and stand.

A. Propellants in Metered Dose Inhalers

EPA has been allocating ASAs for regulated substances used for propellants in MDIs in accordance with subsection (e)(4)(B)(iv)(I)(aa) of the AIM Act. In the Allocation Framework Rule, EPA defined a “metered dose inhaler” as “a handheld pressurized inhalation system that delivers small, precisely measured therapeutic doses of medication directly to the airways of a patient. MDIs treat health conditions such as asthma and chronic obstructive pulmonary disease and are approved for such use by the U.S. Food and Drug Administration (FDA),” (40 CFR 84.3). Patients using MDIs to treat pulmonary conditions work closely with their healthcare provider to identify the right treatment for their condition.

Pharmaceutical grade HFC–227ea and HFC–134a, more commonly referred to as hydrofluoroalkane (HFA)–227ea and HFA–134a in the pharmaceutical industry, are purified from technical grade HFC–227ea and HFC–134a, respectively, and are both used in MDIs as propellants.

1. Availability of Safe and Technically Achievable Substitutes

In the proposed rulemaking, EPA proposed to determine that through calendar year 2030, no safe or technically achievable substitute will be available for propellants in MDIs and that supply of the regulated substances that manufacturers and users are capable of securing from chemical manufacturers is insufficient to accommodate this application. Therefore, EPA proposed to renew the eligibility of entities using regulated substances for propellants in MDIs to receive ASAs for the five-year period of calendar years 2026 through 2030.

Many commenters were supportive of EPA’s proposed determination that no safe or technically achievable substitute will be available for the MDI application. EPA acknowledges the commenters’ support.

One commenter was a chemical producer who shared that they are actively developing HFO–1234ze(E) as a low-GWP propellant for use in MDIs and the alternative is currently undergoing clinical trials to prepare for regulatory approvals and marketing authorizations by FDA and other authorities. The commenter also stated that the chemical is an available substitute and described their planned

largescale production capabilities of medical-grade HFO–1234ze(E). The commenter also said that based on the SNAP evaluation of HFO–1234ze(E), this chemical should be considered a safe alternative to high-GWP HFCs in MDIs.

EPA responds that while the chemical producer stated that “HFO–1234ze is an available substitute,” their comment focused on largescale production of the chemical, which speaks to its available supply as opposed to how EPA is evaluating substitutes for the MDI application. EPA notes that while it has listed HFO–1234ze(E) as an acceptable substitute under the SNAP program for many applications, EPA has not evaluated this substance for applications that concern inhalation, including use as a propellant in MDIs, under the SNAP program. Other than the reference to SNAP’s listings for non-MDI applications, the commenter does not discuss how EPA has said it would assess whether a substitute is available. As outlined in the proposed rule in section IV.A., in the Agency’s assessment of safe or technically achievable substitutes, EPA takes into account Federal regulations, including from other U.S. Government agencies. For the MDI application, EPA specifically references FDA’s requirements for MDIs, and thus considers an alternative to be available for a particular MDI drug product once an MDI containing the alternative propellant has been approved by FDA. Consistent with the proposal, for an assessment of a “safe” alternative for use as a propellant in MDIs, EPA relies on FDA, as FDA takes these considerations into account in their review, as described in more detail in the TSD. Since FDA has not yet approved MDIs containing any propellant substitutes to HFC–134a and HFC–227ea, EPA does not consider HFO–1234ze(E) to be available within the applicable renewal period. Further, based on experience with the ozone-depleting substance MDI transition, we expect that companies will seek, and FDA will evaluate, applications for MDIs that use alternative propellants, on an individual MDI product-by-product basis, and thus it is unlikely there will be approvals for all MDIs within the application within the five year timeframe. In other words, EPA does not intend to consider that FDA’s approval of a single MDI product containing an alternative propellant to mean that the alternative propellant is therefore available for the entire application.

For the reasons outlined here and in the proposed rule, and based on

information available in the TSD, EPA is finalizing the determination that no safe or technically achievable substitute will be available for propellants in MDIs.

2. Supply

EPA proposed to determine that the supply of the regulated substance that manufacturers and users are capable of securing from chemical manufacturers is insufficient to accommodate propellants in MDIs through calendar year 2030. As part of the manufacturing process for MDIs, technical grade HFC–134a and HFC–227ea are purified into pharmaceutical-grade HFC–134a and HFC–227ea. These pharmaceutical-grade HFC propellants are produced at a limited number of production facilities domestically and abroad. In its analyses of other applications, EPA has noted that HFC–134a is the most widely available HFC. However, this fact does not equate to a sizeable supply for the MDI application because there are a limited number of HFC–134a production and purification facilities that meet FDA’s Current Good Manufacturing Practice (CGMP) regulations and MDI manufacturers are not easily able to switch suppliers of pharmaceutical-grade HFCs. Unlike other applications, where EPA has discussed the diverse number of chemical suppliers for HFC–134a globally, in this instance the options are constrained. Producers of pharmaceutical-grade HFC–227ea must also comply with FDA requirements as described in the proposed rule, which limits their ability to switch to other suppliers of HFC–227ea. The two additional years of reported consumption and production data for the United States since the publication of the proposed rulemaking do not change EPA’s proposed assessment due to the limitations summarized here and described in more detail in the proposed rule.

Commenters were supportive of the determination that supply of the regulated substance that manufacturers and users are capable of securing from chemical manufacturers is insufficient to accommodate the MDI application through calendar year 2030, and there has been no further information EPA has been made aware of that would change the Agency’s proposed determination. Therefore, EPA is finalizing as proposed the determinations that the supply of both HFC–134a and HFC–227ea is insufficient to accommodate the propellants in MDIs application.

3. Final Determination on Application-Specific Allowance Eligibility

All but one commenter were supportive of EPA's determination to renew the eligibility of entities in this application to continue receiving ASAs for the full five-year period of calendar years 2026 through 2030. One commenter stated their opposition to the federal government's "green inhaler mandate" due to their concerns about lack of medical benefits and cost of generics and that the Agency should commit that it is the policy of the federal government that neither EPA nor FDA should ever ban, phase out, or refuse to approve HFC inhalers based on their GHG emissions. The commenter also stated that any rulemaking should permanently exempt inhalers from the phasedown of HFCs and the administration should seek a change in law so that the permanent exemption need not be reviewed by EPA every five years.

EPA responds that the AIM Act in subsection (b)(4)(B)(v) instructs EPA to extend the eligibility of any application that meets the statutory criteria "for renewable periods of not more than 5 years." In this action, EPA is extending the eligibility of the MDI application for the maximum length of time permitted by the statute. Further, nothing in this rulemaking nor in the AIM Act mandates or requires that MDI manufacturers transition to alternative propellants. In fact, EPA is continuing to provide flexibility for manufacturers of MDIs to use the propellant that they choose. Under the AIM Act, EPA is required to implement an 85 percent phasedown of HFCs on an EV-weighted basis from historic levels by 2036. This is not a complete phaseout as was required under the CAA for ozone-depleting substances, meaning production and import of HFCs is permitted indefinitely at a reduced level. EPA anticipates the continued production and import of HFCs will include applications where alternatives are not available and/or where the transition is more challenging. In other words, there is nothing in this rulemaking, in the AIM Act, or in any current EPA regulation that would prevent MDI manufacturers from continuing to use the current HFCs they are using after 2036.

In addition, the AIM Act authorizes EPA under subsection (e)(4)(B)(iv) to provide priority access to allowances for certain applications, including propellants in MDIs. EPA must provide the "full quantity of allowances necessary, based on projected, current, and historical trends, for the production

or consumption of a regulated substance for the exclusive use of the regulated substance in an application." This rulemaking maintains eligibility for MDI manufacturers to receive ASAs for another five years (*i.e.*, through 2030) at which time, the Agency will conduct another review, consistent with the Congressional mandate.

Regarding the request for EPA to permanently exempt MDIs from the phasedown of HFCs, that is outside the scope of this rulemaking and likely is not consistent with the AIM Act. However, as stated above, the AIM Act calls for a phasedown and not a phaseout. Given the nature of the phasedown, EPA does not foresee restricting access to all HFCs for MDI manufacturers. EPA can and is finalizing to continue providing priority access to HFCs through eligibility for ASAs for use as a propellant in MDIs.

MDIs provide important, life-saving medications, and the flexibilities described in this rule allow for continued production and import of HFCs for use in MDIs. As discussed elsewhere in this rule, EPA is finalizing additional flexibility to allow for continued priority access to HFCs for the manufacture of MDIs at a level that meets their need (see sections VII.B. and VII.F.).

One commenter stated that even after FDA grants approvals of MDIs containing alternative propellants, eligibility for receiving ASAs may still be needed as one of the potential alternatives, HFC-152a, is a regulated substance under the AIM Act. The commenter requested that when FDA grants approvals to MDIs containing HFC-152a and HFO-1234ze(E), that the Agency does not encourage the use of one propellant over the other, and that such determinations should be left with FDA.

Regarding the first part of the comment regarding eligibility for receiving ASAs for HFC-152a, EPA responds that since FDA has not yet approved any MDIs containing HFC-152a as a propellant, EPA has not yet assessed providing ASAs based on the potential approval of MDIs containing HFC-152a in this application. Regarding the second part of the comment, EPA responds that since FDA has not approved any MDIs containing either alternative propellant, treatment of the two potential alternatives is beyond the scope of this rulemaking.

EPA is finalizing as proposed the determination that no safe or technically achievable substitute will be available for propellants in MDIs and that supply of the regulated substance that manufacturers and users are capable of

securing from chemical manufacturers is insufficient to accommodate propellants in MDIs through calendar year 2030. Therefore, EPA is finalizing the proposal to renew the eligibility of entities using regulated substances for propellants in MDIs to receive ASAs for the five-year period of calendar years 2026 through 2030.

B. Defense Sprays

Per subsection (e)(4)(B)(iv)(I)(bb) of the AIM Act, EPA has been allocating ASAs for use of regulated substances in defense sprays. EPA defined a "defense spray" as "an aerosol-based spray used for self-defense, including pepper spray and animal sprays, and containing the irritant capsaicin and related capsaicinoids (derived from *oleoresin capsicum*), an emulsifier, and an aerosol propellant," (40 CFR 84.3). Within this application, there are four primary uses: bear sprays, dog sprays, personal defense sprays, and law enforcement sprays (which includes military sprays). The defense sprays chapter in the TSD contains more details on these product categories. HFC-134a is the propellant predominantly used for defense sprays and is the only HFC for which defense spray ASAs have ever been expended.

1. Availability of Safe and Technically Achievable Substitutes

EPA proposed that there would not be a safe and technically achievable substitute available for the entire application at the time of rule finalization, but a safe or technically achievable substitute would be available for the entirety of the defense spray application by January 1, 2028. EPA's proposed substitutes determination was based on knowledge at the time of proposal that some entities in the defense sprays application had already successfully commercialized alternative propellants, including non-HFCs, in some of their products. In addition, multiple propellants, including HFC-152a, HFO-1234ze(E), and hydrocarbons, have been listed as acceptable under SNAP and identified as technically and economically feasible alternatives for propellants in aerosols by the Montreal Protocol's Technology and Economic Assessment Panel (TEAP) Medical and Chemicals Technical Options Committee (MCTOC). EPA's Technology Transitions restrictions will also require that all aerosols, including technical aerosols, transition out of HFC-134a by January 1, 2028. EPA's assessment at the time of proposal was that the commercialization of substitutes in some defense spray sub-applications suggests these substitutes are viable application-wide.

Comments on the proposed renewal options were all focused on availability of substitutes. Some commenters requested that defense sprays continue to be eligible for ASAs for the full five-year period because there is no safe or technically achievable substitute for specific sub-applications of defense sprays and explained their concerns. One commenter suggested a two-year renewal also based on the availability of substitutes. Another commenter supported a two-year renewal but provided no explanation or additional information that can inform EPA's assessment. Finally, one commenter supported no renewal of ASAs given the availability of alternatives, though did not provide additional information beyond EPA's initial assessment.

As discussed in section IV.C., which outlines the application review framework, an application must meet both criteria to be eligible for renewal of ASAs. EPA discusses in the next subsection that EPA is finalizing a determination that the criterion in subsection (e)(4)(B)(i)(II) is not met for this application beginning January 1, 2026. This outcome is determinative, standing alone, for EPA to finalize that defense sprays will not be eligible for ASAs beginning January 1, 2026. As a result, EPA is not making a final determination regarding the availability of substitutes in the context of ASAs. Because EPA is not making a final determination in this rule with respect to the availability of substitutes for this application, the comments filed are not significantly adverse to the outcome in this rule. Therefore, EPA is not responding to comments specific to the substitute criterion of the review of the defense spray application.

However, the proposed rulemaking also requested comment on the treatment of defense sprays under the 40 CFR part 84, subpart B Technology Transitions restrictions. Responses to comments regarding availability of substitutes as relevant to the Technology Transitions restrictions are addressed in section V.B.4. of this final rule.

2. Supply

As explained, HFC-134a is the propellant predominantly used for defense sprays and is the only HFC for which defense spray ASAs have ever been expended. Therefore, EPA is analyzing the supply of HFC-134a in assessing whether this application meets the second criterion to be renewed as eligible for ASAs. EPA co-proposed two supply determinations: (1) the supply of HFC-134a is not insufficient to accommodate this

application; or (2) the supply of HFC-134a will not be insufficient to accommodate this application as of January 1, 2028.

In this final rulemaking EPA did not consider the supply of HFC-152a in assessing whether the defense spray application meets the statutory criteria for renewed eligibility for ASAs. EPA noted in the proposal that assessment of HFC-152a supply could be relevant if HFC-152a is an available safe and technologically achievable substitute for the entire defense spray application. EPA did not receive any comments regarding if HFC-152a is an available safe and technically achievable substitute for the entire defense sprays application. Comments from defense spray manufacturers instead highlighted the concerns around the use of flammable propellants in law enforcement and military settings, where defense sprays are often used in conjunction with "Conducted Energy Weapons" (e.g., Tasers). As described in more detail below in section V.B.3., EPA agrees with commenters regarding the human safety concerns of using stun guns alongside flammable propellants, such that HFC-152a, given its flammability, is not an available safe and technically achievable substitute application-wide. Thus, in this final rulemaking EPA did not consider the supply of HFC-152a as it pertains to the defense sprays application.

In the proposal, EPA explained that there is a large available supply of HFC-134a, and demand for HFC-134a from the defense sprays application is very small relative to overall supply. Given its broad use in other applications (e.g., refrigeration and air conditioning), HFC-134a is the most widely produced HFC globally and is produced in substantial quantities in multiple countries, including the United States. At the time of proposal, domestic production of HFC-134a was nearly 50 percent of total U.S. HFC production, but EPA also noted at the time of proposal that one domestic producer indicated it was transitioning its facility to produce a different chemical;¹⁰ as of the time of this final rulemaking, this retrofit was completed. Significant amounts of HFC-134a were also imported in 2022, such that HFC-134a made up approximately 32 percent of total U.S. HFC consumption in 2022. In addition, suppliers held quantities of HFC-134a in inventory that were approximately 100 percent of calculated consumption of HFC-134a in 2022. EPA

had also noted in the proposed rulemaking that it was not aware of any reason this application could not use recovered and reprocessed HFCs, and the supply of reclaimed HFC-134a (the likeliest source of recovered and reprocessed HFCs) was significant and further increased the available supply of HFC-134a.¹¹ At the time of proposal, EPA had not yet finalized the proposed rulemaking "*Phasedown of Hydrofluorocarbons: Management of Certain Hydrofluorocarbons and Substitutes Under Subsection (h) of the American Innovation and Manufacturing Act of 2020*" (88 FR 72216, October 19, 2023) (hereafter referred to as the "2024 Emissions Reduction and Reclamation Rule"), which had proposed requirements that reclaimed HFCs be used for certain equipment to support maximizing reclamation. Despite the large supply of HFC-134a, EPA recognized the uncertainty regarding future supply given the stepdown in permissible production and consumption of HFCs taking place in 2024 and that the Agency did not have complete production, consumption, or inventory data available for 2024 when the proposed rulemaking was issued. In addition, at the time of this proposed rulemaking, EPA had not yet finalized another rulemaking related to the use of trichloroethylene (TCE) in the production of HFC-134a; the TCE pathway is the primary production pathway used to produce HFC-134a in the United States.

Regarding demand of HFC-134a, EPA's models project total HFC consumption to be significantly lower than the limit established by the statutory phasedown cap for all years of the phasedown, assuming compliance with the restrictions.¹² This is due in part, as explained in the proposal, to an expected decrease in demand for HFC-134a over time as a result of the 2023 Technology Transitions Rule, which established sector and subsector-level GWP limits and restrictions on the use of certain regulated substances. GWP restrictions under the 2023 Technology

¹¹ EPA publishes annual data submitted under CAA section 608 showing trends in the reclamation market for ozone-depleting substances and HFC refrigerants. Over 2.5 million pounds of HFC-134a were reclaimed in 2023 and HFC-134a was one of the primary drivers for the 20% year-over-year increase in the reclamation market between the 2022 and 2023. See <https://www.epa.gov/section608/summary-refrigerant-reclamation-trends>.

¹² See HFC Phasedown Regulatory Impact Analysis (RIA) updated for the 2023 Technology Transitions Rule at https://www.epa.gov/system/files/documents/2024-11/epa-hq-oar-2021-0643-0227_attachment_1.pdf.

¹⁰ See <https://www.arkema.com/usa/en/media/news/global/corporate/2022/20221006-two-major-steps-develop-supply-forane-1233zd/>.

Transitions Rule began taking effect on January 1, 2025, with the latest restriction taking effect on January 1, 2028. The majority of sectors or subsectors subject to Technology Transitions restrictions will not be permitted to use neat HFC-134a, as its GWP of 1,430 is greater than the highest relevant GWP limit for those sectors or subsectors (*i.e.*, 700), so demand for this chemical should relatedly fall over time. Many, perhaps most, of these sectors or subsectors were transitioning away from using HFC-134a before the enactment of the AIM Act (*e.g.*, light-duty motor vehicle air conditioning and consumer aerosols). However, EPA also noted that some sectors may transition to blends with HFC-134a as a component where the GWP is below the applicable limit, and that HFC-134a will likely continue to be used in other applications not subject to these restrictions (*e.g.*, air conditioning for heavy-duty vehicles), as well as for servicing existing equipment (*e.g.*, older light-duty motor vehicle air conditioning). In addition, EPA noted in the proposal that of the six defense spray entities that had received ASAs at some point for calendar years 2022, 2023, and 2024, three did not receive ASAs in at least one of those years and only three requested allowances for 2025. EPA was also aware of at least one entity selling bear sprays that use HFC-134a that has never applied for, and therefore never received, ASAs.

There were no comments on EPA's proposed assessment for the insufficient supply criterion related to defense sprays.

In preparing this final rulemaking, EPA analyzed data that has become newly available since the time of proposal related to supply of regulated substances for this application. In 2024, domestic production of HFC-134a was 34,119.4 metric tons (MT), making up 33 percent of U.S. HFC production on a mass basis; this production amount is nearly equivalent to the HFC produced in the highest quantity in that year. While domestic production of HFC-134a has decreased since 2022, global production of this chemical remains high,¹³ and there are multiple entities that import HFC-134a. In 2024,¹⁴ 7,791.1 MT of HFC-134a were imported into the United States. Overall, HFC-134a made up approximately 22 percent of total U.S. HFC consumption in 2024

on a mass basis. The defense sprays application has very limited demand for HFC-134a in comparison to U.S. consumption of HFC-134a; allocated ASAs for this application in 2025 are equivalent to 0.5 percent of calculated domestic consumption of HFC-134a in 2024, on a metric tons of exchange value equivalent (MTEVe) basis. In addition, at the end of 2024, suppliers held 24,598.1 MT of HFC-134a in domestic inventory, which is equivalent to 92 percent of calculated consumption of HFC-134a in 2024; however, EPA notes that the entities holding this material in inventory are broader than EPA's interpretation of chemical manufacturers (see section IV.B. for more information), so not all of this HFC-134a may be considered available supply under the statutory review criteria in AIM Act subsection (e)(4)(B)(i)(II).

EPA recognizes that the overall market for HFCs is likely to continue changing in light of the AIM Act and other restrictions. However, the market behavior to date suggests that over the first three years of the AIM Act-directed HFC phasedown, there have not been dramatic shifts in the supply of HFC-134a. On January 1, 2024, the second stepdown of the level of permissible production and consumption of HFCs took effect. This stepdown was unique in scale, with a cap of 60% of historic baseline levels and a decrease of 30% compared to 2022 and 2023 permissible production and consumption. Imports and production of HFC-134a remained high, albeit with a decrease in total consumption relative to levels in 2023. While consumption of HFC-134a has decreased relative to 2022 and 2023, this aligns with projected decreases in demand for HFC-134a as products transition to new HFC and non-HFC substitutes. In addition, global production capacity is expected to remain substantial over the coming years, given production will continue in countries on later HFC phasedown schedules, and EPA expects continued domestic and global demand for HFC-134a.

EPA notes it is unclear whether there may be impacts on domestic production of HFC-134a from the recently finalized rulemaking, "*Trichloroethylene (TCE); Regulation Under the Toxic Substances Control Act (TSCA)*" (89 FR 102568, December 17, 2024). This rulemaking bans, through a phasedown, the use of TCE due to unreasonable risk of injury to human health, including prohibiting TCE from being used as a feedstock to manufacture HFC-134a within eight and a half years from when that rule was finalized (*i.e.*, by mid-June 2033).

The HFC-134a production pathway using TCE is the primary production pathway in the United States, and while there are other pathways to produce HFC-134a, it is EPA's understanding that it is complex to change already existing domestic manufacturing infrastructure built for the TCE production pathways such that transitions may not occur immediately but rather over the course of the eight-and-a-half year TCE phaseout. However, at the end of this ASA five-year renewal period in 2030, production of TCE for use as a feedstock in the manufacture of HFC-134a will still be allowed at 50% of baseline TCE levels. In addition, given entities using TCE to produce HFC-134a can use any 12 consecutive months in the three years preceding the December 2024 publication of the final TCE rule to calculate their TCE feedstock baselines for compliance with the TCE requirements under TSCA, the baseline TCE level could be based on TCE use early in the HFC phasedown when greater levels of HFC-134a production were allowed. Specifically, the AIM Act limit on HFC consumption and production in 2022 and 2023 was 90% of historic HFC baseline levels; in 2030, HFC consumption and production will be limited to 30% of the HFC baseline. The TCE rule under TSCA is not expected to be a limiting factor during the period covered by this rule and will likely allow for substantial U.S. HFC-134a production levels relative to demand, as discussed in more detail below in this section. Further, while the complete phaseout of TCE for the production of HFC-134a may impact production of HFC-134a in the United States, it is unlikely to limit available supply of HFC-134a, as there is still global supply of HFC-134a from foreign producers that could be imported into the United States. The complete prohibition on TCE being used in the domestic production of HFC-134a will occur after the five-year renewal period assessed in this rulemaking. Therefore, when combined with consideration of global supply, the TCE phasedown does not change EPA's determination in this rulemaking that supply of HFC-134a is not insufficient to accommodate the defense spray application.

In considering supply of the regulated substance currently used by this application, EPA also notes that the Agency is unaware of any reason why this application cannot use recovered and reprocessed HFCs. For example, EPA is not aware of any specific purity requirements for HFCs used in this application. EPA did not receive any comments suggesting that recovered and

¹³ Global production of HFC-134a is estimated to have risen by approximately 20 percent since 2020. See <https://ozone.unep.org/system/files/documents/TEAP-May2024-Progress-Report.pdf>.

¹⁴ All data for 2024 in this preamble is preliminary and includes all data from reports verified as of July 25, 2025.

reprocessed HFCs cannot be used in this application. One commenter suggested that EPA not rely on the use of reclaimed HFCs for defense sprays because reclaimed HFCs should be utilized in applications where the material is able to be recaptured multiple times, thereby extending the usefulness of the substance. In response, EPA notes that this rulemaking does not require the use of reclaimed HFCs in defense sprays but rather notes that reclaimed HFCs may provide a potential source of supply for this application. Requirements for the use of reclaimed HFCs in equipment, and further information on the related authority to do so under the AIM Act and EPA's relevant analyses, can be found in the recently finalized 2024 Emissions Reduction & Reclamation Rule (89 FR 82682, October 11, 2024).

In light of the lack of relevant comments and following on the explanation provided in the proposed rule, EPA is considering the supply of recovered and reprocessed HFCs that can be secured from chemical manufacturers as relevant when assessing whether the supply of HFC-134a is insufficient to accommodate this application. The likeliest source of these reprocessed HFCs for defense sprays would be reclaimed refrigerants, which must meet specific purity requirements.¹⁵ Since there are no federal purity requirements or industry purity standards for HFCs used in aerosols, the purity of reclaimed HFCs is likely the same or higher than the virgin HFCs used in this application. The supply of reclaimed HFC-134a in the United States is substantial and increases the overall supply of HFC-134a available to this application. HFC-134a is the most reclaimed single-component HFC refrigerant since HFC reclamation reporting under CAA section 608 began in 2017 and continues to see growth within the reclamation

market due to its prevalence as a refrigerant in various appliances. Annual reported volumes of reclaimed HFC-134a have continued to grow since the beginning of the HFC phasedown under the AIM Act; preliminary HFC reclamation data for reporting year 2024 indicate a quantity of 1,175.6 MT, an increase of approximately 40 percent since 2021. Discussion on reclaim market trends and future growth potential for reclaimed HFCs can be found in EPA's *Analysis of the U.S. Hydrofluorocarbon Reclamation Market: Stakeholders, Drivers, and Practices*¹⁶ report in the docket for the 2024 Emissions Reduction and Reclamation Rule. EPA expects growth in HFC reclamation, and specifically HFC-134a, to continue due to several factors, such as (1) the increase in refrigeration and air-conditioning appliances using HFC refrigerants reaching their end-of-life—making more HFCs potentially available for recovery and reclamation, (2) provisions established in the 2024 Emissions Reduction and Reclamation Rule intended to maximize reclaim, (3) the overall HFC phasedown's limits on how much virgin HFC can be imported and produced, and (4) increased capacity from EPA-certified reclaimers to reprocess recovered refrigerant. EPA notes that while reclaimed HFC-134a serves as an additional source of available supply, the Agency's assessment that supply of HFC-134a is not insufficient would be the same with or without including the available supply of reclaimed HFC-134a given the significant amounts of HFC-134a available globally and in the United States and other data described in this section.

Restrictions established in the 2023 Technology Transitions Rule began taking effect at the beginning of this year. There has been no further information EPA has been made aware of that would change the Agency's assessment that demand for HFC-134a will continue to fall in part because of these restrictions.

Entities do not need to seek or receive ASAs in order to use HFC-134a in defense sprays, barring requirements under other related regulations. Further, entities do not have to expend an allowance to purchase HFC-134a from another entity that has imported or produced the regulated substance. The number of entities requesting allowances for this application has decreased over the years; only three

entities requested calendar year 2025 allowances for this application as compared to four for 2024 and five for 2022. As explained earlier in this section, EPA is also aware of at least one entity selling bear spray that uses HFC-134a that has never applied for, and therefore never received, ASAs. This suggests that at least this one entity, as well as the others who have stopped applying for allowances, were able to acquire HFC-134a on the open market without having ASAs. In addition, updated EPA modeling conducted for the 2024 Emissions Reduction & Reclamation Rule continues to support that total projected HFC consumption will be significantly lower than the limit established by the statutory phasedown cap for all years of the phasedown, assuming compliance with the restrictions.¹⁷ If HFC consumption is lower than the amount allowed under the AIM Act in a given year, there should be more allowances than are needed to meet market demand in that year.¹⁸ If demand for HFCs is lower than the cap, general pool consumption and production allowances, which are currently used to produce or import HFCs for entities that do not hold allowances and entities that use HFCs in an application-specific use, would be available to allow for the production or import of HFCs for use by entities that historically have relied upon ASAs. Together, these facts support the conclusion that the supply of HFC-134a is not insufficient to accommodate entities in this application.

In sum, HFC-134a is currently more widely available than other HFCs, demand for HFC-134a is decreasing, and defense sprays' need for HFC-134a is small compared to the overall demand for HFC-134a across a range of sectors. Further information regarding EPA's assessment of the supply of HFC-134a related to the needs of the defense sprays application can be found in the defense sprays chapter of the TSD. As a result of this review, EPA is finalizing the proposed determination that the

¹⁵ In alignment with the definition in 42 U.S.C. 7675 (b)(9), EPA defined reclaim as "the reprocessing of regulated substances to all of the specifications in appendix A to 40 CFR part 82, subpart F (based on Air-Conditioning, Heating, and Refrigeration Institute (AHRI) Standard 700-2016) that are applicable to that regulated substance and to verify that the regulated substance meets these specifications using the analytical methodology prescribed in section 5 of appendix A to 40 CFR part 82, subpart F" (40 CFR 84.3). Thus, HFC-134a refrigerant that is reclaimed and used by a different user than the original owner of the recovered refrigerant must meet the purity requirements of AHRI 700, *Standard for Specifications for Refrigerants*. That standard, among other things, requires that reclaimed HFC-134a must be visibly clean (that is, no visible solids or particulate), no more than 1.5 percent by volume of air in the vapor phase, no more than 10 parts per million of water by weight, and no more than 0.5 percent by weight of other volatile impurities.

¹⁶ See 2024 Emissions Reduction & Reclamation Rule's *Analysis of the U.S. Hydrofluorocarbon Reclamation Market: Stakeholders, Drivers, and Practices* report at <https://www.regulations.gov/document/EPA-HQ-OAR-2022-0606-0169>.

¹⁷ See HFC Phasedown RIA Addendum at <https://www.regulations.gov/document/EPA-HQ-OAR-2022-0606-0175>.

¹⁸ The actions taken pursuant to subsection (h) and (i) of the AIM Act did not propose to and did not accelerate the HFC phasedown. The RIAs associated with those actions did not analyze an acceleration of the HFC phasedown. Rather, HFCs will continue to be available consistent with the phasedown codified at 40 CFR part 84, subpart A, and this action does not propose to change that phasedown schedule. Even if the requirements finalized pursuant to subsections (h) and (i) in effect reduce the production or consumption of HFCs used in particular sectors or subsectors faster than the scheduled reductions under the AIM Act, that does not make those rules an acceleration under subsection (f).

criterion in subsection (e)(4)(B)(i)(II) is not met for this application beginning January 1, 2026, *i.e.*, the supply of HFC–134a is not insufficient to accommodate this application for the full five-year period from 2026–2030.

3. Final Determination on Application-Specific Allowance Eligibility

EPA co-proposed two renewal options for the defense sprays application—to not renew the eligibility for entities in this application to receive ASAs, such that the application is ineligible for ASAs beginning January 1, 2026, or to renew for two years, such that the application is ineligible to receive ASAs beginning January 1, 2028—and took comment on a full five-year renewal. EPA explained that these renewal options flowed out of how the Agency would land on a range of proposed determinations for the statutory criteria. Specifically, as described earlier in this section, EPA proposed that there would not be a safe and technically achievable substitute available for the entire application at the time of rule finalization, but a safe or technically achievable substitute would be available for the entirety of the defense spray application by January 1, 2028. EPA co-proposed two supply determinations: (1) the supply of HFC–134a is not insufficient to accommodate this application; or (2) the supply of HFC–134a will not be insufficient to accommodate this application as of January 1, 2028. EPA's co-proposals were based on uncertainty at the time of the proposed rulemaking, for which EPA expected to have additional information at the time of this final rulemaking that would inform a final determination. These co-proposals and the related information that supported each co-proposal are discussed in more detail earlier in this section and in the proposal.

EPA also took comment on a full five-year renewal based on and tailored only to the application's need to purchase HFC–152a. No defense spray ASAs have been expended for HFC–152a to date, but EPA asked for comment in the proposal on whether HFC–152a could be an available safe and technologically achievable substitute for the entire defense spray application within the renewal period. EPA explained that this proposed option, to renew allowances tailored to the application's need to purchase HFC–152a, could be relevant if HFC–152a was determined by EPA in the final rule to be an available safe and technologically achievable substitute for the entire defense spray application within the renewal period.

Comments on the proposed renewal options were all focused on availability of substitutes. EPA responds to these comments in section V.B.1. and section V.B.4. EPA is finalizing a determination that the criterion in subsection (e)(4)(B)(i)(II) is not met for this application beginning January 1, 2026. EPA is not making a final determination regarding the availability of substitutes in the context of ASAs, as described in more detail in section IV.B.3. Because the defense sprays application does not meet both criteria as of January 1, 2026 (*i.e.*, it fails to meet the insufficient supply criterion), EPA is finalizing that defense sprays are not eligible for ASAs beginning January 1, 2026.

4. Restriction Under 40 CFR Part 84, Subpart B

In this final rule, EPA is excluding defense sprays from the provisions of 40 CFR part 84, subpart B. Thus, under this final rule they can continue to be manufactured in the United States and imported into the United States using current propellants indefinitely.

The 2023 Technology Transitions Rule restricts the manufacture and import of aerosol products that use HFCs or HFC blends that have a GWP greater than 150. This restriction began January 1, 2025, for all aerosols except for those specifically listed in the rule as technical aerosols, which have manufacture and import restrictions starting January 1, 2028. Sectors and subsectors subject to the GWP limit are also subject to labeling, reporting and recordkeeping requirements. The listed technical aerosols are applications for which EPA received sufficient information through the comment period or through EPA's own analysis indicating that additional time is needed to transition to substitutes due to various technical requirements, such as non-flammability and/or a specific vapor pressure. The list of technical aerosols does not include defense sprays. The 2023 Technology Transitions Rule also exempted applications while they are receiving ASAs (40 CFR 84.56(a)(2)). If an application no longer qualifies for ASAs, the restrictions would then apply.

Most of the U.S. aerosol industry subject to the January 1, 2025, compliance date had already transitioned to using propellants that meet the 150 GWP limit as indicated in the information provided by industry and trade associations in the development of the 2023 Technology

Transitions Rule,¹⁹ and therefore has available substitutes for use based on EPA's consideration of the factors listed in subsection (i)(4)(B) (*e.g.*, technological achievability, commercial demands, safety, consumer costs, etc.). By contrast, the aerosol uses that have a January 1, 2028, compliance date (*see* 40 CFR 84.54(a)(16)(i)(A)–(O)) currently use HFC–134a (most often as a propellant) and have limitations that require additional time “to reformulate, test, and transition” to ensure availability of substitutes under subsection (i)(4)(B) for these technical uses. EPA determined in the 2023 Technology Transitions Rule that available substitutes for use as aerosol propellants include HFC–152a and HFO–1234ze(E).

In the proposed rule, EPA requested comment on treating defense sprays consistent with how technical aerosols are treated under 40 CFR part 84, subpart B and the codified restrictions that would therefore apply, such as the GWP limit starting January 1, 2028, a three-year sell-through window for inventory ending January 1, 2031, and labeling, recordkeeping, and reporting requirements. EPA also requested data and information related to the availability of substitutes for use in defense sprays and whether a different timeline would be more appropriate for the transition of defense sprays or for a subset of products in this application.

EPA received comments on the use of HFC–134a in defense sprays. First, commenters raised concerns about using a flammable propellant in law enforcement and military applications. These defense sprays could be used by law enforcement or military personnel in combination with a taser, which commenters stated poses a safety risk, as well as a cost to users to retrain personnel to mitigate these risks. The commenters requested an exemption for these uses until a non-flammable alternative propellant is available.

EPA received a comment requesting that the Agency provide additional time for compliance with the provisions of 40 CFR part 84, subpart B for bear sprays to transition to new alternatives. The commenter stated that new formulations of bear sprays must gain approval by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as well as every state where those products are sold. EPA also received comments from a defense spray

¹⁹ See Household and Commercial Products Association (HCPA) and National Aerosols Association (NAA) Technology Transitions Petition to EPA dated July 6, 2021. Available in the public docket to the 2023 Technology Transitions Rule at EPA-HQ-OAR-2021-0289-0037.

manufacturer and a propellant supplier stating that alternative propellants have been commercialized already and are effective in defense spray applications where flammability is not a concern, e.g., bear repellents.

EPA acknowledges these comments regarding the safety, efficacy, and availability of substitute propellants used in defense sprays. The Agency agrees that the circumstances in which law enforcement and military defense sprays may be used warrants proceeding with caution. Almost all currently identified substitutes to HFC-134a as a propellant are either flammable or mildly flammable. While dog sprays use compressed nitrogen gas, which is a non-flammable propellant, technical limitations limit its suitability for use in other types of defense sprays. For example, products using compressed nitrogen gas will steadily reduce in pressure as the contents of the aerosol are used, whereas liquified gas propellants maintain a more constant pressure. Apart from nitrogen gas, we are not aware of available non-flammable substitutes, nor active, in-process development of such substitutes. Of particular concern is that law enforcement or military use of defense sprays in combination with tasers would be applied directly at or on humans, heightening safety risks. We therefore agree with commenters that, at this time, there is no available substitute for the HFCs employed in defense sprays that can safely be used across all uses.

Therefore, the Agency is finalizing that defense sprays as defined in 40 CFR 84.3, are excluded from the provisions under 40 CFR part 84, subpart B because there are not available substitutes, per AIM Act section (j)(4)(B), across all defense spray applications. As such, defense sprays are not subject to the restrictions on the manufacture or import at 40 CFR 84.54(a)(16), and subsequent sale and distribution at 40 CFR 84.54(b). The labeling, reporting, and recordkeeping requirements are also not applicable. In other words, defense spray manufacturers will not have to comply with any of the 2023 Technology Transitions Rule aerosol requirements that would otherwise apply to them once they are no longer eligible for ASAs and can purchase HFC-134a to manufacture defense sprays the same way nearly all other entities purchase HFCs, *i.e.*, on the open market.

C. Structural Composite Preformed Polyurethane Foam for Marine Use and Trailer Use

The third application to which EPA has been allocating ASAs is SCPPU foam for marine and trailer uses, in accordance with subsection (e)(4)(B)(iv)(I)(cc) of the AIM Act. In the Allocation Framework Rule, EPA defined this application as “a foam blown from polyurethane that is reinforced with fibers and with polymer resin during the blowing process, and is preformed into the required shape (e.g., specific boat or trailer design) to increase structural strength while reducing the weight of such structures,” (40 CFR 84.3). SCPPU foam is different from other types of polyurethane (PU) foams due to its specialized structural properties, and it is preformed into required shapes (e.g., specific boat or trailer design). At the time of proposal, HFC-134a was the HFC used commercially in the blowing process for SCPPU foam. Transitions have developed such that at the time of this final rulemaking, HFC-152a, in addition to HFC-134a, is a regulated substance used in this application.

1. Availability of Safe and Technically Achievable Substitutes

With respect to the statutory criterion regarding availability of substitutes, EPA explained in the proposed rule that commercialization of substitutes is well underway in this application, and the Agency anticipated that the availability of substitutes would evolve significantly between the proposed and final rule. EPA noted that it would consider information collected from regulated entities and other relevant sources through public comment and regulatory reporting to inform a final decision on this criterion. At the time of proposal, EPA was aware, from manufacturer communications and reporting, of two substitutes under development for this application—an HFC-152a/cyclopentane blend and an HFO. Information from the manufacturers of SCPPU foam for marine and trailer uses suggested that the research and development phase for both potential substitutes could be nearing a phase where they would be able to commercialize use of substitutes. According to the information shared with EPA prior to the proposed rule, one substitute seemed close to being available for SCPPU foam for marine use, and the other substitute seemed close to being commercialized for SCPPU foam for trailer use. EPA noted that if commercialization occurred as the companies anticipated and as shared

with EPA, the entire application would be able to use a chemical or blend of chemicals different from HFC-134a before January 1, 2026. EPA proposed to determine that the HFO is not an available substitute application-wide for the five-year period of 2026–2030, given additional research and development trials would be needed along with a ramp up to commercialization, before the sub-application could possibly use the HFO as a substitute. With respect to the other substitute under development, EPA noted in its proposal that the Agency was unclear on why the HFC-152a/cyclopentane blend cannot be used across the whole application, and EPA invited comment on reasons why, including supporting data and information. EPA noted that often different companies use different blowing agents to produce the same foam, and that there are two different end uses in this application, but the foam used in both sub-applications is the same (*i.e.*, it is an SCPPU foam). EPA noted that it was not aware of any other safe and available alternatives other than an HFO and the HFC-152a/cyclopentane blend.

As noted earlier in this section, at the time of proposal, EPA explained that transitions were well underway in this application, and the Agency anticipated that the commercial processes used in this application could evolve significantly between the proposed and final rule. To that end, one commenter in the trailer sub-application stated that as of October 2024, the company had nearly completed a full transition to using the HFC-152a/cyclopentane blend and anticipated the transition to be finalized by early 2025 at the latest. On the basis of this statement, as well as regulatory reporting to EPA, the factual framework for the assessment of this application has shifted from the proposal in this final rulemaking. Specifically, EPA is now considering HFC-152a to be commercially used in the SCPPU foam application. Therefore, EPA will be assessing the SCPPU foam application in accordance with the review framework outlined in section IV., and specifically considering this application as one that uses two HFCs, instead of just one.

As described at the proposal, beside the HFC-152a/cyclopentane blend that EPA is now considering as an HFC used within this application for purposes of the analysis in this final rule, EPA only identified one other potential substitute to analyze with specificity in considering whether this application met the first statutory criterion for renewal. Specifically, EPA noted testing that had occurred within the application

for a potential transition to an HFO. EPA received comments from entities operating within the SCPPU foam application, both in the marine sub-application and trailer sub-application, that all agreed with EPA's proposal that HFOs are not a safe and technically achievable substitute available within the renewal period for this application. The entity operating within the trailer sub-application noted that they had completed nearly 190 trials over close to seven years, which were unsuccessful, regarding transition to an HFO. This is consistent with information EPA had on hand in developing the proposal. With respect to the sub-application for marine uses, multiple commenters raised skepticism about the availability of safe and technically achievable substitutes for the marine uses sub-application. One commenter in the SCPPU foams for marine uses sub-application noted that while it has been working with its key supplier on substitutes for several years, that work has been unsuccessful, and no viable substitute has been identified. The commenter stated that it has not invested heavily into pursuing HFOs as an alternative due to perceived risk of those chemicals being under state-level regulatory scrutiny. Another commenter, the supplier for the marine foams sub-application, provided detailed technical information on the challenges of HFOs as compared to HFC-134a. For example, they note "HFO-containing PU [foam] is much more challenging to formulate and process to reach the same level of processability even with adjustments to processing equipment due to the fact that all the components and chemistries such as polyols, surfactants, catalysts etc. are optimized for HFC blown formulations and processes." They noted the transition to HFOs will require "more time to optimize and scale for commercial use." Another commenter, a recreational marine trade associate, stated that while manufacturers are actively pursuing alternatives to HFC-134a, none of those alternatives are currently viable as they have not yet met the stringent technical and safety requirements for marine applications. No stakeholder operating within the application commented that a safe and technically achievable substitute is available in the application nor would be available within the renewal time period.

EPA acknowledges the support from the commenters of EPA's proposed determination that there is no HFO alternative that is or will be a safe and technically achievable substitute for this application within the renewal period.

To the extent commenters provided data to support this conclusion beyond what was included in the TSD for the proposed action, EPA has incorporated that information into the TSD accompanying this final action. Regarding commenters' allegation that considering transition to HFOs is inadvisable due to regulatory action related to per- and polyfluoroalkyl substances (PFAS), EPA notes that the federal government has not adopted a specific definition of PFAS and has not included HFCs or HFOs in any PFAS-related restrictions. Although EPA does not have a consensus definition of PFAS, the Agency has applied certain criteria or definitions to advance program-specific efforts in specific rules (see section 3.4 of the accompanying TSD). As was detailed in the proposed action and accompanying TSD, HFOs may eventually be considered a safe alternative that is otherwise technically achievable and available. However, for this particular application, as detailed in response to an earlier comment, the Agency is determining that HFOs are not available substitutes at this time.

Entities working within the marine sub-application also provided comments regarding a transition from HFC-134a to HFC-152a. However, given that EPA has updated its assessment in this final rule to consider HFC-152a a regulated substance used within the application, as opposed to a potential substitute subject to evaluation, these comments are not significant nor adverse to the action being taken here. However, EPA acknowledges the information provided by the commenter and will incorporate it into future Agency deliberations, as relevant and appropriate.

EPA is finalizing a determination that no safe or technically achievable substitute will be available for the SCPPU foams for marine and trailer uses application for the full five-year period from 2026–2030. Further information about EPA's determination regarding available substitutes for this application can be found in the proposed rule and the SCPPU foam chapter of the TSD.

2. Supply

As explained, entities manufacturing within the SCPPU foam application have historically used an HFC-134a formulation. Between EPA proposing this rule and its finalization, the application has changed such that the trailer sub-application is now using an HFC-152a formulation. Therefore, EPA is analyzing the supply of both HFCs in assessing whether this application meets the second criterion to be renewed as eligible for ASAs.

In the proposed rulemaking, EPA stated its assessment that this application may be able to use recovered and reprocessed HFCs supplied by chemical manufacturers. As a result, EPA did not limit its analysis to only virgin chemicals in assessing what supply of regulated substance may be available to this application at the proposal stage. EPA noted in the proposed rulemaking that it was not aware of any purity requirements or other regulatory restrictions that would prohibit the use of recovered and reprocessed HFCs in this application. However, EPA also noted in the proposed rulemaking that efficacy of blowing agents can be influenced by their composition and purity.

Comments on the use of recovered and reprocessed HFCs primarily focused on the challenges of using this material, but one commenter noted it is exploring using reclaimed HFCs. Commenters asserted that impurities can impact the efficacy of blowing agents. Specifically, commenters highlighted how oils can act as defoamers and that impurities can lead to "inconsistent foam formation and cell structure, which will result in products with inconsistent insulation performance, mechanical strength and integrity." One commenter stated how these inconsistencies might require changing formulation and process conditions with each batch of HFCs. Another commenter asserted their HFC supply must be free of impurities because otherwise the product would "likely be compromised, rendering the product ineffective and unusable," but did not provide any testing data or purity standards.

Reclaimed HFCs, the likeliest source of recovered and reprocessed HFC-134a, are required to be at a very high, but not 100 percent, purity (see footnote 15 in section V.B.). While no commenter suggested that these contaminants cannot be fully removed, EPA recognizes that it may be impractical or infeasible, as EPA is not aware of any purifiers for the SCPPU foams (or other) application that currently purify reclaimed HFC-134a, and commenters did not note any. As described in further detail below, EPA has determined to not incorporate any supply of used HFCs in its assessment of supply for this application at this time, given that inclusion of such used HFCs is not determinative of the supply outcome. However, EPA may take a different approach in future rulemakings and welcomes ongoing stakeholder input regarding the ability to use recovered and reprocessed HFCs for this application.

EPA proposed to determine either: (1) the supply of HFC-134a is not insufficient to accommodate this application; or (2) the supply of HFC-134a is not insufficient to accommodate this application as of January 1, 2028. As outlined in further detail in EPA's proposed rule and the accompanying TSD, HFC-134a is the most widely produced of all HFCs. There is substantial domestic and global production of HFC-134a. This application's demand for HFC-134a is very small compared to domestic consumption; allocated ASAs for this application in 2025 are equivalent to 0.2 percent of calculated domestic consumption of HFC-134a in 2024, on an MTEVe basis. In addition, global supply should remain substantial in comparison to this application's demand for HFC-134a. EPA had also noted in the proposed rulemaking that it was not aware of any purity requirements or other regulatory restrictions that would prohibit the use of recovered and reprocessed HFCs. However, EPA also noted in the proposed rulemaking that efficacy of blowing agents can be influenced by their composition and purity.

With respect to the supply of HFC-134a, one commenter stated uncertainty about the future availability of HFC-134a to meet the application's needs given the reduction in production and consumption allowances under the AIM Act. In response, EPA notes that the commenter did not provide any specific comments on the data EPA presented nor counter data to support a determination that the supply of HFC-134a will be insufficient to accommodate this application. As noted in section V.B., global production of HFC-134a is expected to continue for the foreseeable future. EPA also notes this application uses a very small amount of HFC-134a (the commenter characterized it as "infinitesimal") as compared to total domestic consumption. EPA notes this is further evidence that the large supply of HFC-134a is not insufficient to accommodate this application. Further, EPA responds that the commenter's concern does not align with Congress's direction to EPA to review all applications receiving ASAs at least every five years and instruction to consider the supply of regulated substances as part of a determination on whether to renew the eligibility of an application to continue to receive ASAs. In crafting this system, Congress knew that this review would occur against the backdrop of the overall phasedown in production and consumption of HFCs. While EPA

acknowledges the commenter's concern that the phasedown creates some uncertainty for an evolving HFC market, the best interpretation of the HFC supply criterion cannot be that it is always met simply because of the HFC phasedown occurring.

After considering comments received and reviewing additional data available regarding the supply of HFC-134a, EPA is finalizing a determination that supply of HFC-134a is not insufficient to accommodate the SCPPU foams application as of January 1, 2026. To take a conservative approach, EPA is not including recovered and reprocessed HFC-134a in its assessment of the available supply of HFC-134a to accommodate this application, given the potential concerns raised by commenters about the impacts of even small levels of impurities in the HFCs used as blowing agents. Due to the significant global production of virgin HFC-134a, the exclusion of recovered and reprocessed HFC-134a does not change EPA's conclusion regarding available supply of HFC-134a.

With respect to HFC-152a, EPA stated in the proposed rule that in light of uncertainty, EPA did not make a proposed determination about the supply of HFC-152a. EPA stated that the Agency could determine in the final rulemaking that supply of HFC-152a is not insufficient to accommodate the SCPPU foams for marine and trailer uses application for the full five-year period, is not insufficient as of January 1, 2028, or is insufficient for the entire renewal period. This was based on multiple facts regarding supply and demand of this chemical that are outlined in significant detail in the proposed rule and the TSD accompanying the proposal. Specifically, domestic production and imports of HFC-152a were substantial, with HFC-152a being produced in the second highest quantities domestically of any HFC and production equal to about 22 percent of U.S. HFC production by mass.²⁰ Domestic production capacity was also expected to increase by approximately 20 percent by mid-2024 due to one manufacturer's facility expansion, but EPA could not say with certainty at the time of proposal when that expansion would be complete.²¹ Overall, HFC-152a made up approximately 20 percent of total U.S. HFC consumption in 2022 on a mass basis. Domestic inventory of HFC-152a

equaled 3,228.4 MT of HFC-152a at the end of 2022, equivalent to about 10 percent of calculated consumption of HFC-152a that year. Demand, however, was less certain. For example, certain HFC restrictions that would take effect as of January 1, 2025, could increase demand for HFC-152a domestically for certain uses. HFC-152a has a GWP that is below all the GWP limits for sectors and subsectors subject to restrictions under 40 CFR part 84, subpart B. The 2023 Technology Transitions Rule identified HFC-152a as an available or potentially available substitute for foams, aerosols, motor vehicle air conditioning, and household refrigerators and freezers.²² While some of the affected sectors and subsectors transitioned to other substitutes (e.g., motor vehicle air conditioning, household refrigerators and freezers), there are subsectors where HFC-152a neat or in blends is a substitute, and it was unknown at the time of proposal if there would be any significant shift toward use of HFC-152a in 2025. EPA also noted that this application's demand for HFC-152a was minimal compared to global supply.

One commenter stated general uncertainty regarding the supply of HFC-152a related to the HFC phasedown. The commenter asserted with the 40% phasedown step in 2025 and the 70% stepdown in 2029, it is "very reasonable to assume that the supply of HFC-152a will be reduced by a similar degree." This commenter also highlighted their sub-application's growing demand for HFC-152a as compared to previous years.

EPA responds in a similar fashion as to the concerns raised regarding the supply of HFC-134a relative to the HFC phasedown, specifically that Congress could not have intended for the supply criterion to be meaningless in the face of the overall AIM Act phasedown of regulated substances. Additionally, EPA has analyzed data that has become newly available since the time of proposal related to supply of HFC-152a for this application. In 2023, domestic production of HFC-152a increased to 33,905.9 MT, about 26 percent of U.S. HFC production by mass. Preliminary data for 2024 shows that production remained similar in 2024, increasing slightly to 34,154.9 MT. The facility expansion that EPA described in the proposed rule has been completed. There is continued substantial global

²⁰ See <https://www.epa.gov/climate-hfcs-reduction/hfc-data-hub/expanded-hfc-data>.

²¹ See <https://www.chemours.com/en/news-media-center/all-news/press-releases/2023/chemours-announces-capacity-increase-of-hfc-152a-providing-reliable-domestic-supply-of-low-global-wa>.

²² See 2023 Technology Transitions Rule TSD "American Innovation and Manufacturing Act of 2020—Subsection (i)(4) Factors for Determination: List of Substitutes." This list is not exhaustive, so it is possible HFC-152a is an available alternative for other subsectors.

production of HFC-152a, which also supplies the U.S. market. Multiple entities imported HFC-152a in 2024, and imports have remained at significant levels. In 2024, entities imported a total of 5,886.5 MT, an approximately 8 percent decrease compared to 2023 imports and 1 percent increase compared to 2022 imports. Overall, HFC-152a made up approximately 22 percent of total U.S. HFC consumption in 2023 on a mass basis and 30 percent in 2024, approximately a 50 percent increase relative to 2022. These data trends taken together suggest that what the commenter termed as a reasonable assumption that HFC-152a supply will be reduced in amounts proportional to reductions in the HFC production and consumption caps appears to be incorrect.

In addition to considering the comment filed on this issue, EPA analyzed two additional years of reported data since the publication of the proposed rulemaking to determine how the new information impacts EPA's proposed determinations regarding the supply of HFC-152a. Despite the increase in domestic production and imports, there are factors that limit supply of HFC-152a. Inventory of this chemical is substantially lower than that of other HFCs, such as HFC-134a. At the end of 2024, suppliers held just 5,650.4 MT of HFC-152a in domestic inventory, which is equivalent to approximately 15 percent of calculated consumption of HFC-152a in 2024. A lack of available inventory could indicate increased use in this market as the phasedown progresses as compared to HFCs where there is more inventory available, such as for HFC-134a.

In addition, there is continued uncertainty regarding the demand for HFC-152a as other manufacturers transition. As noted earlier in the section, HFC-152a has a GWP that is below all the GWP limits for sectors and subsectors subject to restrictions under 40 CFR part 84, subpart B. At the time of this final rulemaking, it is still not known if there will be a significant shift toward use of HFC-152a neat or in blends. The continued global HFC phasedown could encourage a shift to lower GWP HFCs, like HFC-152a, and Technology Transitions restrictions may also result in some sectors transitioning to HFC-152a. EPA's Vintaging Model shows a projected decreased demand for HFC-152a in the coming years, but, as described above, consumption of HFC-152a has been increasing, suggesting an increased demand for HFC-152a, potentially in new blends. This differing information and projections further

highlight the uncertainty regarding the near-term market demand for HFC-152a as a substitute. In addition, EPA is also aware that HFC-152a is used as a feedstock to produce other chemicals, which could contribute to variations in demand for HFC-152a for use as a feedstock. In sum, while there is currently a reasonably large supply of HFC-152a that is expected to increase over the coming years relative to other HFCs, there is significant uncertainty around supply and demand for HFC-152a. As a result of this uncertainty, EPA is finalizing a determination that the supply of HFC-152a is insufficient to accommodate the SCPPU foams for marine and trailer uses application for the full five-year period from 2026–2030, *i.e.*, the criterion in section (e)(4)(B)(i)(II) is met for HFC-152a.

3. Final Determination on Application-Specific Allowance Eligibility

In light of the range of outcomes EPA proposed regarding its determinations on whether the criteria in subsection (e)(4)(B)(i)(I) and (II) are met, EPA proposed three potential outcomes on whether and how SCPPU foam for marine and trailer uses may be eligible for future ASAs: (1) not eligible to receive ASAs; (2) eligible to receive calendar year 2026 and 2027 ASAs; and (3) eligible to receive ASAs for the five-year period of calendar years 2026–2030 with allowance amounts determined based on the EV of HFC-152a. EPA also took comment on SCPPU foam for marine and trailer uses eligibility to receive ASAs consistent with the current approach through calendar year 2030. EPA also noted that it could finalize different outcomes based on how the transition to substitutes progressed between the proposal and rule finalization.

Comments regarding the proposed renewal determinations were mixed. Two commenters supported a full five-year renewal without restriction on how allowances are calculated; one of these commenters, a manufacturer of SCPPU foam for marine uses, requested renewal for the full five-year period for HFC-134a because it would be unable to comply with the relevant Technology Transitions restrictions if it was not eligible for ASAs. Another commenter supported a five-year renewal with allowance amounts determined based on the EV of HFC-152a but also supported no restriction on allowance calculations. One commenter supported a two-year renewal ending January 1, 2027.²³ Finally, one commenter

supported a hybrid approach—a two-year renewal with no restriction on allowance calculations and renewal for the remaining three years with allowance amounts determined based on the EV of HFC-152a—based on availability of alternatives.

Based on the analysis provided in the prior subsections, as further detailed in the TSD accompanying this final action, EPA is finalizing determinations that the SCPPU foams for marine and trailer uses application meets both criteria in subsection (e)(4)(B)(i) for the full five-year renewal period. As such, EPA is finalizing to renew the eligibility of entities using regulated substances for SCPPU foams for marine and trailer uses application for the five-year period of calendar years 2026 through 2030. Regarding the commenter's request for a full five-year renewal for HFC-134a so as to not be held to relevant Technology Transitions restrictions, EPA's decision to finalize a renewal addresses this comment; because this application is eligible for ASAs through 2030, it will continue to be exempt from relevant Technology Transitions restrictions through at least 2030.

D. Etching of Semiconductor Material or Wafers and the Cleaning of Chemical Vapor Deposition Chambers Within the Semiconductor Manufacturing Sector

EPA has been allocating ASAs for regulated substances used for the etching of semiconductor material or wafers and the cleaning of CVD chambers within the semiconductor manufacturing sector in accordance with subsection (e)(4)(B)(iv)(I)(dd) of the AIM Act. In the Allocation Framework Rule, EPA defined “etching” in the context of semiconductor manufacturing as “a process type that uses plasma-generated fluorine atoms and other reactive fluorine-containing fragments that chemically react with exposed thin films (*e.g.*, dielectric, metals) or substrate (*e.g.*, silicon) to selectively remove portions of material. This includes semiconductor production processes using fluorinated GHG reagents to clean wafers,” (40 CFR 84.3). EPA defined “chemical vapor deposition chamber cleaning” (hereafter referred to as “chamber cleaning”) in the context of semiconductor manufacturing as “a process type in which chambers used for depositing thin films are cleaned periodically using plasma-generated fluorine atoms and other reactive fluorine-containing fragments,” (40 CFR 84.3). At the time of this final rule, EPA is aware of three

²³ EPA notes a two-year renewal period, as EPA co-proposed, would end January 1, 2028, so EPA is

interpreting this comment as being consistent with EPA's co-proposal.

HFCs that are used for this application in manufacturing. HFC-23 is commonly used for selective dry etching of silicon dioxide (SiO₂) and silicon nitride (SiN), while HFC-32 and HFC-41 are used in high-aspect-ratio hole etching. HFC-23, HFC-32, and HFC-41 may also be minimally used in chamber cleaning processes.

EPA proposed to determine that this application met both statutory criteria for the full five-year renewal period. Specifically, EPA proposed to find that, through calendar year 2030, (1) no safe or technically achievable substitute will be available for the etching of semiconductor material or wafers and the cleaning of CVD chambers within the semiconductor manufacturing sector; and (2) that the supply of regulated substances that manufacturers and users are capable of securing from chemical manufacturers is insufficient to accommodate this application. Therefore, EPA proposed to renew the eligibility of entities using regulated substances for the defined semiconductor application to receive ASAs for the five-year period of calendar years 2026 through 2030.

1. Availability of Safe and Technically Achievable Substitutes

With respect to whether safe and technically achievable substitute(s) are or will be available for this application, EPA explained in the proposed rule that while there are a number of alternative chemicals currently used for etching and chamber cleaning in semiconductor manufacturing, EPA proposed to not consider any of these chemicals to be safe and technically achievable substitutes based on consideration of these chemicals having some or a combination of higher GWPs, higher emission rates (also referred to as lower utilization rates in this application), or higher toxicity than the HFCs for which ASAs are currently used. EPA also identified other compounds that are being studied for use in etching and chamber cleaning, and are either not yet technically achievable or are not considered safe. All the details of EPA's assessment regarding substitutes can be found in the proposed rule and accompanying TSD.

Some commenters were supportive of EPA's proposed determination that there will be no available safe and technically achievable substitutes for the semiconductor application by the end of the renewal period. One commenter encouraged EPA to consider gas use, gas utilization, and byproduct generation rates within its evaluation of alternatives' technical feasibility. The commenter noted that within the

semiconductor application, gases have different utilization and byproduct emission factors, citing 40 CFR part 98, subpart I: Mandatory Greenhouse Gas Reporting: Electronics Manufacturing tables I-3 through I-7.

EPA acknowledges these comments in support of the Agency's proposed determination regarding availability of safe and technically achievable substitutes. When the commenter references "gas use," they do not specify what they mean by this phrase. EPA understands that this term could mean gas consumption (*i.e.*, the quantity of each gas used for a particular process), how the gas is used (*i.e.*, for which processes or technologies), or some other meaning. The Agency reviewed a variety of sources in developing its assessment of substitutes, some of which included consideration of the factors listed by the commenter. For example, the TEAP's MCTOC 2022 Assessment report considers utilization rates and byproduct generation in its review. The Agency did not consider many of the potential alternatives listed in the MCTOC 2022 Assessment report as available substitutes. As one example, EPA did not consider saturated perfluorocarbons (PFCs) as a technically available and safe substitute for this application for a variety of reasons, including that they have relatively low gas utilization rates. Based on the data at hand and the information available to the Agency at the time, EPA has not identified any substitute or substitutes that could be considered an available alternative under EPA's definition of a "safe and technically achievable substitute." EPA may consider additional factors in the review of their potential substitute chemicals in future reviews, including the ones cited by the commenter, as additional data becomes available.

One commenter stated that there has been "promising work" demonstrating low-GWP, affordable alternative recipes that do not include HFC-23, HFC-32, and HFC-41 and these alternative recipes would not introduce use of substances that may be considered PFAS. The commenter added that in-house testing at semiconductor manufacturers has lagged as limited incentives exist, and that providing a five-year renewal will further disincentivize the semiconductor industry from developing lower-GWP etch processes using alternative etch molecules. The commenter said an incentive for the semiconductor industry to proactively demonstrate the "HVM performance" (EPA understands the commenter to mean high volume manufacturing in their use of the

acronym HVM) of alternative, lower-GWP etch recipes replacing HFC-23, HFC-32, and HFC-41 should be provided, which they suggest could be done by limiting the renewal to one year.

While the commenter has stated that there is promising work in the development of alternative etch chemistries, the commenter has not provided specific data to inform EPA's determination regarding whether there are substitutes available for this application now. As explained elsewhere in this section and detailed in the TSD accompanying this final rule, EPA has analyzed all available information in coming to a determination that substitutes are not available for this application. The commenter suggests that EPA could renew this application for only a single year to incentivize the HVM performance of alternative, lower-GWP etch recipes to replace HFC-23, HFC-32, and HFC-41, but does not provide any data to support such an outcome, *i.e.*, that substitutes will become available within a year and therefore both statutory criteria for renewal are no longer met. EPA invites the commenter to review section IV. of this rule for more information about how EPA is making decisions regarding application eligibility, including the determination of how long an application will be eligible to receive ASAs.

Another commenter stated that EPA's proposed determination that there is no substitute available for HFC-23 deserves close attention. The commenter stated that the Agency should not wait five years to re-visit the determinations for the availability of substitutes for HFC-23. The commenter asserted that lower-GWP, affordable alternatives to HFC-23 have been demonstrated in various semiconductor applications. The commenter, a chemical manufacturer, described efforts to collaborate with a partner on an unspecified near-zero GWP alternative for use in this application. According to the commenter, this chemical has been demonstrated for etching and is ready for use in the field. The commenter expressed that with its high GWP and incomplete destruction resulting in potent emissions, the stakes are particularly high for the continued use of HFC-23, and the Agency should not be incentivizing its continued use. The commenter quotes AIM Act subsection (e)(4)(B)(v), which directs EPA to review applications "not less frequently than once every 5 years" and suggests that EPA is free to review the applications more frequently than every five years.

In response to the commenter regarding the availability of potential substitutes for HFC-23, while the commenter has stated that a near-zero GWP alternative has been demonstrated for etching and chamber cleaning use and is ready for use in the field, their comment indicates this alternative has not been commercialized or otherwise adopted by the semiconductor industry. EPA met with the commenter to further discuss the status of the alternative and determined that the alternative would not replace all uses of HFC-23 for etching. Even if this alternative were to become available as an HFC-23 substitute within the next five years, EPA still has not identified substitutes that would meet the substitute criteria on an application-wide basis. As described earlier in this section and finalized in section IV.A., determinations on whether a substitute is available and whether the statutory criterion is met are made on an application-wide basis. Therefore, if EPA agreed with the commenter's statements and could determine that an alternative would be available for HFC-23 within the five-year renewal period, there still is no evidence that there would be an available substitute for the entire application. EPA responds to the comment regarding the frequency of review of these applications in section IV.C.

In addition to the information provided by the commenters, EPA also reviewed existing sources of information for potential updates on the Agency's assessment of whether substitutes are available for this sector. EPA found no significant updates, which is outlined in more detail in the TSD accompanying this final rule. Therefore, for the reasons outlined, EPA is finalizing the determination that no safe or technically achievable substitute will be available for the etching of semiconductor material or wafers and the cleaning of CVD chambers within the semiconductor manufacturing sector for at least the next five years.

2. Supply

HFC-23, HFC-32, and HFC-41 are all currently used in the etching of semiconductor material or wafers and the cleaning of CVD chambers within the semiconductor manufacturing sector. As described earlier in section IV.B. of the preamble, EPA is finalizing the approach described in the proposed rule to determine that an application meets the supply criterion if EPA determines that any of the HFCs currently used in an application's equipment or to manufacture the application's products for use have

insufficient supply. EPA proposed to determine that the supply of HFC-23 and HFC-41 are insufficient to accommodate the application. Therefore, EPA proposed to determine that supply of the regulated substance that manufacturers and users are capable of securing from chemical manufacturers is insufficient to accommodate this application through calendar year 2030.

In the proposed rulemaking, EPA noted that it is not aware of why reclaimed HFCs cannot be purified to industry specifications and invited comment on the topic. EPA noted that of the three HFCs utilized by the semiconductor industry, only HFC-23 and HFC-32 were reclaimed in 2022 and thereby could be a source of supply for this application, though the amount of reclaimed material is small. In addition, EPA noted that it is possible to capture the unreacted process gases used in semiconductor manufacturing, but the reclamation of fluorinated gases from the semiconductor manufacturing process is not currently economically viable.

One commenter stated that reclaimed refrigerants cannot be used to supply the semiconductor industry, stating that both purity and chemical consistency of each batch of HFCs are critical, and accordingly each HFC source must be approved by purifiers and/or semiconductor customers and a consistent chemical fingerprint must be demonstrated. The commenter added that this assures purifiers that they will be able to effectively and economically produce material for the semiconductor industry, and it assures fabrication plants they will not be introducing unexpected contaminants to their processes. The commenter further asserted that reclamation cannot offer the same consistency between each batch. The commenter added that many different sources, with many different impurities, may contribute to reclaimed HFCs, and this complicates the purification process, making it more expensive, and puts semiconductor fabrication plants at risk. They concluded that it would thus be inappropriate for EPA to include reclaimed material in assessing availability of HFCs for the semiconductor sector pursuant to the ASA program. Another commenter described similar challenges associated with purifying HFC-23 from semiconductor fabrication facility recapture. The commenter stated that virgin HFC material contains known purities, and that purification and distillation processes are therefore calibrated to handle these predefined

impurity levels. These purification methods are able to purify HFC-23 to a quality of 99.999% with stable metrology solutions for monitoring. Conversely, the commenter cited challenges with purifying HFC-23 from semiconductor fab recapture, including the variation in the concentration of HFC-23 and other molecules between tools, the variability in the chamber effluent output across tools, the low concentrations of HFC-23 in effluent gas due to dilution from other substances introduced downstream to sweep impurities, and cost-effectiveness issues associated with removal of toxic substances and movement of the gases.

EPA notes that these two commenters are describing concerns related to recovered HFCs from two different pathways—the purification of generally reclaimed gas and the recapture of HFC-23 from a semiconductor fab facility. However, commenters raised similar concerns with both types of material, and therefore EPA is responding to the comments in a single response. EPA notes that the commenters state that purification and subsequent use of reclaimed HFC material at this time may not be feasible for the purposes of semiconductor manufacturing due to quality control concerns in addition to the other technical and cost limitations outlined in these comments. EPA has added this information to the TSD. In addition, EPA notes that the quantities of reclaim available for these specific HFCs are currently very small and may be limited. In 2024, only HFC-23 and HFC-32 were reclaimed in small quantities, and there were no quantities of reclaimed HFC-41 reported. EPA also acknowledges that the reuse of such material in etching and chamber cleaning may not be feasible at this time due to concerns regarding variability in recaptured HFC-23 material and cost concerns associated with purification of this material to a level of purity high enough for the semiconductor industry. As described in further detail below, EPA has determined to not incorporate any supply of used HFCs in its assessment of supply for this application at this time, given that inclusion of such used HFCs is not determinative of the supply outcome. However, EPA may take a different approach in future rulemakings and welcomes ongoing stakeholder input regarding the ability to use recovered and reprocessed HFCs in this application.

With respect to HFC-23, in the proposed rule, EPA evaluated 2022 data. Domestic producers produced approximately 1,049.3 MT of HFC-23. 876.2 MT were subsequently destroyed,

and one producer sold 5.2 MT of HFC-23 for consumptive uses. In addition, there were about a half dozen entities that imported HFC-23 with total amount of imports equaling 125 MT. In the proposed rule, EPA explained that there is particular uncertainty for HFCs with a more limited number of production facilities and/or higher GWPs than other regulated HFCs. In addition, EPA noted in the proposed rule that the demand for HFC-23 from the semiconductor manufacturing application is large relative to the annual consumption of HFC-23. In 2022, semiconductor ASA holder purchases of HFC-23 accounted for about 76 percent of calculated consumption of HFC-23. At the end of 2022, suppliers held 301 MT of HFC-23 in domestic inventory; not all of this HFC-23 may be considered available supply for purposes of this analysis, as the entities holding this material in inventory may be broader than EPA's interpretation of chemical manufacturers (see section IV.B. for more information).

One commenter requested that the Agency revisit the determination for HFC-23 on insufficient supply. Citing numbers from the TSD, the commenter stated that ASA allowance holders acquired only approximately 59 MT of HFC-23 in both 2022 and 2023 compared to the approximate calendar year 2022 values from domestic producers of 1,000 MT produced and 880 MT destroyed. The commenter concluded that with the potential available supply far exceeding the semiconductor demand, it was difficult for it to see how the amount of HFC-23 available from manufacturers is insufficient.

EPA responds that domestic producers generate HFC-23 in the United States exclusively as an unintended byproduct of other chemical production. Quantities of byproduct HFC-23 are not necessarily equivalent to supply of HFC-23 that could be available for use in semiconductor manufacturing due to technical and economic constraints. EPA's understanding is that most facilities that produced HFC-23 in the United States generated HFC-23 in low concentrations in operations that are not designed to, and in some cases cannot, isolate and process the HFC-23 into a viable product. These quantities are destroyed or emitted. Therefore, without alterations to the equipment and processes run at these facilities, HFC-23 produced cannot always be made available for consumptive uses. Additional information regarding the unique aspects of by-production of

HFC-23 can be found in the TSD accompanying this final rule. Therefore, EPA considered the quantities of HFC-23 produced for consumptive uses (5.2 MT in 2022) when considering domestic production figures for the supply analysis at proposal. EPA also considered factors like the limited number of importers.

In addition to considering information provided by the commenters, EPA analyzed two additional years of reported data that became available since the publication of the proposed rulemaking to determine how the new information impacts EPA's proposed determinations. The 2023 and 2024 data confirm many of the supply constraints described in the proposed rulemaking. The number of producers and importers remained similar in 2024 compared to 2022 and 2023. Production for consumptive uses increased to 9.3 MT in 2024 from 6.2 MT in 2023. Virgin imports of HFC-23 decreased, from 127.0 MT in 2023 to 91.6 MT in 2024. In 2024, reported semiconductor ASA holder purchases of HFC-23 were 1.3 times higher than calculated U.S. consumption overall of HFC-23, compared to 2023, where purchases represented about 73 percent of calculated consumption. There was about a 2 percent increase in the quantity of HFC-23 held in inventory at the end of the year in 2024 compared to 2023, while exports of virgin HFC-23 increased by about 11 percent.

EPA also analyzed the supply of HFC-32 in the proposed rule. In 2022, there was one domestic producer of HFC-32 and over a dozen entities that imported HFC-32. The use of HFC-32 in the semiconductor manufacturing application is small compared to the annual consumption of HFC-32. In 2022, semiconductor ASA holder purchases of HFC-32 accounted for less than 0.035 percent of calculated consumption of HFC-32. At the end of 2022, suppliers held 20,908 MT of HFC-32 in domestic inventory, which is equivalent to about 78 percent of calculated consumption of HFC-32 in 2022; similar to considerations for supply of HFC-23 and for other applications, not all of this inventory may be considered available. EPA also considered the impact other regulatory actions may have for the available supply of HFC-32. As described in more detail in the proposed rule, EPA stated that the overall market for HFCs is likely to continue changing in light of AIM Act and potentially shifts to HFC-32 neat or in blends, and thus there is particular uncertainty regarding demand for HFC-32.

One commenter stated that EPA's assessment of the available supply of HFC-32 for semiconductors must account for continued demand in the refrigerant sector. The commenter added that unlike the proposed rule, which found "particular uncertainty" regarding the HFC-32 market, the commenter projected robust demand in the refrigerant sector for the foreseeable future, as several original equipment manufacturers have selected HFC-32 as a standalone refrigerant to replace R-410A. Additionally, they said that HFO/HFC blends needed to replace higher-GWP materials will utilize HFC-32 in significant quantities, which would thus indicate a growing need for HFC-32 into the 2030s.

EPA notes the commenter projection of robust demand for HFC-32 and identification of certain drivers of this demand, and the Agency has incorporated the information into the TSD accompanying this final rule, as appropriate.

Additionally, EPA has analyzed data that has become newly available since the publication of the proposed rule related to the supply of HFC-32 for this application. The 2023 and 2024 data confirm many of the supply considerations described in the proposed rulemaking of HFC-32. The number of producers and importers decreased in 2024 compared to 2023, and the production of HFC-32 decreased by about 22 percent to 17,558.8 MT from 2023 to 2024. By 2024, HFC-32 accounted for 17 percent of all U.S. production. U.S. consumption of HFC-32 decreased nearly 30 percent from 37,870.3 MT in 2023 to 27,782.1 MT in 2024. Exports of virgin HFC-32 increased by nearly 67 percent from 2023 (1,660 MT) to 2024 (2,773 MT). Suppliers held 21,174 MT of HFC-32 in domestic inventory at the end of 2024, which is equivalent to 76 percent of 2024 calculated consumption of HFC-32. In 2024, semiconductor ASA holder purchases of HFC-32 accounted for about 0.03 percent of calculated consumption of HFC-32, an increase from about 0.02 percent from the previous year. There is continued substantial global production of HFC-32, which also supplies the U.S. market. Multiple entities continued to import HFC-32 in 2024, and imports have remained relatively high. In 2024, entities imported a total of 13,000.4 MT, an approximately 24 percent decrease from 2023 imports but 31 percent increase over 2022 imports.

As noted in the proposed rule, there is continued uncertainty regarding the demand for HFC-32 as the overall market for HFCs is likely to continue

changing in light of AIM Act and market shifts to HFC-32 and HFC blends. The 2023 Technology Transitions Rule set a GWP threshold of 700 for certain sectors and subsectors. HFC-32 has a GWP of 675 and may be a suitable alternative in those sectors and subsectors which could result in increased demand. For other sectors and subsectors where other HFCs, HFC blends, or non-HFCs (e.g., HFC-152a, HFO-1234yf) are used, the GWP threshold is lower (e.g., 300, 150). The first set of restrictions under the 2023 Technology Transitions Rule have compliance dates of January 1, 2025, with additional later compliance dates. Additionally, the final 2024 Emissions Reduction and Reclamation Rule could also affect the use and availability of new and reclaimed HFC-32. EPA's Vintaging Model shows consistent levels of demand for HFC-32 through 2030, but, as described above, consumption of HFC-32 has been increasing, suggesting an increased demand for HFC-32. This differing information further highlights the uncertainty regarding the overall market for HFC-32. In sum, while there is currently a reasonably large supply of HFC-32 that is expected to increase over the coming years relative to other HFCs, there is significant uncertainty around supply and demand for HFC-32.

EPA analyzed the supply of HFC-41 in 2022 in the proposed rule. There was one domestic producer of HFC-41 and multiple entities that imported HFC-41. The use of HFC-41 in the semiconductor manufacturing application is moderately large compared to the annual consumption of HFC-41. In 2022, semiconductor ASA holder purchases of HFC-41 accounted for 21 percent of calculated consumption of HFC-41. At the end of 2022, suppliers held 27 MT of HFC-41 in domestic inventory, which is equivalent to about 60 percent of calculated consumption of HFC-41 in 2022; as noted for the supply of HFC-23 and HFC-32 and for other applications, not all of this inventory may be considered available. EPA did not receive any comments regarding the supply of HFC-41.

The 2023 and 2024 data regarding the supply of HFC-41 confirm many of the supply constraints described in the proposed rulemaking. The number of producers and importers remained the same in 2024 compared to 2023. Production of HFC-41 decreased about 24 percent from 2023 to 2024 while virgin imports decreased by about 1 percent in the same time period. In 2024, semiconductor ASA holder purchases of HFC-41 accounted for about 95 percent of calculated

consumption of HFC-41, nearly equivalent to the previous year. Exports of virgin HFC-41 decreased by about 14 percent, and there was a 17 percent increase in the quantity of HFC-41 held in inventory at the end of the year from 2023 to 2024.

Due to the reasons outlined here, EPA is finalizing the determination that at least the supply of HFC-23 and HFC-41 is insufficient to accommodate the application.

3. Final Determination on Application-Specific Allowance Eligibility

EPA proposed to renew the eligibility of entities using regulated substances for the defined semiconductor application to receive ASAs for the five-year period of calendar years 2026 through 2030. Several commenters were generally supportive of the proposed determination to renew the eligibility of entities in the semiconductor application to continue receiving ASAs for the full five-year period of calendar years 2026 through 2030.

EPA is finalizing as proposed the determination that no safe or technically achievable substitute will be available for the semiconductor application and that supply of the regulated substance that manufacturers and users are capable of securing from chemical manufacturers is insufficient to accommodate the semiconductor application through calendar year 2030. Therefore, EPA finalizing the proposal to renew the eligibility of entities using regulated substances for the defined semiconductor application to receive ASAs for the five-year period of calendar years 2026 through 2030.

E. Mission-Critical Military End Uses

EPA has been allocating ASAs for regulated substances used for MCMEU in accordance with subsection (e)(4)(B)(iv)(I)(ee) of the AIM Act. In the Allocation Framework Rule, EPA defined "mission-critical military end uses" as "those uses of regulated substances by an agency of the Federal Government responsible for national defense which have a direct impact on mission capability, as determined by the U.S. Department of Defense (DOD), including, but not limited to uses necessary for development, testing, production, training, operation, and maintenance of Armed Forces vessels, aircraft, space systems, ground vehicles, amphibious vehicles, deployable/expeditionary support equipment, munitions, and command and control systems," (40 CFR 84.3).

EPA proposed to renew eligibility for DOD to receive MCMEU ASAs for the five-year period of calendar years 2026

through 2030. EPA proposed to determine "that the requirements described in subclauses (I) and (II) of clause (i) are met" in accordance with the requirements of 42 U.S.C. 7675(e)(4)(B)(v)(II). Specifically, EPA proposed to determine that no safe or technically achievable substitute will be available for the entirety of the application and that the supply of the regulated substance that manufacturers and users are capable of securing from chemical manufacturers is insufficient to accommodate the application through calendar year 2030. EPA is aware that there are various end uses that DOD considers mission-critical, and DOD uses different HFCs across these end uses. The docket for this rulemaking includes technical reports in which DOD identifies indicative uses of regulated substances which DOD has deemed to be mission-critical. In the proposed rule, EPA outlined its analysis relative to these uses underpinning the proposed determination that technically achievable and safe substitutes do not exist across the entirety of this application. EPA also outlined its assessment of HFCs that have been used by DOD for mission-critical purposes where EPA proposed to determine that there was insufficient supply to accommodate the application. EPA also described in the proposal how this application is more fluid in terms of which particular HFC uses fall within the application, and DOD may change which end uses it determines to be mission-critical over time. DOD has informed EPA that it will continue to need HFCs for mission-critical end uses through at least 2030.

One commenter supported EPA's proposal to renew eligibility for the MCMEU application for the five-year period from 2026 through 2030. EPA did not receive any adverse comments on its proposal to renew the eligibility of this application for ASAs or on the assessments outlined at the time of proposal to underpin that proposed outcome. EPA is not aware of any developments in the identification of safe and technically achievable substitutes to the currently used HFCs for mission-critical end uses. For the supply criterion, EPA evaluated HFCs used by DOD in its assessment of other applications and has determined that the supply of some of these HFCs is insufficient to accommodate the application. For example, in the evaluation of supply for the onboard aerospace fire suppression application, EPA is finalizing the determination that the supply of HFC-227ea is insufficient to accommodate the application. This is

in addition to the unique restrictions that apply to the Defense Logistics Agency and DOD purchasing requirements that impact the available supply of HFCs to DOD for MCMEU. Therefore, EPA is finalizing renewal through the entire period for the MCMEU application as proposed.

F. Onboard Aerospace Fire Suppression

EPA has been allocating ASAs for regulated substances used for onboard aerospace fire suppression in accordance with subsection (e)(4)(B)(iv)(I)(ff) of the AIM Act. In the Allocation Framework Rule, EPA defined “onboard aerospace fire suppression” as the “use of a regulated substance in fire suppression equipment used on board commercial and general aviation aircraft, including commercial-derivative aircraft for military use; rotorcraft; and space vehicles. Onboard commercial aviation fire suppression systems are installed throughout mainline and regional passenger and freighter aircraft, including engine nacelles, auxiliary power units (APUs), lavatory trash receptacles, baggage/crew compartments, and handheld extinguishers,” (40 CFR 84.3). At the time of proposal, EPA was aware of only one area, lavatory trash receptacles, in which HFCs are used in commercial aviation. For military uses, HFCs have been used in engine nacelles, APUs, and a streaming application (*i.e.*, a portable extinguisher).²⁴ In addition to HFC uses in commercial and military aviation, EPA is aware that HFCs have limited usage in general aviation, which consists of private and/or business aircraft. HFC-227ea is the only HFC for which onboard aerospace fire suppression ASAs have ever been expended.

In the proposed rulemaking, EPA proposed to determine that no safe or technically achievable substitute will be available for the entirety of onboard aerospace fire suppression. While EPA suggested in the proposed rulemaking that 2-bromo-3,3,3-trifluoropropene (2-BTP) is a safe and technically achievable substitute for portable extinguishers, EPA did not identify a safe and technically achievable substitute available for other HFC uses including for lavatory trash receptacle systems, engine nacelles, or APUs. EPA

also proposed that supply of the regulated substance that manufacturers and users are capable of securing from chemical manufacturers is insufficient to accommodate the application through calendar year 2030. Therefore, EPA proposed to renew the eligibility of entities using regulated substances for onboard aerospace fire suppression to receive ASAs for the five-year period of calendar years 2026 through 2030.

EPA only received one comment regarding EPA’s proposal. The commenter supported EPA’s proposal to renew the application for the full five years but did not provide any additional data that could be used to inform EPA’s analysis on the two statutory criteria.

EPA is not aware of any additional information since the publication of the proposed rule that would alter the Agency’s analysis of the substitutes criterion that was presented in the proposed rule and accompanying TSD. For the Agency’s assessment of the supply criterion, as explained in section IV.B., EPA is individually evaluating each HFC for which ASAs are being expended. HFC-227ea is the only regulated substance for which onboard aerospace fire suppression ASAs have been expended to date. Therefore, in this final rule EPA only considered the supply of HFC-227ea in assessing whether the onboard aerospace fire suppression application meets the statutory criteria for renewed eligibility for ASAs. EPA analyzed two additional years of reported data since the publication of the proposed rulemaking to determine whether the new data supports EPA’s proposed determination that the supply of HFC-227ea is insufficient to accommodate the application. The 2023 and 2024 data confirm many of the supply constraints on HFC-227ea described in the proposed rulemaking. Production of HFC-227ea has remained fairly even since 2022, while the quantity imported has declined year over year from 494.3 MT in 2022 to 50.7 MT in 2024. Suppliers also held less HFC-227ea in inventory at the end of 2024 than either of the previous two years, dropping from a high of 1,173.3 MT in 2023 to 744.0 MT in 2024. The supply chain for HFC-227ea remains more fragile than supply chains for other HFCs given it has one of the highest EVs of the regulated HFCs and there are a limited number of producers in the United States and abroad.

Consistent with the analysis completed for the proposed rule and

described in more detail in the TSD, EPA is finalizing renewed eligibility for the full five-year period from 2026 to 2030 as proposed.

VI. What are the requirements associated with a petition to be listed as an application that will receive application-specific allowances?

The Agency proposed a procedural framework for a petition filed pursuant to 42 U.S.C. 7675(e)(4)(B)(ii) requesting the designation of an application as eligible for ASAs. Subsection (e)(4)(B)(ii) outlines requirements that apply if the Administrator receives a petition requesting consideration of eligibility for ASAs. In the event a complete petition is received, the Agency would make a determination on whether to designate the application as eligible for ASAs after considering the criteria listed in subsection (e)(4)(B)(i). The AIM Act specifies a timeline by which the Agency must consider these petitions. Within 180 days, the Agency must make the complete petition available to the public and propose and seek comment on whether to designate the application as eligible for ASAs and if so, the requisite number of allowances. Within 270 days of receiving the petition, the Agency must take final action on the petition. The Agency envisions that petitions could be submitted by a single entity, such as a company or trade association, or a group of entities.

In order to have sufficient information to evaluate a petition based on the criteria in subsection (e)(4)(B)(i), EPA proposed to require that certain information must be included in order for a petition to be considered complete. This proposed required list was not meant to be comprehensive, but rather a minimum threshold after which the Agency would consider a petition complete.

EPA received two comments regarding the elements which EPA proposed to require as part of a complete petition. One commenter suggested that the Agency should be flexible in what information is required so that a new application (*i.e.*, an end use newly using HFCs) would be able to satisfy the requirements and submit a complete petition. The commenter stated as an example that it may be difficult for a new application to include the total quantity of regulated substances acquired for the application in the past three years.

²⁴ See https://www.epw.senate.gov/public/_cache/files/d/1/d152a591-878f-4a4d-b9c1-dc7121c06eca/9D366FF1E61F7EFFD6A71C37C92924A5.04.03.2020-boeing.pdf.

EPA responds that the elements which EPA proposed to require are achievable regardless of the length of time a petitioner has been using HFCs. EPA clarifies that, for elements for which EPA is requesting three years of data, an entity would still be able to submit three years of data even if that entity has been using HFCs for less time; an entity can indicate zero for any years for which regulated substances were not used in the application and, as with all provided data, assuming the information is accurate, the petitioner would satisfy the requirement. Similarly, EPA proposed that entities submitting the petition must include certain information on their HFC suppliers for the past three years. If an entity has been using HFCs for one year, then the entity should indicate that in the submission and provide the required supplier information for that one year.

Another commenter, while expressing general support for outlining petition requirements, suggested that these requirements should focus on the essentiality of the use and that requirements for completeness of a petition should be limited to what is relevant and necessary. The commenter provided, as an example, that requiring the cost of the product or system that reflects the cost of regulated substances, should not be required.

In developing this final rule, EPA revisited the proposed requirements to determine whether any elements would be extraneous in the development of a well-informed position on a petition. The Agency was deliberate in proposing to require information that would be critical for reviewing a petition consistent with the criteria in subsection (e)(4)(B)(i) of the AIM Act. EPA considered proposing to require certain other elements that in the Agency's view did not rise to the level of critical for evaluating a petition; some of these were included in the proposed rulemaking as optional elements which the Agency may find helpful in evaluating a petition. Upon review, EPA reaffirms that all the proposed requirements would meaningfully inform whether a petition meets the statutory criteria. For example, the commenter indicated that EPA should not need data on the proportion of the overall cost of the product or system that reflects the cost of regulated substances. EPA responds that this element would meaningfully inform the Agency's assessment of the criteria listed in subsection (e)(4)(B)(i) of the AIM Act, in particular affordability for residential and small business consumers. If a high proportion of a product's cost is due to the cost of the

currently used regulated substance, and a potential alternative is vastly more expensive, then the Agency may consider whether that poses affordability concerns for residential and small business consumers. EPA responds that this is a key data point which may not be easily retrievable based on public data alone, and therefore it is appropriate to require as one element of a complete petition.

After considering the comments received, EPA is finalizing the list of petition requirements as proposed with minor modifications for clarity. Therefore, a complete petition must include, at a minimum:

- A description of the application, including an explanation of what the application is, what purpose or function it achieves, and what populations or commercial products benefit from the application;

- A list of regulated substance(s) and description of their use(s) in the application and an explanation as to why HFCs are required in the application;

- Evidence that no safe or technically achievable substitute, including not-in-kind technologies, is or is expected to be available, and that the petitioner has conducted research to evaluate substitutes for the HFC(s). Examples of evidence that may be accepted include, but are not limited to, third-party analyses and technical reports by recognized experts in the field, test results evaluating potential substitutes on safety and technical achievability, decisions by EPA to list alternatives under the SNAP Program, or federal regulatory standards that inhibit the ability of the application to transition to a substitute;

- Evidence that supply of the regulated substance(s) used in the application is insufficient to accommodate the application. Examples of evidence that may be accepted include, but are not limited to, signed and notarized²⁵ communication from responsible corporate officers at multiple representative suppliers or potential suppliers for the sector or related sectors that the application falls in stating that the currently used HFCs cannot be sourced; signed and notarized communication from responsible corporate officers at 10 or more allowance holders, including at least three of the 10 largest consumption allowances holders, stating that the currently used HFCs cannot be sourced;

- A signed certification from a responsible corporate officer at the

requesting entity that the application cannot use recovered and reprocessed HFCs in conjunction with or in place of virgin HFCs, either due to demonstrated lack of technical achievability or insufficient supply, and an explanation and evidence documenting why recovered and reprocessed HFCs cannot be used for the application;

- Total quantity (in kilograms (kg)) of all regulated substances acquired for the application specified in the petition in each of the previous three years, including a copy of the sales records, invoices, or other records documenting that quantity; if multiple entities are submitting a joint petition, they must each provide EPA with unaggregated entity-specific information, which may be transmitted jointly or individually;

- The name of the entity or entities supplying regulated substances for and contact information for those suppliers over the past three years; if multiple entities are submitting the petition, they must each provide this information individually to EPA;

- Total quantities (in kg) of regulated substances held in inventory for use in the application specified in the petition as of the date the petition is submitted; if multiple entities are submitting the petition, they must each provide this information individually to EPA;

- An estimate of the total quantity of HFCs the petitioner expects to purchase for use in the application specified in the petition in the first year it would be eligible for ASAs;

- Data on the proportion of the overall cost of the product or system that reflects the cost of regulated substances; if multiple entities are submitting the petition, they must each provide this information individually to EPA;

- Historic and projected sales of the product or system; if multiple entities are submitting the petition, they must each provide this information individually to EPA;

- Evidence of research into design changes to decrease the amount of HFCs used in the product or system;

- An explanation regarding whether the use of the regulated substance is necessary for the health, safety, or is critical for the functioning of society (encompassing cultural, intellectual, and economic aspects);

- An explanation regarding steps taken to minimize the use of the regulated substance and any associated emission of the HFC(s); and

- Information on regulatory restrictions related to possible alternatives and substitutes.

Consistent with the proposal, EPA is also providing a non-exhaustive list of

²⁵ Notarization ensures authenticity of the signature and deters fraud.

other elements that are optional, and the Agency may find compelling or helpful in making a determination on a petition:

- Market research on the application, which could include: an estimate of the number of domestic entities within the application; an estimate of the amount of bulk HFCs used domestically within the application; an estimate of the projected annual growth rate for the duration of the period for which the application is seeking eligibility to receive ASAs, with supporting evidence by third-party sources;

- Economic research on the elasticity of demand for products or systems within the application, with supporting evidence by third-party sources;

- Research on whether products or systems in the application outside of the United States have had success in transitioning to substitutes or otherwise reducing use of HFCs; and

- Other information that may be relevant as the Agency evaluates the petition, based on the factors listed in subsection (e)(4)(B)(i).

In addition to establishing minimum required elements of a complete petition, EPA proposed some framework elements on how EPA would process petitions received. EPA proposed to consider the statutory timeline triggered upon the filing of a complete petition. In the event that an entity filed an incomplete petition, EPA would notify that entity that their petition was incomplete, but not process the petition any further. EPA proposed to consider a petition re-submitted if the petitioner supplements the petition, and the statutory timelines for action would restart. Comments on EPA's proposed determination on a petition would not restart the statutory timelines unless the petitioner formally requested to supplement or revise their petition. EPA did not receive any comments on the framework under which a petition would be considered and is therefore finalizing as proposed.

EPA notes that for an entity to be eligible to receive ASAs in a given calendar year, a complete petition should be submitted no later than January 31 two calendar years prior to provide the Agency sufficient time to review a petition and be able to issue allowances in advance of the statutory deadline of October 1 each year. For example, if an entity would like to receive allowances in calendar year 2028, the entity should submit a complete petition no later than January 31, 2026. Earlier submission and/or

discussion with the Agency is encouraged to allow for timely reviews. EPA is setting this clear expectation so entities can factor this into their planning when deciding to petition EPA to be added to the list of eligible applications. This timeline will allow the Agency the requisite time to review and take final action on the petition, consistent with the statutory timeline in subsection (e)(4)(B)(ii), and also issue a final rule to effectuate that decision in 40 CFR 84.13.

EPA proposed to allocate allowances to entities in a new application through the same manner as other entities receiving ASAs, per 40 CFR 84.13 and 40 CFR 84.31(h). In other words, entities within a new application would need to request ASAs by July 31 like all other applications (per 40 CFR 84.13(b)). This may mean that in cases where there is a final rule pending to add an application to the list of entities eligible for ASAs at 40 CFR 84.13, any entity wishing to be eligible for ASAs in the next calendar year would need to provide the information required at 40 CFR 84.13(h)(2) by July 31. EPA did not receive comment on this proposal and is finalizing as proposed.

EPA proposed that if a petition is granted and a new application is listed as eligible to receive ASAs, that eligibility would apply until the end of the five-year review cycle during which its petition was granted. Per subsection (e)(4)(B)(v), EPA must review each ASA use receiving an allocation of allowances not less frequently than once every five years. EPA also proposed that, at the end of each five-year review cycle, it will review any applications listed in 40 CFR 84.13(a) at the time of review, regardless of how they were initially included on the list. For example, the five-year review period covered in this rule includes calendar years 2026 through 2030. If a petition were granted to receive ASAs starting for calendar year 2028, that application would be eligible for calendar year 2028, 2029, and 2030 allowances, and then EPA would review the eligibility for that application to continue receiving ASAs starting with calendar year 2031 allowances. EPA did not receive comment on these proposals and is finalizing as proposed.

Consistent with the reporting requirements under 40 CFR 84.31(a), EPA proposed that for an entity that is eligible for ASAs as the result of EPA granting a petition, all reports, petitions, and any related supporting documents

must be submitted electronically in a format specified by EPA,²⁶ and quantities of regulated substances must be stated in terms of kilograms unless otherwise specified. EPA also proposed that these records and copies of reports required by this section must be retained for three years. EPA did not receive comment on these proposals and is finalizing as proposed.

VII. Revisions to Existing Regulations

EPA finalized an approach under the Allocation Framework Rule for issuing ASAs for the initial years after enactment of the AIM Act. As explained in more detail in the Allocation Framework Rule, EPA allocates ASAs differently for MCMEU, given the complex nature of the way DOD sources and uses HFCs in the mission-critical context. The 2024 HFC Allocation Rule did not reopen the methodology for issuing ASAs but noted that the Agency had begun development of this rule to review and consider whether to renew eligibility for each of the six applications for ASAs and would herein consider revisions to existing regulatory requirements. As EPA foreshadowed in the 2024 HFC Allocation Rule, the Agency proposed targeted regulatory changes after considering whether any changes should be made to the existing regulatory requirements governing ASAs based on implementation over the past several years. EPA also proposed one specific regulatory change to clarify how EPA's regulations would apply to any illegally imported HFCs that are seized and auctioned by enforcement officials, proposed to require exporting companies to report ITNs quarterly, and proposed to simplify the "date of purchase" requirement for a RACA.

Under the current regulations established in the Allocation Framework Rule, EPA issues ASAs based on multiplying the company's HFC use in the prior year by the higher of:

- The Average Annual Growth Rate (AAGR) of use for the company over the past three years; or
- The AAGR of use by all entities requesting that type of ASA (e.g., for MDIs) over the past three years.

For the calculation of AAGR, EPA calculates the growth rate between the first and second year plus the growth rate between the second and third year, divided by two. The formula is as follows:

²⁶ Currently, most HFC reports under the AIM Act are submitted through HAWK, the HFC reporting system.

$$\frac{\left(\frac{\text{Application or Entity HFC Use in Year 2}}{\text{Application or Entity HFC Use in Year 1}} - 1 \right) + \left(\frac{\text{Application or Entity HFC Use in Year 3}}{\text{Application or Entity HFC Use in Year 2}} - 1 \right)}{2}$$

EPA relies on activity from July 1 to June 30 for each of the three preceding years prior to the annual allocation because of the biannual reporting deadlines and to include the most recent year of data prior to the October 1 allocation deadline in the allowance allocation determinations. EPA established the information an entity requesting ASAs must provide in 40 CFR 84.31(h)(2). EPA proposed to codify the existing practice such that entities reporting on or applying for ASAs provide supporting documentation to verify reported data on total quantities of HFCs acquired through conferring allowances, expending allowances for direct import, purchases without expending allowances, and quantity held in inventory above zero. EPA did not receive any comments on this proposal, and therefore is finalizing as proposed.

In the Allocation Framework Rule, EPA also established that the Agency would consider unique circumstances that are not reflected by the rates of growth calculated in the methodology outlined above that are factually documented when determining allowance allocations. EPA codified the following circumstances as potentially meriting an increased allocation to an individual company beyond historical growth rates: (1) additional capacity will come on line in the next year, such as a new manufacturing plant, expanded manufacturing line, or launch of a new product within the scope of the application, (2) a domestic manufacturer or some of its manufacturing facilities has been acquired, and (3) a global pandemic or other public health emergency increases demand for use of HFCs in an application, such as an increase in patients diagnosed with medical conditions treated by MDIs. These scenarios could provide reasons to increase allowance allocations to affected companies in the affected years. If a company wanted to make a claim that it qualifies for individualized treatment due to one of these unique circumstances, the company must sufficiently document in a verifiable way why it qualifies. Acceptable documentation includes, but is not limited to, recent invoices for new tools; permit documentation for new facilities, facility expansion, or installation of equipment related to retooling; agency or company press releases for the

launch of new products; documentation reflecting the hiring of additional employees or adding additional shifts; or Securities and Exchange Commission filings documenting facility acquisitions or expansions. Ultimately, accommodating documented unique circumstances that are not reflected by the recent rates of growth, in addition to an amount of allowances based on verified use in the past three years, supports the Agency in fulfilling Congress's mandate that EPA "allocate the full quantity of allowances necessary, based on projected, current, and historical trends," (86 FR 55116, 55151, October 5, 2021).

As a result of the lessons learned from multiple years of issuing HFC allocations, EPA proposed limited changes to these existing regulations. Specifically, EPA proposed: to require companies provide the total expected amount of HFCs they intend to purchase in the calendar year, to expand permissible scenarios that could qualify as unique circumstances, a different allocation methodology for certain very small users of HFCs and entities with irregular purchasing history, how to account for inventory in allocation decisions, new requirements for conferrals of MCMEU allowances, to establish a pool of set-aside allowances for situations that meet the criteria for unique circumstances related to medical conditions treated by MDIs, and to allow ASA holders to return a portion of their allowances voluntarily if they do not intend to use them. EPA proposed other specific regulatory changes to: clarify how EPA's regulations would apply to any illegally imported HFCs that are seized and auctioned by enforcement officials, require exporting companies to report ITNs quarterly, and simplify the "date of purchase" requirement for a RACA. This section discusses each of these elements in detail, specifically, what EPA proposed; what, if any, comment the Agency received on the proposal; and whether and how EPA is finalizing the proposed changes. In the instance that a reviewing court determines any of these changes to be unlawful, EPA intends each of these regulatory revisions to be severable from the others, as each is based on individual reasoning and bases that is distinct from the other revisions.

A. Expected Total HFC Purchases

EPA proposed to amend the regulations to require all entities to provide their total expected HFC purchases for the next calendar year as a component of overall applications due July 31 for ASAs for the following calendar year. Entities would be required to provide the total quantity of HFCs they expect to purchase next year based on their expected eligibility for allowances. EPA proposed to allocate at that level if it is lower than what that entity is eligible for based on the regulatory formula. EPA's rationale for making this proposal were detailed in the proposed rule.

EPA received only one comment on this proposal, which was supportive of the requirement that entities provide a total request for allowances for the next calendar year and for EPA to allocate ASAs to that level if lower than what the entities are otherwise eligible for based on the regulatory formula.

Therefore, EPA is finalizing this approach as proposed. Entities must report this quantity, in MTEVe, by the July 31 deadline to request ASAs. The total request should be the *total* expected HFC purchases for the next calendar year, so would be inclusive of any HFCs an entity anticipates purchasing as a result of a unique circumstance(s). The amount should be equal to the full quantity of allowances an entity believes EPA should allocate and that the entity wants to have on hand to expend or confer. Accordingly, EPA will not apply a 10 percent purification loss multiplier when allocating to the total request level for an entity in the semiconductor application.²⁷

B. Unique Circumstances

Under EPA's current regulations, entities may request that EPA consider unique circumstances that are not reflected by the rates of growth calculated when making annual allowance allocations. Entities "must

²⁷ In the Allocation Framework Rule, EPA created a 10 percent purification loss allowance for the semiconductor industry, which is applied after EPA calculates a semiconductor manufacturer's allocation under the regulatory formula, including any unique circumstances or other applicable individual considerations (86 FR 55116, 55152, October 5, 2021). To provide clarity on how this loss allowance works with the other changes finalized in this rule, EPA has modified the regulatory text in 40 CFR 84.13.

provide additional information if requesting that EPA consider unique circumstances” under 40 CFR 84.13(b)(1). EPA proposed to codify into the regulations the Agency’s existing practice of requiring entities to provide supporting documentation to verify any claimed need. EPA did not receive any comments on this proposal, and therefore is finalizing as proposed.

EPA previously codified three situations that would be considered as unique circumstances (40 CFR 84.13(b)(1)). EPA proposed to broaden one of these unique circumstances that is related to MDIs and proposed to add two new unique circumstances under which EPA may allocate additional allowances beyond what is calculated from the regulatory allocation formula.

1. Healthcare System Needs

EPA proposed to expand the scope of the existing unique circumstance for a global pandemic or other public health emergency that increases patients diagnosed with medical conditions treated by MDIs to include “healthcare system needs.” In the proposed rule, EPA noted that the reference in the regulations to an “other public health emergency” is not limited to situations where the Department of Health and Human Services (HHS) has officially declared a public health emergency.

EPA proposed to define a healthcare system need as circumstances where an increase in demand for MDIs used to treat asthma, chronic obstructive pulmonary disease, and other respiratory diseases may occur because of a change in market conditions that otherwise would not be included in calculated rates of growth.

EPA provided the following examples of the types of events that could fall into a healthcare system need:

- A manufacturer that makes MDIs outside of the United States stops selling approved MDI products in the United States;
- Major recall or suspension of production of alternative (non-MDI) emergency asthma treatments prompting increase in MDI demand;
- Change in preferred products from pharmacy benefit managers or state Medicare programs to patients;
- FDA compliance or enforcement actions that impact MDI market dynamics by reducing availability of generic drug products;
- Significant increase in respiratory infections in the general population (e.g., respiratory syncytial virus (RSV), coronavirus disease (COVID)); and
- Decrease in availability of active pharmaceutical ingredient or device component for one or more MDI

manufacturers causing a supply shortage.

All comments received on this proposal were supportive. Therefore, EPA is finalizing the expansion of the scope of the unique circumstance for a global pandemic or other public health emergency that increases patients diagnosed with medical conditions treated by MDIs to include “healthcare system needs.”

If an entity is requesting consideration for this unique circumstance, they must submit supporting documentation that allows EPA to verify this request. Supporting documentation for a unique circumstance has been a requirement under 40 CFR 84.31(h)(1)(viii), and entities will be required to continue providing this documentation if requesting consideration of additional allowances due to “healthcare system needs.” Examples of such documentation could include, but are not limited to, market share and/or sales data (e.g., IQVIA or internal company data), press releases announcing a particular MDI product leaving the market, or supplier announcement or other communications regarding a supply shortage for a particular MDI device component. EPA will determine if other forms of supporting documentation are acceptable on a case-by-case basis. Additionally, as described in the proposed rule, EPA intends to consult closely with FDA and potentially HHS more broadly before allocating allowances for “healthcare system needs.”

2. Economic Disruptions

The first new unique circumstance EPA proposed to create was for economic disruptions outside the immediate control of the entity applying for ASAs, such as an economy-wide recession or other documented short- or medium-term market events that negatively impact a company’s operations. In the proposed rulemaking, EPA described the types of documentation that an entity would be required to submit in its request including documentation verifying that the disruption has taken place and that it has materially impacted the entity’s HFC needs.

Several commenters generally supported EPA’s proposal. One commenter supported EPA’s proposal that the requesting party would need to provide documentation to verify the event occurred, the current status of the event, and how the event impacted HFC needs. EPA acknowledges the commenters’ support.

One commenter stated that requests for allowances under this unique

circumstance would be likely due to the cyclical nature of the application, as well as other events, including shifts in market share based on competitiveness of the product mix, changes in product mix which change use of HFCs, ramp of new technology nodes, and new investment. This commenter also requested further clarity on the scope and required documentation to qualify for the use of this unique circumstance.

In the proposal, EPA described this proposed unique circumstance as applying to “documented short- to medium-term market events that negatively impact a company’s operations,” (89 FR 75898, 75927, September 16, 2024). In reviewing the commenter’s input, and upon further consideration of the proposal, EPA has determined that the proposal did not include a definition or sufficiently discuss the types of events that would qualify under this unique circumstance. Without additional specificity beyond what was proposed, EPA has concerns that this unique circumstance could not be appropriately evaluated and decided within the context of individual allocation decisions.

While commenters supported the proposal in concept, some were unsure what the scope of the proposed unique circumstance would include and on the types of documentation needed to demonstrate eligibility for the proposed unique circumstance. Others did not provide any additional specificity or constructive feedback on how to further operationalize the proposed unique circumstance. In the one instance where specificity was provided on the types of additional situations that could be eligible, the events appear to be outside the scope of what was proposed. The examples mentioned in the comment, e.g., new manufacturing processes, new products and technology improvements, and investments in new facilities, are not short- to medium-term economic disruptions and commenters did not explain how these events would qualify as such. Further, these situations appear to be covered by the existing unique circumstance for new manufacturing capacity coming online, at least in part.

While EPA acknowledges the potential for unanticipated short- to medium-term disruptions that could lead to a need to purchase HFCs beyond what is reflected in the regulatory formula, the Agency has not seen such a situation occur to date and has concerns that the term “economic disruption” as proposed was not specific enough for the Agency to finalize a change at this time. The Agency plans to monitor the issue and engage with stakeholders further on this

concept as requested by commenters and may repropose a new unique circumstance to address such events in the future if warranted.

3. Stockpiling

The second unique circumstance EPA proposed to add was building a stockpile of a specific HFC in the event a major producer for an application announces they will be ceasing production of the HFC used by the application-specific entity in the near future. An entity could request additional allowances for the purpose of building inventory ahead of a supplier ceasing production. For an entity to be eligible for additional allowances under this unique circumstance, EPA proposed that the entity must provide EPA with a letter from their supplier signed by a responsible corporate officer stating that the supplier is ceasing all production of the HFC at issue within three years. Further, EPA proposed that an eligible entity must certify that they have regulatory requirements beyond the 40 CFR part 84 requirements that limit its ability to switch suppliers or there are no other suppliers that could meet their needs (*e.g.*, because there are no other chemical manufacturers that can supply the needed HFC). EPA proposed to also require evidence that the entity has a restricted HFC supply chain, such as required purity requirements. If additional allowances were granted because of this requested unique circumstance, EPA proposed to require reporting specific to the building of inventory by the entity that would be allocated ASAs in advance of their supplier's production facility ceasing production. Such inventory buildup must be held by the entity that is allocated allowances, and EPA would subtract those quantities from the entity's purchase history such that it is not included in the regulatory formula to determine the entity's allocation the following year.

EPA received a number of supportive comments on the proposal. One commenter stated that the potential need for building a stockpile at some point is well supported by the historical experience with the chlorofluorocarbon MDI transition, while another commenter representing the semiconductor industry stated that with the cyclical nature of semiconductor manufacturing, such a unique circumstance may be likely. Another commenter also found it reasonable that EPA require an entity requesting this unique circumstance to provide the Agency with a letter from their supplier signed by a responsible corporate officer stating that the supplier is ceasing all

production of the HFC at issue within three years; certify that the entity has regulatory requirements beyond CFR part 84 requirements that limit the entity's ability to switch suppliers or there are no other suppliers that could meet their needs; and provide evidence that the entity has a restricted supply chain.

EPA acknowledges commenters' support of the proposal. EPA agrees with the commenter that the Agency should not authorize a stockpiling unique circumstance without strong evidence that alternative supply sources are not available. As EPA stated in its proposal, an entity would need to certify that there are no other suppliers that can supply the regulated substances in the quantity that they need. EPA recognizes that this unique circumstance should only apply in situations when an entity has no other avenue in which to procure the HFCs to meet their full needs in the near future in the event their supplier announces that they are no longer producing the relevant HFC material.

Another commenter stated that EPA should not authorize a stockpiling unique circumstance without finding that the supply from alternative sources is and will be insufficient for the expected life of the stockpile, and that the ASA holder should not transfer the HFCs it stockpiled because of a supplier closure to any other entity.

EPA does not agree that it needs to determine that supply is unavailable for the full lifetime of the stockpile. EPA is finalizing this unique circumstance in a narrow manner such that the provision as finalized will require that (1) the ASA holder have regulatory requirements beyond the 40 CFR part 84 requirements that limit its ability to switch suppliers or document that there are no other suppliers that can supply the regulated substances in the quantity that they need and (2) the requester provide evidence that it has a restricted HFC supply chain. The commenter did not provide any rationale for why these requirements were not sufficient or why the Agency would need to review whether supply is unavailable for the full lifetime of the stockpile. Additionally, building and managing a stockpile is not a decision that most manufacturers would make lightly. As discussed with stakeholders prior to the development of the proposed rule, there are upfront costs associated with creating a multiyear stockpile and then ongoing costs associated with managing a stockpile, *e.g.*, to avoid contamination and leakage. There may also be limitations on how long the HFCs can be stored (*e.g.*, EPA understands the

shelf life for HFCs for pharmaceutical grade HFCs can be five years before they would potentially need to be reprocessed back to purity specifications). These factors decrease the incentive to choose stockpiling over switching suppliers.

EPA does not see the need to limit the ability of an ASA holder to transfer or sell the HFCs it stockpiled under this unique circumstance. Under current regulations in place before this rulemaking, HFCs acquired by expending ASAs must be used solely for the application for which they were produced or imported, and entities must report that sale or conveyance to EPA (40 CFR 84.5(c) and 84.21(a)). As a result, an entity could only sell or convey HFCs if they were for use within the same application. The commenter did not provide a rationale for why EPA should add additional restrictions for regulated substances acquired under this unique circumstance. This additional limitation would effectively require entities to destroy or permanently hold onto any unused HFCs when they could meaningfully be deployed for use in the same application. EPA considers using already produced HFCs to be a better outcome than destroying those HFCs or forcing them to remain in storage indefinitely, where there would be a higher risk of leakage. Furthermore, EPA sees advantage in allowing entities within the same application to transfer or sell regulated substances in this situation, given that entities using the same regulated substance for the same application may face similar supply challenges.

EPA is finalizing the proposed requirement to add the unique circumstance of building a stockpile of a specific HFC in the event a major producer for an application announces they will be ceasing production of the HFC used by the application-specific entity in the near future. Any entity requesting such unique circumstance must provide sufficient evidence of the following to be eligible:

(1) Confirmation that its supplier is ceasing production of the specific HFC needed within three years. This must be documented in a letter from its supplier signed by a responsible corporate officer at the company.

(2) Certification that the requester has regulatory requirements beyond the 40 CFR part 84 requirements that limit its ability to switch suppliers or that there are no other suppliers that can supply the regulated substances in the quantity that they need. The requester should submit the specific regulatory requirements or if the requester is

certifying that there are no other suppliers that could meet their needs, an entity must provide documentation of due diligence to identify and secure supply from potential alternative suppliers. This documentation is especially relevant for cases in which there is more than one global producer of the regulated substance. This documentation may include a signed certification from a responsible corporate officer at other producers of the regulated substance certifying that they are not able to supply the regulated substance in sufficient quantities to the requester.

(3) The requester has a restricted supply chain. While required purity requirements were cited as an example in the proposed rulemaking, EPA envisions that an entity could provide different types of evidence of a restricted supply chain, such as third-party reports demonstrating the limited number of producers or purifiers of the HFC being used and/or the specific purity requirements that make it challenging to acquire HFCs that limit the available supply.

Entities submitting a request under this unique circumstance must specify how much of each HFC they intend to purchase (in kg) and the year(s) they intend to purchase the HFCs in. The request should also include a description of the requester's plan. If the requester intends to build its inventory over multiple years, they should continue requesting a unique circumstance for stockpiling in each of the years they hope to acquire HFCs for the stockpile.

Finally, in the proposed rule, EPA stated that it would subtract quantities purchased to build a stockpile from the entity's purchase history such that it is not included in the regulatory formula to determine the entity's allocation the following year. EPA received no adverse comments on this proposal. To implement the proposal EPA is requiring that entities include information in their request on how long they expect their stockpiled material to last or when they expect to fully draw down the stockpiled material. This should be updated annually if building an inventory over multiple years. After approval of the unique circumstance, entities must track and manage their inventory of the stockpiled HFC separately from their other inventory, and report biannually on the buildup and drawdown (including sales or conveyance to another entity) of the stockpile until the

stockpile is depleted.²⁸ This reporting requirement applies even if the allowance holder is no longer requesting additional allowances. This approach will ensure that for as long as there is a stockpile, the entity receiving the allocation will receive allowances commensurate with non-stockpile use. The Agency expects this will be a relatively straightforward task given the HFC that is being stockpiled would be hard to otherwise acquire once a supplier stops providing it.

C. Inventory

EPA's current regulations require entities receiving ASAs to provide, as part of their biannual reporting requirements, information on the quantities of HFCs left in their inventory at the end of the previous six-month reporting period (40 CFR 84.31(h)(1)(iv)). Upon finalization of this rulemaking and heading into the allocation of calendar year 2026 allowances, EPA will have several years of data on inventory, including how inventory levels have changed over time. In the Allocation Framework Rule, EPA noted its intent to account for changes in inventory in the allocation of ASAs.

EPA proposed to include verified changes in inventory into the calculation of the quantity of HFCs an entity used over the 12-month period for all applications except MCMEU. EPA noted in the proposed rulemaking that incorporating changes in inventory would yield a more accurate reflection of HFC use than if the Agency were to look at HFC purchases alone. EPA proposed to factor in both drawdown and growth in inventory, meaning that a drawdown of inventory would be added to HFC purchases and a buildup of inventory would be subtracted from HFC purchases in determining an entity's HFC use for the year. EPA alternatively proposed to not incorporate small amounts of growth (*i.e.*, below 20 percent) in inventory in

allocation decisions or, alternatively, growth in inventory for only a single year. EPA also proposed as another option that entities may provide a rationale as to why a buildup in inventory should not be incorporated.

EPA received one comment regarding EPA's proposal to account for changes in inventory in allocation decisions. The commenter stated that incorporating inventory may have a place in calculating allocations, but the commenter expressed concern that its implementation could lead to unintended consequences. For example, the commenter presented a hypothetical scenario in which a company drew down inventory before the finalization of this rule and subsequent to the finalization of this rule rebuilds that inventory. In this scenario, the commenter posits that the company would not have received the benefit of higher allocations from drawing down inventory pre-finalization, and their calculated usage would be reduced by growing inventory post-finalization.

In response to the commenter, EPA acknowledges that any change in the methodology by which the Agency allocates allowances could result in changes in the amount that an entity is eligible to receive. However, subsection (e)(4)(B)(iv)(I) of the AIM Act directs EPA to "allocate the full quantity of allowances necessary, based on projected, current, and historical trends." In order to meet that directive, EPA has determined it is appropriate to evaluate and refine the allocation methodology so that the Agency is able to best approximate the number of allowances an ASA holder may need in the next calendar year. After multiple years of implementing the phasedown, EPA has noted challenges with relying heavily on purchase history to calculate ASA allocations, and some stakeholders have raised concern as well. Some ASA holders that tend to purchase HFCs at irregular intervals have experienced considerable swings in the amount they have been eligible for year-to-year, even in cases where their annual HFC usage has remained relatively steady. While the circumstances and data for each individual company are different, the Agency anticipates that incorporating changes in inventory will generally result in more stable allocation amounts year-to-year and better reflect company needs.

The same commenter expressed support for EPA's alternative pathway to exclude small amounts of growth in inventory in allocation decisions or to exclude a single year of inventory growth. The commenter's rationale for excluding small amounts of growth in

²⁸ An entity allocated allowances under this unique circumstance will receive an allocation based on the regulatory formula, including all other eligible unique circumstances, and an amount based on the stockpiling unique circumstance. Any HFCs purchased for the stockpile should be tracked separately and reported as inventory buildup. This amount would at minimum be the difference between the total amount acquired in the year minus the non-stockpile portion of the allocation and the maximum amount would be the total amount of allowances allocated for stockpiling. For example, if an entity was allocated 500 allowances based on historic purchases and changes in inventory plus an additional 1,000 allowances under the stockpiling unique circumstance, any amount acquired in the year above 500 allowances' worth would be the minimum amount of HFCs that would be considered as entered into a stockpile and 1,000 allowances worth would be the maximum.

inventory in allocation decisions was that including the full amount of inventory growth could reduce an entity's allocation.

EPA has considered this comment, but in developing the final rule has determined that such a methodology does not align with the best interpretation of the statutory directive in subsection (e)(4)(B)(iv)(I) of the AIM Act to "allocate the full quantity of allowances necessary, based on projected, current, and historical trends." As previously noted, EPA considers that the inclusion of inventory drawdown and buildup in allocation decisions will yield a more accurate reflection of HFC use than HFC purchases alone. If the Agency moved forward with excluding small amounts of inventory buildup, it would be detrimental to the concept of accurately estimating an entity's use and could result in over-allocating to ASA holders. Allowing an entity to provide a rationale as to why a buildup in inventory should not be subtracted from the quantities of HFCs they annually acquire would similarly detract from the Agency's intent to approximate the entity's use with the greatest accuracy possible and could result in over-allocation. Given there is a finite pool of allowances available in each calendar year, over-allocation to ASA holders would come at the expense of general pool allowance holders.

Finally, the same commenter encouraged EPA to finalize a definition of inventory to prevent inconsistent reporting. Specifically, the commenter suggested that EPA finalize a definition for inventory that reflects the quantity of inventory stored in containers, including heels, but excludes containers in service. While EPA sees benefits to defining how an entity should report what is to be included when calculating the amount of HFCs in inventory and may revisit it in the future, EPA did not propose and is not finalizing that entities report inventory based on a specific definition at this time. For the first few years of the allocation program, EPA has communicated to ASA holders that each individual entity should report inventory in a consistent manner year-over-year, and the Agency will continue to encourage ASA holders to maintain rigorous inventory tracking systems so that they are able to report the quantity of regulated substances held in inventory with accuracy. However, EPA understands that entities receiving ASAs are in differing applications (*e.g.*, aerosol fillers versus semiconductor etching) and that they may have different ways of maintaining inventory. Therefore, EPA will continue

to evaluate whether an entity has reported inventory in an appropriate manner on a case-by-case basis. For example, EPA would not accept an ASA biannual report if an entity reported inventory buildup without documentation for how those HFCs had been acquired.

EPA is finalizing as proposed that the Agency will include verified changes in inventory into the calculation of the quantity of HFCs an entity used over the 12-month period for all applications except MCMEU. The Agency will factor in both drawdown and growth in inventory, meaning that a drawdown of inventory would be added to HFC purchases and a buildup of inventory would be subtracted from HFC purchases. EPA is not finalizing its alternative pathway to exclude small amounts of growth in inventory for allocation decisions or its proposal that entities may provide a rationale as to why a buildup in inventory should not be subtracted from the quantities of HFCs they annually acquire. In developing this final rule, EPA has determined it is also necessary to add an additional required reporting element on regulated substances sold, returned, or otherwise conveyed to another entity. EPA has determined this is necessary so that an entity's sale of HFCs does not artificially appear to be a drawdown in available inventory attributed to use in allocation determinations. For the purposes of this additional reporting element, EPA is not requiring ASA holders to report the return of heels in cylinders to an entity's supplier.

D. Methodology for Small Purchasers of HFCs, Entities That Do Not Purchase HFCs Every Year, and Entities With Irregular HFC Use

Since beginning the allocation program, EPA has observed that there are certain entities for which the regulatory formula either is not able to calculate an allocation or applying the terms of the regulatory formula would produce absurd results. EPA proposed to create an alternative method of allocating to these entities. Specifically, EPA proposed to create an alternative methodology for entities that fall in any of the following categories: (1) entity has small purchases of HFCs (<100 kg) at least one of the last three years and an AAGR of 200 percent or higher, (2) entity has zero purchases in one of the last three years for reasons other than newly using HFCs, or (3) entity's HFC purchases add up to less than 100 kg in each of the previous three years. For entities that fall into these categories, the Agency proposed to allocate the highest, as measured in exchange value

equivalent (EVe), verified purchase amount in the last three years. EPA also solicited comment on whether the Agency should round allowance allocations for very small purchasers (*i.e.*, entities whose HFC purchases add up to less than 100 kg in each of the previous three years) to account for purchase of a specific cylinder volume. Further information about the rationale behind this proposal can be found in the proposed rule.

EPA did not receive adverse comments on how the Agency proposed to define the categories of entities that would fall under the alternative methodology proposed. Therefore, EPA is largely finalizing the three categories as proposed. However, in light of more general concern raised that the proposed methodology may not fully address industry fluctuations, EPA is making a modification for entities who have a significant decline in HFC usage in Year 3 as compared to Year 2. For example, an entity that uses 15,000 MTEVe in Year 1, 20,000 MTEVe in Year 2, and 500 MTEVe in Year 3 would have an AAGR of -32% and would only be eligible for 339.6 MTEVe of allowances in the following calendar year, which, assuming Year 3 was an aberration, would be an unreasonable allocation. It is not EPA's intent for the methodology to unintentionally penalize entities for a market fluctuation and/or need to only use a minimal amount of HFCs in a given year. EPA is therefore finalizing the converse of a tripling of growth represented by an AAGR >200 percent—an entity will be considered an irregular user of HFCs if its Year 3 usage is ≤33 percent of its Year 2 usage, *i.e.*, the entity has a ≥67 percent decrease in HFC usage from Year 2 to Year 3.

EPA had proposed that entities in this irregular HFC user category would be allocated the highest verified purchase amount in the last three years, as measured in EVe. EPA stated that it was taking comment on whether the Agency should look back further at up to five years' worth of purchase history and also solicited comment on whether EPA should round allowance allocations for very small purchasers to account for purchase of a specific cylinder volume. EPA did not receive comment on either of these issues for which it solicited comment.

One commenter stated that while this alternate methodology may be helpful, it may still not be sufficient for changes in use and typical industry fluctuations and requested that EPA consider a minimum allocation for entities in a specific application, suggesting 5,000 MTEVe.

EPA disagrees with the commenter's suggestion to allocate a minimum number of allowances to entities in the semiconductor application. Providing a set minimum allocation to any entity requesting allowances in the semiconductor application does not align with the AIM Act's direction that EPA "allocate the full quantity of allowances necessary, based on projected, current, and historical trends." A set minimum allocation level would not be tailored to the allocation level "necessary" nor would it be "based on projected, current, and historical trends."

The commenter did not provide an explanation of why providing a minimum allocation would be the best reading of the relevant statutory language. EPA considers its ASA allocation methodology to be the best read of Congress's directive because it is specifically based on historical HFC usage trends, while also allowing for an entity to request additional allowances for verified unique circumstances (40 CFR 84.31(b)(1)) which document where the entity is trending currently and will be in the future. EPA's best interpretation of the statutory direction in the AIM Act is that all applications receiving ASAs should be allocated allowances in the same manner. The AIM Act directs EPA to "allocate the full quantity of allowances necessary . . . for the production or consumption of a regulated substance for the exclusive use of the regulated substance in an application solely for [the six applications being discussed in this rulemaking]," and nowhere suggests that one application may be allocated allowances in a different manner or otherwise treated independently from the other applications receiving ASAs.

Further, the commenter did not provide any data or information that would substantiate their statement that allocations have not been sufficient to date or would be insufficient in the future. In fact, data from previous years suggests allowances allocated to all ASA holders are sufficient. For example, the semiconductor application, which has the largest number of applicants, has left a substantial number of allowances unexpended in previous years; in 2023, 39 percent of semiconductor allowances (approximately 741,000 allowances) went unexpended, and in 2024, 30 percent (just over 550,000 allowances) went unexpended. These unexpended allowances can be transferred to meet the needs of entities within the same application, should there be a need for additional allowances by an entity in the semiconductor application. Further, based on EPA's review of the data, there

isn't technical support for 5,000 MTEVe as an appropriate minimum allocation, and the commenter did not provide a basis for the amount. Further, the data does not support a decision to choose any other specific quantity to serve as a minimum allocation. Entities applying for ASAs range in size and HFC needs. In calendar years 2023, 2024, and 2025 allocations, approximately 40 percent of ASA applicants were eligible for less than 5,000 MTEVe of allowances, and 15 to 20 percent were eligible for less than 1,000 MTEVe. Of the 20 entities receiving less than 5,000 MTEVe for calendar year 2025 allowances, 15 had also received less than 5,000 MTEVe in 2024, and 11 had received less in 2023 (three entities received allowances for the first time in 2024). EPA is not aware of widespread concerns with entities not receiving allowances commensurate with their planned use, and many of the entities even requested a total allocation substantially below 5,000 MTEVe.

In the near term, if entities require more allowances beyond their allocation, ASA holders can either receive a transfer of allowances from other entities within their application, as noted above, or from general pool allowances holders, or they can acquire additional HFCs from the open market. EPA further notes that, given the finite pool of allowances available in each calendar year, any overallocation of ASAs lessens the number of allowances available to general pool allowance holders. Following finalization of this rule, the Agency will continue to monitor ASAs and has the ability to undertake future rulemakings to pursue additional methodology updates if appropriate.

Therefore, EPA is finalizing that the Agency will allocate to the highest amount in the last three years beginning with the allocation of calendar year 2026 allowances. Because EPA is finalizing the proposal to incorporate inventory usage into calculation of entities' AAGRs (see section VII.C. for more information), whether an entity qualifies for the alternative allocation methodology will be based on AAGR where relevant, and therefore inventory use will be taken into account in the determination. Further, allocation decisions will be made based on use, not purchases. EPA is thereby finalizing that entities that qualify for the alternative methodology here will be allocated allowances in a quantity equivalent to the highest verified use amount in the last three years, as measured in EVe.²⁹

²⁹ Entities newly using HFCs within the past three years are not intended to be captured under the

E. Department of Defense Conferrals

In the Allocation Framework Rule, EPA finalized that anyone conferring an ASA, except for the conferral of allowances for MCMEU, would be required to submit information about each conferral prior to conferring allowances (40 CFR 84.31(h)(4)). While DOD was not required to submit conferral information to EPA, DOD was required to maintain records documenting the conferral(s) of ASAs to other entities up to and including the producer or importer of the chemical (40 CFR 84.31(h)(7)(iv)).

In order to ensure that imports are not delayed or denied, EPA proposed to modify the 40 CFR part 84, subpart A regulations to require that conferrals of MCMEU allowances be reported to EPA consistent with the process for all other ASA holders in 40 CFR 84.31(h)(4). This would include the identity of each conferrer and conferee and the quantity in MTEVe of ASAs being conferred. More detailed information on the reasons why EPA proposed this change is available in this rulemaking's proposal (89 FR 75898, September 16, 2024). EPA also proposed to require that a certificate number, generated by DOD, be reported to EPA for each conferral and expenditure of MCMEU allowances. For example, if an intermediary receives a conferral of MCMEU allowances from DOD and then confers the allowances further to a supplier, both DOD and the intermediary must report the same certificate number as part of the conferral. When the supplier expends the conferred MCMEU allowances for production or import of HFCs, the supplier must report the certificate number in the same report in which the expenditure of MCMEU allowances is reported. EPA made this proposal in light of a suggestion from DOD that requiring such information would be helpful for administrative efficiency of this program.

EPA did not receive any comments on any aspect of these proposed changes and is therefore finalizing these changes as proposed.

F. Limited Set-Aside for Unique Circumstances Related to Metered Dose Inhalers

EPA proposed to create a set-aside of allowances that would be available for

categories described in this section unless they have zero purchases in one of the last three years for reasons other than newly using HFCs (*i.e.*, zero purchases in a year after they began using HFCs). For an entity newly using HFCs, EPA would calculate its base allocation (*i.e.*, the eligible amount based on historical activity) by multiplying that entity's Year 3 HFC usage by the higher of the application-wide AAGR or one.

the use of HFCs as a propellant in MDIs if the requester meets the criteria for the unique circumstance established in 40 CFR 84.13(b)(1)(iii), including the changes described in section VII.B.1. In other words, this would be a set-aside to accommodate unforeseen need for regulated substances related to a global pandemic, other public health emergency, or other healthcare system needs related to increased patients diagnosed with medical conditions treated by MDIs. Application-specific entities could apply to EPA for these allowances based on a demonstrated need to purchase more HFCs in the present calendar year in light of events that were unforeseen at the time of the entity's application for ASAs for the calendar year at issue and that qualify under 40 CFR 84.13(b)(1)(iii), as modified in this rule. EPA took comment on whether there are other analogous situations where an unexpected increased need for HFCs resulting from the other established and proposed unique circumstances could arise in which the facts would justify the potential use of another set-aside for ASA holders. EPA also solicited comment on whether, because historic producers and importers of HFCs for application-specific uses may be effectively receiving a "double allocation," a set-aside is not truly needed, or if a set-aside is necessary because historic importers and producers are requiring conferral of ASAs to meet the needs of application-specific entities.

Multiple commenters supported the creation of a set-aside pool for unique circumstances that meet the criteria defined in 40 CFR 84.13(b)(1)(iii), as updated. One commenter noted the proposal is responsive to previously raised concerns that "the annual allocation decision may not adequately account for increased needs and is not flexible enough to respond to changed circumstances," with the COVID-19 pandemic being a good example, as EPA had raised in the proposal. No commenters suggested this limited set-aside should be expanded to other unique circumstances and applications, and one commenter specifically stated that a set-aside for the semiconductor application is unnecessary. The commenter noted there was no justification for an HFC-32 set-aside because the analysis in this rulemaking is that HFC-32 is not "insufficient to supply the ASA sectors," and "production or import with general pool allowances will be able to satisfy any increase in demand in the ASA sectors for HFC-32."

EPA acknowledges commenters' support of EPA's proposal. EPA is finalizing as proposed that this set-aside pool of allowances would only be available for unique circumstances that meet the criteria defined in 40 CFR 84.13(b)(1)(iii), as updated through this rulemaking. EPA plans to consult with FDA in determining whether the presented situation meets the criteria as defined. Examples of scenarios can be found in section VII.B.1. of this preamble and the proposed rule.

In addition to a requester demonstrating that they meet the criteria for the unique circumstance as defined in 40 CFR 84.13(b)(1)(iii), EPA noted in the proposed rulemaking that, at a minimum, it would be appropriate to require a requesting entity to present EPA with information on how facts have changed that were unknowable at the time the entity applied for that year's ASAs and also evidence that the entity has been unable to acquire needed HFCs from the open market or through allowance transfer, as well as that EPA would likely require at least some of the records described in section VI. EPA took comment on any other evidence requesters should provide when applying for set-aside ASAs and on the appropriate records that would need to be provided to EPA to document the entity's unsuccessful efforts to acquire HFCs without additional allowances from EPA.

EPA did not receive comments on required records. EPA is thereby finalizing, as described in the proposal, that entities applying for this set-aside would need to provide EPA with the minimum information it noted in the proposal, *i.e.*, documentation that they meet the criteria for the unique circumstance as defined in 40 CFR 84.13(b)(1)(iii), information on how facts have changed that were unknowable at the time the entity applied for that year's ASAs, and evidence that the entity has been unable to acquire needed HFCs from the open market or through an allowance transfer. Examples of evidence that may be accepted include, but are not limited to, signed and notarized communication from responsible corporate officers from its approved suppliers and potential suppliers for the sector or related sectors that the application falls in stating that the currently used HFC(s) cannot be sourced; entities must also include the name of the entity or entities supplying regulated substances for and contact information for those suppliers over the past three years. In addition, EPA is finalizing that entities should provide the total quantities (in kg) of regulated substances held in inventory as of the

date the application is submitted, including documentation to verify this quantity (this includes zero quantities), and an explanation of why that inventory, if available, will not be sufficient to accommodate this increased demand.

EPA presented a series of options for comment on how such a set-aside pool would be created. Under Option 1, EPA would form this pool by setting aside 10 percent of the allocation of entities that produced or imported HFCs during 2011–2019 to serve the applications eligible for ASAs, except MCMEU. The second option EPA presented was to create this set-aside pool from any revoked allowances, including from administrative consequences already finalized. Under this second option, instead of redistributing revoked allowances to all other allowance holders, EPA would put the revoked allowances into a set-aside pool in case additional ASAs were needed as a result of a public health emergency. A third option was to hold back a set amount of allowances from all general pool allowance holders. EPA proposed that the Agency could hold back allowances in the range of 500,000 to 1,000,000 MTEVe production and consumption allowances. EPA also proposed that this set-aside pool could be created from voluntarily returned ASAs, if that proposal was finalized.

Finally, as an alternative to creating a set-aside at all, EPA took comment on the possibility of allowing conferral of ASAs from other applications should an unforeseen event that meets the unique circumstance outlined in 40 CFR 84.13(b)(1)(iii) occur. In this occurrence, EPA would amend the regulations in 40 CFR 84.13(h) to allow ASAs to be conferred and expended to produce or import HFCs for application-specific use different from the application associated with the allowance.

Commenters were mixed on how this pool should be created. One commenter supported creating this pool from revoked allowances, and one preferred withholding 10 percent of allowances from historic producers and importers for ASA uses (Option 1) based on the information currently available and a desire to maximize certainty and flexibility; neither commenter explained their preferences in more detail. Another commenter raised multiple concerns about Option 1. Specifically, the commenter argued that withholding 10 percent is excessive and not justified, particularly given that ASA holders represent only 5 percent of consumption allowances for calendar year 2025. The commenter also flagged that EPA did not explain how it will gather data on

what entities sold HFCs to entities now being issued ASAs. The commenter also asserted that EPA did not show that entities that supplied for these applications are now benefitting from a “double allocation.” The commenter similarly argued that only producers and importers currently receiving conferrals, and conferrals larger than a *de minimis* amount, should contribute to this pool; the commenter further argued that only producers and importers of HFCs used by the MDI application should contribute to this pool, as producers and importers for other applications that do not use any of the same HFCs would not be able to supply the necessary HFCs should such a need arise. Comments on how voluntarily returned allowances should be distributed were mixed, but one commenter supported using voluntarily returned allowances for this set-aside pool; responses to these comments are covered in full in section VII.G. EPA did not receive comments on allowing transfers between applications or creating this set-aside pool from all general pool allowance holders.

EPA is not finalizing the proposal to allow for the voluntary return of allowances (see section VII.G.), so this option is not discussed further in this section.

Option 1 was originally EPA’s preferred option; however, after considering comments received, EPA agrees with the commenter on the challenges and some of the potential inequities with this approach and thus is not finalizing this approach. EPA acknowledges that currently it does not have the required data to pursue Option 1, and it will be difficult to acquire such data going back to 2011 at this time. Further, as discussed in more detail below, EPA is finalizing the proposal to set aside a set number of allowances before allocating the remainder to the general pool.

While EPA agrees with the commenter that creating this pool from revoked allowances is a viable approach, EPA still has the same concerns that were raised in the proposed rulemaking. Specifically, to date, there have only been revoked consumption allowances.³⁰ Because entities can expend ASAs to either produce or import HFCs, if only consumption allowances were revoked, a pool of production allowances would still be needed to ensure entities can source ASAs from domestic producers, in addition to being able to import the

HFCs (as consumption allowances allow). In addition, a pool created from revoked allowances would vary in size (e.g., for calendar year 2025, EPA revoked 523,912.0 MTEVe of allowances, as compared to 272,329.6 MTEVe in calendar year 2024) and thus would lack stability and certainty around addressing the intent of this provision to ensure access to additional allowances in the case of an unforeseen public health emergency or other healthcare system need.

Commenters did not raise particular concerns with EPA’s proposed approach to hold back allowances from the entire general pool to create this set aside. While EPA had noted some concerns in the proposal regarding potential inequity of holding back allowances from all general pool allowance holders to create this pool, upon further consideration and review of comments EPA sees benefits in subtracting allowances used for the set-aside from the full set of allowances available for the general pool allowance holders. This approach is consistent with how the Agency allocates for ASAs currently and also creates certainty in the size of the set-aside pool each year, as compared to creating a pool from revoked allowances.

EPA is thereby finalizing the option to withhold 1,000,000 MTEVe of consumption and production allowances from all general pool allowance holders to create this set-aside pool; this is significantly smaller than the Agency’s proposal under Option 1, as it would withhold approximately 0.5 percent of all allowances allocated through 2029, compared to 10 percent under proposed Option 1. This pool of allowances is greater than 50 percent of the total number of allowances allocated to the MDI application for calendar year 2025,³¹ which should be sufficient to address any future unexpected spikes in demand that qualify for this set-aside pool. During the peak of the COVID–19 pandemic, HFC usage increased by approximately 540,000 MTEVe (a 35 percent relative to pre-pandemic numbers), so 1,000,000 MTEVe (*i.e.*, an additional 50 percent over the total MDI allocation for 2025) provides a meaningful buffer. Should the size of this pool be shown to be insufficient, EPA could reevaluate the number of allowances withheld in a future rulemaking.

³¹ This includes consumption allowances allocated to GlaxoSmithKline, who is an MDI manufacturer and a historic HFC importer that is thereby eligible for both ASAs and consumption allowances.

Therefore, EPA is finalizing in this rule that when EPA issues allowances annually it will issue allowances in the following order: first, allocate ASAs based on requests submitted by July 31 of that year (unchanged from the current approach), second, set aside 1,000,000 MTEVe allowances for potential additional ASA needs for the limited MDI needs described in this rule, and, third, allocate the remainder of allowances to the general pool based on each entity’s market share (unchanged from the current approach).

EPA had proposed that allowances held back from the general pool, whether only historic producers and importers for ASA uses or all general pool allowances, would be withheld until April 30. If no application-specific entity applied for the allowances by April 30, then the withheld allowances would be issued to the entities from which they were withheld. If a request is pending, EPA would withhold allowances until that request was evaluated and allowances were issued. Such issuance would be done in a proportionate fashion if some, but not all, of the set-aside allowances were allocated to application-specific entities.

EPA did not receive comments on the dates by which set-aside allowances should be requested and unclaimed allowances would be released. Therefore, EPA is finalizing April 30 as the deadline by which entities must request allowances from this set-aside pool. EPA will not accept additional supporting documentation after this date but may reach out to entities to ask clarifying questions as needed. EPA will assess the validity of requests and will work to provide a notice of its determination and issue the set-aside allowances, if appropriate, within 60 days. If the total request for set-aside allowances is greater than the set-aside pool, EPA will distribute the allowances proportionally. For example, Entity A requests 600,000 allowances, Entity B requests 360,000 allowances, and Entity C requests 240,000 allowances, equaling a total of 1,200,000 allowances, which is greater than the size of the set-aside pool. Assuming all requests are verified, because Entity A’s request is 50 percent of total set-aside allowances requested, Entity B’s is 30 percent, and Entity C’s is 20 percent, Entity A would receive 50 percent of the total available pool of allowances (*i.e.*, 500,000 MTEVe allowances), Entity B would receive 30 percent (*i.e.*, 300,000 MTEVe), and Entity C would receive 20 percent (*i.e.*, 200,000 MTEVe). If no set-aside allowances are requested, requests are not granted, or there are any remaining allowances after the set-aside pool is

³⁰ See <https://www.epa.gov/climate-hfcs-reduction/administrative-consequences-under-hfc-allocation-rule>.

distributed, EPA also intends to distribute any remaining set-aside allowances pro rata amongst general pool allowance holders within 60 days of the April 30 request date.

G. Return of Unneeded Allowances

EPA proposed to allow ASA holders to return their allowances voluntarily if they did not intend to use them. EPA proposed to use any returned allowances to either: (1) fulfill unexpected higher demand of another ASA holder (see section VII.F. on a limited set-aside for unique circumstances related to MDIs) or (2) return the allowances to the general pool of allowance holders proportionate to respective market shares. EPA solicited comment on this proposal, including whether it would be needed if EPA finalized other proposals outlined in the proposed rulemaking. EPA was particularly interested in whether this proposed approach would be needed if EPA finalized the requirement for entities to include in their application for allowances their anticipated need for the following calendar year (see section VII.A.). In addition, EPA proposed other potential sources of allowances for the limited set-aside for unique circumstances related to MDIs (see section VII.F.).

EPA received mixed comments on the proposal to allow ASA holders to return their allowances voluntarily. One commenter supported the proposal and suggested that EPA retain the flexibility to redeploy returned allowances based on the most urgent need. Another commenter, a general pool allowance holder, conditionally supported the proposal if returned allowances were redistributed to the general pool. A third commenter, an ASA holder, opposed the proposal, indicating that they would not be in a position to voluntarily return allowances and that returning allowances could limit the availability of intra-application allowance transfers.

EPA is not finalizing the proposal to allow ASA holders to return their allowances voluntarily at this time for several reasons. First, as mentioned earlier in this section, EPA proposed a variety of sources of allowances that could support the limited set-aside for MDIs described in section VII.F. Because of EPA's decision to finalize setting aside 1,000,000 MTEVe of allowances before allocating to production and consumption allowance holders, EPA anticipates that there will be a sufficient number of allowances available to support the set-aside already. Second, EPA is not aware of any ASA holders who have suggested that they would voluntarily return

allowances. No ASA holders commented in support of this flexibility and as previously noted, one ASA holder commented that they would not be in a position to return allowances due to unpredictability in the HFC supply chain. Therefore, it seems that at the present time this mechanism would not be used. However, EPA sees benefit in continuing to consider whether a mechanism for unused ASA allowances may be beneficial. Third, as described in section VII.A., EPA is finalizing the requirement that all entities provide their total expected HFC purchases for the next calendar year as a component of overall applications due July 31 for ASAs for the following calendar year. EPA noted in the proposed rulemaking that this change may help avoid overallocation on ASAs at the expense of general pool allowance holders, which in turn may reduce the amount of unused allowances held by ASA holders. Fourth, EPA noted in the proposed rulemaking, and a commenter agreed, that allowing for the return of unneeded allowances could limit the availability of allowances for transfer to another application-specific entity that has an unanticipated need for more allowances during the calendar year. Allowance transfers can be an important flexibility for ASA holders in the event that they need more allowances than they have been allocated in a given calendar year. Thus, while EPA is not finalizing returning unneeded allowances to the Agency, EPA instead encourages ASA holders with unneeded allowances to consider transferring those allowances to other entities within their application if any of those entities are seeking additional allowances.

H. Enabling Auctions of Illegally Imported HFCs

EPA proposed to amend the prohibition relating to the sale and distribution of illegally imported HFCs in 40 CFR 84.5 to clarify that a person may sell or distribute, or offer for sale or distribution, a regulated substance purchased at an auction authorized by U.S. Customs and Border Protection (CBP) if the buyer expended consumption allowances or ASAs in a quantity equal to the EV-weighted equivalent of the illegally imported regulated substances.³²

EPA also proposed targeted changes to the reporting requirements to provide clarity in the regulations for how such

purchases would be reported. Specifically, entities purchasing HFCs at auction would need to report the import of those HFCs (that was done by another entity prior to administration of the auction) under 40 CFR 84.31(c)(1) and maintain records consistent with 40 CFR 84.31(c)(2). In addition, EPA proposed that entities would use the entry date for the HFCs purchased at auction for purposes of 40 CFR 84.31(c)(1) reporting and maintain records of that purchase under 40 CFR 84.31(c)(2).

Additionally, EPA proposed that entities who purchase HFCs at auction would not be subject to the advance notification requirement in 40 CFR 84.31(c)(7) for HFCs purchased via an auction authorized by CBP, as the window for the notification would have already passed and EPA would be verifying whether a prospective purchaser has sufficient allowances as part of any auction. However, EPA proposed that entities would still have to provide notification to EPA via a CBP-authorized electronic data interchange system, such as the Automated Broker Interface, prior to the HFCs entering U.S. commerce and provide the same data elements as in 40 CFR 84.31(c)(7). If a certificate of analysis (see 40 CFR 84.31(c)(7)(xvi)) is not available at the time of filing entry, EPA proposed that the entity would need to do any required sampling and testing prior to sale in U.S. commerce.

Several commenters expressed concern at the appropriateness of auctions generally for the handling of illegally imported regulated HFCs and instead urged the Agency to require that these materials be destroyed at the expense of the illegal importer. Commenters argued that auctions would generally be inappropriate because an auction would force CBP into a particular outcome prior to them issuing a proposal for handling illegally imported HFCs, and the high organizational, creation, and facilitation costs for auctions would be better spent on other mechanisms such as import screening, sustainable management practices, and destruction orders. One commenter also expressed the same conceptual concern with auctions of previously illegally imported HFCs as they did with auctions for the statutorily-required yearly issuance of allowances.

At the outset, EPA is restating that the proposed amendment to the prohibition relating to the sale and prohibition of illegally imported HFCs in 40 CFR 84.5 was to clarify that a person may sell or distribute, or offer for sale or distribution, a regulated substance

³² The sales provision in 40 CFR 84.5 does not apply to other government personnel or contractors that need to move the HFCs for eventual disposition consistent with the regulatory requirements, such as through an auction with verification by EPA prior to sale.

purchased at an auction authorized by CBP if the buyer expended consumption allowances or ASAs in a quantity equal to the EV-weighted equivalent of the illegally imported regulated substances. The Agency's proposal did not prejudice the outcome of the handling of illegally imported materials, nor was it an endorsement of auctions as a lead option over other outcomes such as re-export or destruction. Accordingly, EPA disagrees that the regulatory changes contemplated force EPA, CBP, or any other agency to pursue one specific action; instead, an auction is one possible outcome, and the regulatory changes simply provide flexibility for auctions to be operationalized if and when deemed appropriate.

In response to comments that the high costs and burdens associated with auctions would be better spent on monitoring legal HFC imports, supporting programs that promote sustainable HFC management practices, and carrying out what the commenter referred to as "a more straightforward" approach to requiring destruction, EPA notes that these regulatory changes do not require or necessitate the use of auctions, but rather preserve flexibility for auctions to potentially be pursued if and when deemed appropriate. Therefore, EPA does not view these comments as significant adverse comments with respect to the action proposed in this rulemaking. EPA also notes that other disposition options (e.g., destruction of illegally imported HFCs) have significant costs without any opportunity to offset those costs.

EPA acknowledges the importance of monitoring for HFC imports. EPA notes that since 2021, the Agency has co-chaired an interagency task force on illegal HFC trade. Detecting, disrupting, and deterring illegal shipments of HFCs has been a priority for EPA and our interagency partners. In addition to daily monitoring of HFC imports, EPA and our federal partners have also made information technology enhancements such as upgrades to a filing system within the Automated Commercial Environment (ACE) specifically for HFCs that prohibit unknown importers or importers without sufficient allowances to file for entry. These enhancements allow EPA to more efficiently identify potential instances of illegal trade that could undermine U.S. businesses complying with the AIM Act.

For the reasons stated above, EPA is finalizing as proposed the amendment to 40 CFR 84.5 to clarify that a person may sell or distribute, or offer for sale or distribution, a regulated substance purchased at an auction authorized by CBP if the buyer expended consumption

allowances or ASAs in a quantity equal to the EV-weighted equivalent of the illegally imported regulated substances.³³

Closely joined to comments received in opposition of auctions as a concept generally for previously illegally imported HFCs, several commenters favored destruction of illegally imported HFCs at the importer's responsibility and cost. These commenters asserted that this approach ensures public safety by not introducing potentially harmful low-quality or unknown-quality HFCs, upholds the integrity of U.S. regulatory authorities by sending a clear message to illegal importers and would-be illegal importers, and prevents unfair competition against U.S. manufacturers who have made significant investments to meet environmental and regulatory standards. As noted in response to the prior comments, this rulemaking is not intended to choose one approach over another, but rather preserve flexibility for future decision making. Amendments being finalized in this rulemaking do not pre-judge an outcome or favor any outcome for illegally imported HFCs. Rather, these changes allow for the legal transfer of previously illegally imported HFCs by way of a very specific mechanism. Therefore, these comments are not significantly adverse to the regulatory changes EPA proposed here and do not require a response in the context of this rulemaking. However, in the interest of providing clarity to interested stakeholders on these issues, EPA is providing its view on these points below and will take commenters' concerns into account in making future decisions on disposition of illegally imported HFCs in cooperation and coordination with federal agency partners.

EPA has taken steps to address the concerns mentioned and disagrees with the commenters on their arguments against auctioning illegally imported HFCs. Note that under the provisions being finalized in this rule, EPA would only allow for auctioned HFCs to be sold or distributed in U.S. commerce if an equivalent amount of allowances are expended. To address concerns about quality and to ensure that all HFCs sold have an accurate label, sampling and testing and labeling requirements are in place for HFCs purchased at auction just like the requirements applicable to all other HFCs. Additionally, anyone

buying HFCs through an auction would be prohibited, consistent with the sales and distribution restrictions at 40 CFR 84.5(i), from selling or distributing or offering for sale and distribution HFCs that are off specification (e.g., refrigerants that do not meet the AHRI 700 purity standard) as included in EPA regulations.

Regarding the concern that auctioning illegally imported HFCs does not uphold the integrity of U.S. regulatory authorities, EPA disagrees. Any HFCs sold via an auction are HFCs that were attempted to be imported without the appropriate permissions (e.g., allowances), were stopped, and were seized. The goods themselves and any value associated with them would be forfeited by the illegal importer. This upholds the integrity of the regulatory requirements by preventing the importer from bringing these into the United States without following applicable law and results in a complete financial loss to the importer. Additionally, the entity that attempted to import HFCs would still be subject to applicable civil and criminal penalties, as applicable, for violating the law.

EPA also disagrees with commenters' assertions that simply allowing an auction to occur may have negative economic effects against U.S. manufacturers. Any potential buyer would have to expend consumption allowances equal to the quantity acquired at auction. Since there are a finite number of allowances allocated each year and allowances will be expended for the quantity purchased at auction, this approach ensures there is no additional consumption beyond the limits in the AIM Act and implementing regulations at 40 CFR part 84, subpart A. In other words, the total pool of HFCs that can enter the U.S. market in a given year will not change if illegally imported HFCs are auctioned to an entity that will expend an equivalent number of allowances. Other than domestic producers, allowance holders are almost exclusively expending their allowances to import HFCs. By expending allowances for HFCs purchased at auction, these allowance holders are in effect offsetting quantities they would otherwise be importing, which is expected to result in no change in the quantity of HFCs produced domestically. Regarding concerns that there would be financial effects on U.S. manufacturers due to auctioned HFCs being sold at a below market price, EPA expects minimum pricing thresholds would reduce any effects. See the discussion later in this section.

The Agency also received comments on specific aspects of the physical goods

³³ The sales provision in 40 CFR 84.5 does not apply to other government personnel or contractors that need to move the HFCs for eventual disposition consistent with the regulatory requirements, such as through an auction with verification by EPA prior to sale.

as well as the process and criteria for holding an auction. These comments include: the quality and composition of auctioned materials and potential downstream effects on end users; payment of duties and tariffs; pricing that may undercut U.S. manufacturers; reclassifying the goods; and limiting the scope of who may bid on the goods.

As stated in responses to regulatory changes that were considered and being finalized in this rule, the changes contemplated in this rule are not intended to favor auctions as a means to handle illegally imported HFCs. Whether, and how, to pursue such an auction is subject to future decision making. However, EPA notes that to mitigate quality and component concerns for any downstream end user, EPA proposed that if a certificate of analysis (*see* 40 CFR 84.31(c)(7)(xvi)) is not available at the time of filing entry, the entity purchasing illegally imported HFCs would need to do any required sampling and testing prior to sale in U.S. commerce. The Agency is finalizing this provision with a minor adjustment to better reflect when the certificate of analysis is required, *i.e.*, if a certificate of analysis is not available by the time the auction concludes and the purchasing entity takes physical possession of the goods, the entity must perform any required sampling and testing prior to sale in U.S. commerce in accordance with 40 CFR 84.5(i)(3)(i), regardless of whether the entity meets one of the criteria contained in that subsection. EPA is also clarifying that in instances where a purchasing entity is repackaging regulated substances whether as a single or multicomponent substance, that they must perform lab sampling and testing in accordance with 40 CFR 84.5(i)(3)(i) even if a certificate of analysis was available at the time the purchaser took physical possession of the goods. As noted above and in combination with existing labeling and purity requirements, this ensures that the purchaser at auction knows the composition of the HFCs and whether those HFCs meet the regulatory purity standard prior to sale.

Several commenters urged EPA to require that any applicable tariffs or import duties, including anti-dumping and countervailing duties (AD/CVDs) be paid, either by the purchaser of the goods or prior to the goods being auctioned. EPA acknowledges the comment and the importance of preventing duty evasion. In addition to the authority and mandates of the U.S. Department of Commerce (DOC), CBP enforces AD/CVD laws by collecting the applicable cash deposits, administering AD/CVD entries, assessing and

collecting final AD/CVDs, and enforcing AD/CVD on imports that evade AD/CVD orders. The comments on ensuring that tariffs and duties have been paid is outside of the scope of this rulemaking, and would require the Agency to determine details about factors including but not limited to scope, timing, and rationale that EPA does not have sufficient information at this time to develop. However, if the Agency pursues an auction, in collaboration with federal government partners, the Agency may consider whether to include a minimum pricing threshold to negate the detrimental effects to U.S. manufacturers of any potential dumping or countervailing. Upon verification that EPA requirements have been satisfied, CBP can affect a sale of forfeited property via national seized property contracts. These contracts are awarded by the U.S. Department of Treasury's Treasury Executive Office for Asset Forfeiture, and minimum pricing thresholds can be instituted.

Two commenters expressed concern that the auction of illegally imported HFCs could introduce below-market priced HFCs into commerce which would therefore unfairly compete against domestic companies that have followed the legal framework, borne the costs of compliance, and invested in new environmental and regulatory standards. Furthermore, these commenters contended that auctioning illegally imported HFCs at below-market prices may dilute efforts and incentives created by the HFC phasedown, specifically the adoption of lower EV alternatives. EPA responds that today's final rulemaking considers regulatory changes that could provide future flexibility to pursue an auction of previously illegally imported HFCs. This rulemaking does not consider potential criteria for any future auctions and the comments described in this paragraph are outside of the scope of this rulemaking. However, and as noted above, EPA may consider whether it is appropriate to include a minimum pricing threshold to remain competitive when compared to products from U.S. manufacturers as part of any future auction proceedings.

One commenter offered an alternative to EPA's proposal for administering an auction for previously illegally imported HFCs: these HFCs may be auctioned as "recovered" refrigerant which, once verified to meet AHRI 700 specifications, could be sold as reclaim to support compliance with reclamation requirements contained in the final 2024 Emissions Reduction and Reclamation Rule. This commenter also offered that only EPA-certified

reclaimers who are also allowance holders may bid on the goods, that the illegal importer not be eligible to bid on the goods, that tariffs and duties have been paid, and that EPA must furnish information about the source of the material being offered at auction. EPA responds that the premise of referring to HFCs being auctioned as "recovered" is outside of the scope of today's rulemaking. However, in future development of an auction, if pursued, EPA would be unlikely to pursue commenter's suggestions given the definition codified in 40 CFR 84.102, for "recover," which means:

The process by which a regulated substance, or where applicable, a substitute for a regulated substance, is

(1) removed, in any condition, from equipment and

(2) stored in an external container, with or without testing or processing the regulated substance or substitute for a regulated substance.

One commenter suggested that entities subject to administrative consequences, or their affiliates, should be ineligible to participate in an auction of previously illegally imported HFCs. EPA reiterates that this rule is simply contemplating flexibilities that would allow future consideration of an auction. As a result, in the proposal EPA did not put forward limits or exclusionary criteria for entities who may bid on the auction of previously illegally imported HFCs.

One commenter expressed concern that auctions may have other unintended consequences, *i.e.*, they may encourage or incentivize continued illegal activities, and auctioned materials may be harder to track and ensure responsible use. The commenter alleged that by administering auctions, the illegal importers might see this process as an opportunity to legitimize their wrongdoing and continue importing HFCs in a manner that is inconsistent with EPA's regulations. The commenter expressed a concern that this may also embolden would-be illegal importers and lead to efforts to bypass EPA's regulations thereby flooding the U.S. market with illegal HFCs. EPA responds that as previously noted, the provision being finalized in this rulemaking only allows flexibility for the federal government to potentially pursue auctions, and therefore the Agency does not consider these comments to be significantly adverse to the regulatory changes proposed. EPA is not pre-judging the outcome of any illegal shipment nor is the Agency favoring auction over other final outcomes. EPA also notes that the commenter has only provided

conceptual arguments, but has not provided any data, information, or other compelling evidence to support the argument that illegal activity would be meaningfully higher if the goods were to be auctioned versus other outcomes such as re-export or destruction. However, EPA reaffirms our commitment to working with our federal partners to detect, disrupt, and deter illegal shipments of HFCs. If an auction were to be pursued, the entity that illegally imported would have their HFCs seized by CBP, losing all value and investment made to bring those HFCs into the United States illegally. Coupled with the need to purchase allowances, it is not clear how auctions would facilitate illegal trade, especially if the HFCs are auctioned with a minimum pricing threshold.

The commenter also expressed concern that there would be no guarantee that auctioned goods would be used in an environmentally responsible manner or according to regulatory standards. EPA does not view this comment as significantly adverse to the regulatory changes considered in this rulemaking. However, the Agency notes that entities must expend the appropriate number of allowances to cover the auctioned materials on an EV-weighted basis, thereby creating regulatory obligations for them if they weren't already an allowance holder. Among other things, the entity purchasing illegally imported HFCs at auction would be subject to certain reporting and recordkeeping requirements under 40 CFR 84.31(c), would be responsible for ensuring the quality and composition of the goods either through an existing certificate of analysis and/or additional lab sampling and testing, and would be subject to annual audits of certain HFC activities under 40 CFR 84.33. As applicable, purchasers of HFCs at auctions would also be subject to EPA's regulations under 40 CFR part 82, subpart F, where applicable, including but not limited to any recordkeeping provisions under the sales restriction contained in 40 CFR 82.154(c). Failure to abide by one or more of any of these traceable and tangible obligations created as a result of taking possession of or selling previously illegally imported HFCs could result in administrative consequences, traditional enforcement action, or a combination of the two. End users of any HFCs are also subject to EPA regulations implemented under the 2023 Technology Transitions Rule and the 2024 Emissions Reduction and Reclamation Rule.

EPA also proposed targeted changes to the reporting requirements to provide

clarity in the regulations for how such purchases would be reported. Specifically, entities purchasing HFCs at auction would need to report the import of those HFCs (that was done by another entity prior to the auction purchase) under 40 CFR 84.31(c)(1) and maintain records consistent with 40 CFR 84.31(c)(2). The Agency did not receive any comments during the public comment period with respect to this proposed provision, and in the absence of any information that would deem these provisions to be inappropriate, EPA is finalizing this provision as proposed.

In addition, EPA proposed that entities would use the entry date for the HFCs purchased at auction for purposes of 40 CFR 84.31(c)(1) reporting and maintain records of that purchase under 40 CFR 84.31(c)(2). The Agency did not receive any comments during the public comment period with respect to this proposed provision, but after consultation with CBP specifically with respect using the date that entry was filed for the purposes of 40 CFR 84.31(c)(1), EPA is amending this provision to be the date that the goods were released to the entity purchasing the HFCs at auction. The Agency understands that there may be logistical issues that arise for CBP if the purchaser were to file for entry; accordingly, EPA is adjusting the date to use for the purposes of reporting to 40 CFR 84.31(c)(1) in a manner that should not materially affect either domestic or international compliance or reporting obligations while simultaneously not creating additional burden for another Federal Agency.

Lastly, EPA proposed that entities who purchase HFCs at auction would not be subject to the advance notification requirement in 40 CFR 84.31(c)(7) for HFCs purchased via an auction authorized by CBP, as the window for the notification would have already passed and EPA would be verifying whether a prospective purchaser has sufficient allowances as part of any auction. However, EPA proposed that entities would still have to provide notification to EPA via a CBP-authorized electronic data interchange system, such as the Automated Broker Interface, prior to the HFCs entering U.S. commerce and provide the same data elements as in 40 CFR 84.31(c)(7). The Agency did not receive any comments during the public comment period with respect to this proposed provision, but after consultation with CBP specifically with respect to the notion of the purchaser providing notification to EPA via a CBP-authorized electronic interchange

system as the Automated Broker Interface, EPA is not finalizing this requirement. EPA understands that having a broker or importer transmit notification via a CBP-authorized electronic interchange system may create logistical issues for CBP, and accordingly will work directly with an entity purchasing HFCs at auction to ensure that the same information that is contained in 40 CFR 84.31(c)(7) is received prior to the HFCs entering commerce. Specifically, in lieu of entities providing notification to EPA via a CBP-authorized electronic data interchange system, entities who purchase HFCs through an auction shall provide information contained in 40 CFR 84.31(c)(7) directly to EPA in an electronic format specified by EPA. EPA had proposed that the required information be submitted within three business days of the HFCs being purchased at auction. However, after further reflection and recognizing that the general auction process would be novel to both government agencies and purchasers, EPA is finalizing that the required information must be submitted within 30 calendar days of the HFCs being purchased at auction and that the HFCs may not enter commerce until the required information is submitted. Additionally, transmittal shall also certify that the entity has expended the necessary allowances as of the date of purchase and will report the transaction(s) in the quarterly importer report required under 40 CFR 84.31(c)(1) as if the HFCs had been imported on the date the HFCs were released to the purchaser at auction.

I. Quarterly Exporter Reporting of Internal Transaction Numbers

ITNs uniquely identify shipments being exported from the United States to another country. EPA currently requires companies to report ITNs when they request additional consumption allowances after exporting bulk HFCs. EPA proposed to require companies, as part of reporting done pursuant to AIM Act subsection (d)(1), to additionally report ITNs quarterly for all HFC exports, but that exporters would not be required to report on their quarterly reports ITNs for shipments that are exempt from needing ITNs under CBP regulations. EPA did not receive comment on this proposal so is finalizing these changes as proposed. EPA did not propose any changes to the existing regulations related to RACAs, such that reporters would still need to obtain ITNs for any exports listed in RACA submissions (e.g., exports to Canada).

J. Date of Purchase for Requests for Additional Consumption Allowances (RACAs)

EPA proposed to amend the existing requirement in 40 CFR 84.17(a)(5) to require an entity to only report whether the HFCs exported were purchased before or after January 1, 2022, rather than the exact date purchased as is currently required. EPA did not receive comments on this proposal and is accordingly finalizing this amendment as proposed.

VIII. Authorization To Produce for Export

Subsection (e)(5) of the AIM Act provides that the Administrator may authorize an entity to produce a regulated substance in excess of the number of production allowances otherwise allocated to that entity, subject to several conditions including:

- The authorization is valid for a renewable period of not more than five years;
- The authorization must be established via notice and opportunity for public comment;
- The production is solely for export to, and use in, a foreign country that is not subject to the prohibition in subsection (j)(1);³⁴ and
- The production so authorized would not violate the production or consumption limits.

On March 28, 2024, EPA received a request from Iofina Chemical (Iofina) to authorize additional production of HFCs under subsection (e)(5) that can be exported to supply semiconductor manufacturers outside of the United States. Details of Iofina's request can be found in the proposed rulemaking and in the docket associated with this rulemaking.

After considering Iofina's specific situation, the limited number of allowances that would be needed to accommodate its request, and its stated intent to export HFCs for use in an application that Congress specified in subsection (e)(4)(B) of the AIM Act, EPA proposed to allocate 3,000.0 MTEVe non-transferrable production for export allowances exclusively to Iofina on an annual basis for each of the calendar years 2026 through 2030. A detailed discussion of the rationale for the Agency's proposal and final action follow.

A. To what entities is EPA finalizing provisions to allocate production for export allowances?

As described above, EPA proposed to only allocate production for export allowances to Iofina. As outlined in the proposal, the Agency had determined that the company has demonstrated its need for production for export allowances. EPA also outlined in the proposed rule how such an authorization supports the HFC phasedown overall, given that Iofina only produces HFC-41, one of the lowest EV HFCs controlled by the AIM Act with an EV of 92, at its facility in Covington, Kentucky.

EPA notes that while there may be other HFC producers interested in receiving production for export allowances, EPA has only assessed the appropriateness of proposing an allocation for Iofina in light of the specific circumstances presented by that entity. The Agency did not propose, nor create a mechanism to finalize, production for export allowances for any other entity through this rulemaking. If other producers were to express a similar interest, EPA may consider whether to act in a separate rulemaking under subsection (e)(5) on a case-by-case basis. At this time, EPA emphasizes that this action is dependent on facts specific to Iofina, including the relatively small size of Iofina's production and the modest impacts on the overall market for HFCs that will result.

The Agency received supportive comments from Iofina and did not receive comments from any other entity either in support of, or against, our proposal. EPA is finalizing as proposed that Iofina will receive production for export allowances in the amount and duration described in this final rule.

B. How many production for export allowances will EPA issue to Iofina on an annual basis, and for how many years will EPA issue these allowances?

EPA proposed to issue Iofina non-transferrable production for export allowances in the amount of 3,000.0 MTEVe on an annual basis for the five-year period between 2026 and 2030. The Agency arrived at this proposed amount based on an evaluation of a combination of factors, including: Iofina's request; supporting information from the company explaining and demonstrating the need for production for export allowances; Iofina's relative market share of production allowances and recent yearly allocations from EPA; recent conferral activity where Iofina is the recipient; and the general effect to

other producers of issuing Iofina production for export allowances in the proposed amount.

The Agency received supportive comments from Iofina during the public comment period for this provision, and did not receive comments from any other entity either in support of, or against, our proposal. Consistent with the provisions in subsection (e)(5)(A)(i), EPA is finalizing that Iofina will be allocated production for export allowances in the amount of 3,000.0 MTEVe on an annual basis for a five-year period between 2026 and 2030.

C. Will Iofina need to expend consumption allowances for materials produced with production for export allowances and subsequently exported?

Subsection (e)(5) of the AIM Act allows EPA to "authorize a person to produce" for export if such production would not violate the yearly cap described in subsection (e)(2)(B). To operationalize this statutory requirement, EPA proposed to require that any material produced with production for export allowances must be exported in the same year it was produced. The AIM Act defines "consumption" as the amount of HFCs produced and imported minus the quantity of HFCs exported. Therefore, production of an HFC in a given year would be "netted out" when calculating consumption if that HFC is exported in that same year. Because HFCs produced with production for export allowances would be exported in the same year and therefore would be "netted out" when evaluating the United States' calculated yearly consumption, EPA proposed that when Iofina produces for export using this specific category of allowances, it would not be required to expend consumption allowances in an equivalent amount. Relatedly, EPA also proposed that Iofina's materials produced with production for export allowances would not be eligible for additional consumption allowances through the RACA provisions in 40 CFR 84.17.

No comments were received on this provision during the public comment period. Accordingly, EPA is finalizing these provisions as proposed, *i.e.*, any material produced with production for export allowances must be exported in the same year it was produced, Iofina does not need to expend consumption allowances in equivalent amount when it produces regulated HFCs using production for export allowances, and Iofina's materials produced with production for export allowances are not eligible for the RACA provisions in 40 CFR 84.17.

³⁴ Given that the prohibition of (j)(1) does not take effect until 2033, and EPA is making allowances available to Iofina through 2030, EPA does not consider this restriction related to subsection (j)(1) as relevant to this rulemaking.

D. How will this process affect the issuance of other types of allowances?

Under 40 CFR part 84, subpart A, EPA first determines ASAs prior to determining any other allowances. Because the Agency proposed to issue an annual finite number of production for export allowances for Iofina, EPA proposed to determine these non-transferrable allowances immediately after ASAs are determined. As a result, EPA proposed small modifications to 40 CFR 84.9 to reflect that the number of available general pool production allowances is the difference between the yearly production cap and the sum of ASAs issued and the number of production for export allowances. EPA did not propose any changes to how general pool consumption allowances are issued on an annual basis and did not propose to either revise or reopen the methodology codified in 40 CFR 84.11.

The Agency did not receive comments on the proposed process for issuing production for export allowances or how this process may affect other types of allowances. In the absence of any information that would indicate that the proposed provisions would be inappropriate, EPA is finalizing the provision to determine non-transferrable allowances to Iofina immediately after ASAs are determined as well as related modifications to 40 CFR 84.9 to reflect that the number of available general pool production allowances is the difference between the yearly production cap and the sum of ASAs issued and the number of production for export allowances. It should be noted that because production for export allowances is a separate category from general pool production allowances, Iofina would be eligible for both of these types of allowances beginning in 2026 through 2030. No changes to how general pool consumption allowances are allocated are being finalized in this rulemaking.

E. What are the final recordkeeping and reporting requirements for production for export allowances?

EPA is finalizing that Iofina comply with recordkeeping and reporting requirements in addition to what is already required of the entity as a domestic producer under 40 CFR 84.31(a) and (b) and as an exporter under 40 CFR 84.31(d).

1. Annual Certifications

EPA proposed that Iofina secure signed certifications by a responsible corporate officer from their overseas application-specific customers attesting

that any regulated HFCs produced using production for export allowances will only be used in application-specific uses (*i.e.*, only for the etching of semiconductor material or wafers and the cleaning of CVD chambers within the semiconductor manufacturing sector). EPA proposed that Iofina must provide such written and signed certification for each of their overseas customers, accompanied by a description of how the foreign use aligns with the definitions in 40 CFR 84.13(a) and 40 CFR 84.3. The Agency also proposed that if the regulated HFCs produced by Iofina using production for export allowances are to be held at an intermediary prior to receipt by the semiconductor manufacturer, the intermediary must also submit the same certification. As part of the yearly written certification, EPA proposed that the name and address of the foreign entity, and the contact person's name, email address, and phone number are included. Further, EPA proposed that Iofina must provide copies of these signed certifications with its end of year fourth quarter report due February 14 (*i.e.*, certifications for calendar year 1 are due on February 14 of year 2).

During the public comment period, Iofina explained that as one of its common business practices, it sells regulated HFCs to intermediary companies, who then repackage and sell the regulated HFCs to the final end users. Iofina interpreted the Agency's proposed provisions as requiring it to obtain and submit copies of the signed certifications from all intermediaries and final end users. In an effort to protect customer confidentiality, Iofina requested that it be responsible for obtaining and submitting to EPA the signed certifications from the intermediary, and that Iofina or the intermediary be responsible for obtaining and submitting to EPA the signed certification from the final end user.

EPA acknowledges Iofina's concerns regarding customer confidentiality, and is clarifying the final provisions for annual certifications. In instances where the regulated HFCs produced using production for export allowances are sold by Iofina directly to a final end user, EPA is finalizing that Iofina must secure signed certifications by a responsible corporate officer from its overseas application-specific customers attesting that any regulated HFCs produced using production for export allowances will only be used in application-specific uses (*i.e.*, only for the etching of semiconductor material or wafers and the cleaning of CVD chambers within the semiconductor

manufacturing sector). The certifications must be accompanied by a description of how the use in another country aligns with the definitions in 40 CFR 84.13(a) and 40 CFR 84.3. EPA is finalizing that in instances when regulated HFCs produced using production for export allowances are sold directly for use by foreign end users, the name and address of the foreign entity, and the contact person's name, email address, and phone number are included in the certification. Further, EPA is finalizing that Iofina must provide copies of these signed certifications with its end of year fourth quarter report due February 14 (*i.e.*, certifications for calendar year 1 are due on February 14 of year 2).

If the regulated HFCs produced by Iofina using production for export allowances are to be held at an intermediary prior to receipt by the semiconductor manufacturer, EPA is clarifying that Iofina must secure signed certifications by a responsible corporate officer from the intermediary attesting that any regulated HFCs produced using production for export allowances will only be used in application-specific uses (*i.e.*, only for the etching of semiconductor material or wafers and the cleaning of CVD chambers within the semiconductor manufacturing sector). The certifications must be accompanied by a description of how the foreign use aligns with the definitions in 40 CFR 84.13(a) and 40 CFR 84.3. As part of the yearly written certification for the intermediary, EPA is finalizing that Iofina must provide the name and address of the intermediary, as well as the contact person's name, email address, and phone number. Further, EPA is finalizing that Iofina must provide copies of these signed certifications with its end of year fourth quarter report due February 14 (*i.e.*, certifications for calendar year 1 are due on February 14 of year 2).

2. Quarterly Export and Inventory Reporting

In addition to submitting the quarterly exporter reports currently required under 40 CFR 84.31(a) and (b), the Agency proposed that Iofina must, as part of these quarterly exporter reports, document the amounts exported that were produced using production for export allowances. Iofina would also be required to document the country to which HFCs were exported. As part of this documentation and to help ensure that EPA can quickly locate exports of regulated HFCs produced by Iofina, the Agency proposed that an ITN be provided for each shipment regardless of monetary value, destination country, or other characteristics that could

otherwise exempt or preclude an exporting entity from obtaining an ITN. Additionally, EPA proposed that Iofina report quarterly no later than 45 days after the applicable quarterly control period on inventory of regulated HFCs produced with production for export allowances so EPA can effectively track their use. Inventory of regulated HFCs produced with production for export allowances must be zero as of December 31 for that calendar year; otherwise, EPA may pursue actions including but not limited to allowance adjustments, *i.e.*, administrative consequences, or enforcement action.

The Agency did not receive any comments during the public comment period on this set of provisions. Accordingly, EPA is finalizing that as part of the existing quarterly exporter reports, Iofina must also: document the amounts exported that were produced using production for export allowances; document the country to which HFCs were exported along with an ITN for each shipment regardless of monetary value, destination country, or other characteristics that could otherwise exempt or preclude an exporting entity from obtaining an ITN; and, that Iofina report quarterly no later than 45 days after the applicable quarterly control period on inventory of regulated HFCs produced with production for export allowances. As stated in the proposal and reiterated in this final rulemaking, inventory of regulated HFCs produced with production for export allowances must be zero as of December 31 for that calendar year; otherwise, EPA may pursue actions including but not limited to allowance adjustments, *i.e.*, administrative consequences, or enforcement action. All reports described in this section are subject to EPA's auditing provisions under 40 CFR 84.33.

3. Recordkeeping

EPA proposed that Iofina maintains for a period of five years the certifications from all of its customers and any intermediaries attesting that the regulated HFCs they are receiving are only to be used for the etching of semiconductor material or wafers and cleaning of CVD chambers within the semiconductor manufacturing sector. The Agency also proposed that Iofina maintain for a period of five years records demonstrating that Iofina has conducted extensive due diligence to verify and ensure that the HFCs they sell abroad are only sold to an entity that will use the HFC for an application-specific use and are not going to be diverted for some other use (*e.g.*, destroyed for carbon credits, sold to

another entity that will use the HFCs for another end use).

The Agency did not receive any comments during the public comment period on this set of provisions. Accordingly, EPA is finalizing that: Iofina maintain for a period of five years the certifications from all of its customers and intermediaries attesting that the regulated HFCs they are receiving are only to be used for the etching of semiconductor material or wafers and cleaning of CVD chambers within the semiconductor manufacturing sector; and, Iofina maintain for a period of five years records demonstrating that Iofina has conducted extensive due diligence to verify and ensure that the HFCs they sell abroad are only sold to an entity that will use the HFC for an application-specific use and are not going to be diverted for some other use (*e.g.*, destroyed for carbon credits, sold to another entity that will use the HFCs for another end use).

IX. How will EPA handle confidentiality for newly reported information?

Consistent with EPA's commitment to transparency in program implementation, as well as to proactively encourage compliance, support enforcement of program requirements, and enable third-party engagement to complement EPA's enforcement efforts, EPA proposed several ways it would treat the release of data that would be collected if this rule were finalized as proposed. Specifically, EPA proposed to make categorical confidentiality determinations for some of the proposed data elements that would be submitted to EPA. The proposal identified certain information that would be subject to disclosure to the public without further notice because the Agency proposed to find that the information did not meet the standard for confidential treatment under Exemption 4 of the Freedom of Information Act. EPA also proposed to identify certain other categories of information that would be entitled to confidential treatment.

EPA is finalizing confidentiality determinations for certain individual reported data elements as proposed. Some aspects of the proposal are not being finalized because they related to elements of data that are not being required upon finalization of this rule. For example, EPA proposed determinations related to the proposal to allow ASA holders to voluntarily return unneeded allowances, but as explained in section VII.G., EPA is not finalizing this proposal to allow ASA

holders to voluntarily return allowances. For data elements for which EPA is not making a confidentiality determination in this action, EPA will apply the 40 CFR part 2 process for establishing case-by-case confidentiality determinations. EPA will also follow the aggregation criteria as finalized in the Allocation Framework Rule.

Two comments discussed EPA's general approach to confidential information. One commenter suggested that the Agency was proposing a different standard for determining confidential business information (CBI) than that used in other programs and encouraged the Agency to handle confidentiality determinations consistently across the Agency and its programs and not adjust treatment depending on ASA applications. Another commenter similarly noted that it is important for the Agency to protect CBI consistently to ensure that CBI is afforded appropriate protection from disclosure.

EPA responds that by establishing confidentiality determinations through this rulemaking, EPA will provide predictability for both information requesters and entities submitting information to EPA. The confidentiality determinations are also intended to increase transparency around this program's implementation. EPA did not propose, nor is the Agency finalizing, a different standard for the handling of confidential information related to ASA applications than that used by the Agency generally across programs. Unless directed otherwise by statute, EPA uses the same legal review standard for confidentiality determinations across all Agency programs, whether through rulemaking or through the Agency's 40 CFR part 2 process. EPA explained at length this legal standard and its rationale for proposing categorical confidentiality determinations in the proposed rule. EPA's rationale remains the same from the proposed rule, and EPA is not reproducing that rationale in this final rule. In short, through this rulemaking, submitters are on notice before they submit any information that EPA has determined that the information identified as not CBI in the memorandum provided in the docket for this action titled *Confidentiality Determinations for Data Elements in the Application-specific Allowances Review and Renewal Rule*, will not be entitled to confidential treatment upon submission and may be released by the Agency without further notice. As a result, for any data element included in the memorandum and categorized as not CBI, submitters do not have a reasonable

expectation that the information will be treated as confidential; rather, they should have the expectation that the information will be disclosed.

There may be additional reasons not to release information determined to not be entitled to confidential treatment, *e.g.*, if it is personally identifiable information (PII). The Agency will separately determine whether any data should be withheld from release for reasons other than business confidentiality before data is released.

A. Data Elements Associated With a Petition To Be Listed as an Application That Will Receive Application-Specific Allowances

In light of the statutory requirement in subsection (e)(4)(B)(ii) to make a complete petition available to the public, and consistent with EPA's commitment to transparency in program implementation, EPA is finalizing the proposal without change. The Agency will not provide confidential treatment to, and may release without further process, petitions submitted under 40 CFR 84.14 in full with limited exception. EPA will treat as confidential a subset of required elements for which EPA is finalizing that multiple entities could submit information individually to EPA, specifically information submitted under 40 CFR 84.14(a)(6), (7), and (8). All other information, including all information submitted to EPA that does not correspond to a required element, will be released without further process. EPA did not receive comments in response to the proposed determinations for data submitted in a petition. The memorandum to the docket lists each individual element of a complete petition with an accompanying determination on whether that element is entitled or not to confidential treatment. EPA proposed and is finalizing that through this rulemaking, entities are put on notice of data release in line with the legal standard established by the *Argus Leader* decision and EPA regulations at 40 CFR part 2, as more fully explained in the proposal. EPA is providing an express indication to all potential petitioners prior to the time information is submitted to EPA that EPA will publicly disclose the information without further process. Therefore, potential future submitters cannot reasonably expect confidentiality of the information upon submission, and the information is not entitled to confidential treatment under Exemption 4.

B. Data Elements Related to Proposed Revisions to Existing Regulations

To maximize program transparency, EPA is finalizing that the Agency will release data elements corresponding to the following regulatory revisions: (1) a pool of set-aside allowances for situations that meet the criteria for unique circumstances related to the propellants in MDIs application; and (2) the "date of purchase" requirement for a RACA. EPA did not receive comments on these elements which the Agency proposed that it would intend to release. The memorandum to the docket lists each individual element related to these regulatory revisions with an accompanying determination on whether that element would be entitled or not to confidential treatment. EPA proposed and is finalizing those individual determinations through this rulemaking. Entities reporting this information are put on notice that this data may be released without further notice in line with the legal standard established in the *Argus Leader* decision and EPA regulations at 40 CFR part 2. Therefore, potential future submitters cannot reasonably expect confidentiality of the information upon submission, and the information is not entitled to confidential treatment under Exemption 4.

EPA proposed and is finalizing determinations through rulemaking that certain other reported information is entitled to confidential treatment. EPA proposed and is finalizing that supporting documentation verifying a need to purchase regulated substances in the present calendar year for purposes of the set-aside is entitled to confidential treatment because it is likely to include the type of information that submitters customarily keep private or closely held. This is also consistent with the Agency's current approach regarding requests for ASAs. EPA also proposed and is finalizing determinations that the following data elements are entitled to confidential treatment: (1) companies reported total expected amount of HFCs they intend to purchase in the calendar year; (2) elements reported on the conferral of MCMEU allowances; and (3) exporters' quarterly reported ITNs. These data elements constitute the type of information that submitters customarily keep private or closely held and will be treated as confidential information consistent with the approach taken in the Allocation Framework Rule.

One commenter stated that ITN numbers are customarily kept private or closely held. EPA agrees with the commenter. Furthermore, in the case of

ITNs reported by exporters, it is EPA's understanding that the ITN, as part of the Electronic Export Information (EEI) contained in the Automated Export System (AES), is considered confidential by DOC. This further underpins EPA's final determination in this rulemaking that ITN numbers reported in quarterly export reports are entitled to confidential treatment. Additional information on the determinations for specific data elements associated with the regulatory revisions is provided in the memorandum in the docket for this action.

C. Data Elements Reported to EPA Related to Production for Export

EPA is finalizing a production for export category of allowances as described in section VIII. EPA stated in the rule proposal that the Agency would release several data elements that a "production for export" allowance holder would be required to submit, including: (1) quantity of allowances expended for each regulated substance; (2) quantity of each regulated substance produced for export; (3) quantity of each regulated substance, produced using production for export allowances, that was exported; (4) quantity of each regulated substance held in inventory at the end of the quarter; and (5) the country to which regulated substances, produced using production for export allowances, were exported. The memorandum to the docket for the proposed rulemaking listed each individual element EPA proposed related to the production for export allowances with an accompanying proposed determination on whether that element would be entitled or not to confidential treatment. EPA invited comment on this proposed determination.

Additionally, EPA proposed that the ITNs submitted for all exports of regulated substances produced using production for export allowances would be entitled to confidential treatment, under the same rationale described earlier in this section for the proposed requirement that exporters report ITNs on a quarterly basis. EPA requested comment on this proposed determination, including comments on why this information may not be entitled to confidential treatment.

EPA also proposed that the signed certifications would be entitled to confidential treatment because it is EPA's understanding that these certifications could have the potential to reveal confidential business relationships (*i.e.*, the relationship between the allowance holder, overseas

customer, and any intermediaries). EPA requested comment on this proposed determination, including comments on why this information may not be entitled to confidential treatment. Specifically, EPA requested comment on whether the existence of a business relationship between an HFC producer and customer is information that is customarily closely held.

In response to these proposed determinations for data related to production for export, one commenter requested that all elements related to any reporting and recordkeeping requirements for production for export allowances be treated as confidential. The commenter stated that protecting the confidentiality of business relationships and customers is critical with respect to the names of any intermediaries and final end users. Additionally, the commenter asserted that CBI protection is necessary to prevent unfair competitive advantages resulting from the publication of intermediary and end user information. The commenter also expressed concern that other HFC manufacturers in countries where regulations may not yet be in place would gain a competitive advantage over US manufacturers if CBI protections are not provided.

EPA responds that at the time of proposal, the Agency had proposed that certain data elements for which the commenter requested confidential treatment, *i.e.*, ITNs and the signed certifications, should be treated as confidential. EPA did not receive comments from any other entity and in the absence of information demonstrating why it would be inappropriate to treat these specific elements as confidential. Therefore, the Agency is finalizing its determination that ITNs and signed certifications for the production for export provisions are CBI.

EPA also proposed confidentiality determinations for several other data elements related to production for export allowances, including: (1) quantity of allowances expended for each regulated substance; (2) quantity of each regulated substance produced for export; (3) quantity of each regulated substance, produced using production for export allowances, that was exported; (4) quantity of each regulated substance held in inventory at the end of the quarter; and (5) the country to which regulated substances, produced using production for export allowances, were exported. Upon further analysis of the confidentiality determinations previously finalized in the Allocation Framework Rule, the Agency has determined that for four of these five

elements confidentiality determinations already exist, specifically determinations for production and export data. The one exception is the fourth data element listed at proposal—the quantity of each regulated substance held in inventory at the end of the quarter. For every other data element, while production for export allowances is a distinct and novel category of allowances under the HFC allocation program, the confidentiality determinations finalized in the Allocation Framework Rule cover all production and export of HFCs. Therefore, under the existing determinations for production data reported to EPA, the quantity of allowances expended for each regulated substance and the quantity of each regulated substance produced are not entitled to confidential treatment. Similarly, consistent with the existing determinations for export data reported to EPA, the quantity of each regulated substance that was exported and the country to which regulated substances were exported are not entitled to confidential treatment. Because EPA is not finalizing new determinations for these data elements, any data released on production or export activity would be aggregated to include all production or export activity for a given reporting period, without distinction based on type of allowance used.

With respect to the fourth element listed at proposal, which is the quantity of each regulated substance held in inventory at the end of the quarter, this is a data element that is not covered under existing confidentiality determinations. While producers must report on the quantity of each regulated substance held in inventory, and EPA previously determined that this information is entitled to confidential treatment, producers are only required to report inventory on an *annual* basis, per 40 CFR 84.31(b)(2)(x). However, in light of the prior determination that annual inventory reporting is entitled to confidential treatment, the Agency finds that it is appropriate to treat the quantity of each regulated substance held in inventory at the end of each quarter as confidential.

For all other data elements for which the Agency is not finalizing a confidentiality determination in this rulemaking, EPA will follow the individualized determination process outlined in 40 CFR part 2 on a case-by-case basis, as described earlier in section IX, and the aggregation criteria established in the Allocation Framework Rule.

X. What are the costs and benefits of this action?

This action only results in minor additional costs and benefits attributable to changes in recordkeeping and reporting requirements, primarily marginal benefits associated with not renewing ASAs for defense sprays and the resulting changes in recordkeeping and reporting costs for the defense sprays application. This rule will not result in any significant changes to the HFC phasedown program as a whole (*i.e.*, the number of allowances that will be issued in total and overall phasedown schedule remain the same) and will allow the defense sprays application to remain exempt from the restrictions under the 2023 Technology Transitions Rule. Thus, while EPA considered both the Allocation Framework Rule and the 2023 Technology Transitions Rule to be the status quo from which potential incremental costs and benefits should be evaluated, the rule does not fundamentally alter the analytic results associated with these prior rulemakings. In the Allocation Framework Rule, EPA estimated benefits and costs for the HFC phasedown between 2022 and 2050. Given that some elements in this rule may result in incremental impacts for a subset of entities, the Agency analyzed potentially salient costs and benefits considerations associated with this rulemaking.

The analysis described in this section is intended to provide the public with information on the relevant costs and benefits of this action and has been completed to comply with relevant Executive Orders. The analysis does not form a basis or rationale for any of the actions EPA is finalizing in this rulemaking. As explained in section II.B., the AIM Act requires EPA to review applications receiving allocations pursuant to subsection (e)(4)(B)(iv) at least every five years and to renew eligibility based on two statutory criteria. Specifically, EPA must renew ASA eligibility for an application when the Agency determines there is (1) no safe or technically achievable substitute available during the applicable period and (2) an insufficient supply of the HFC(s) used in the application that can be secured from chemical manufacturers to accommodate the application. Without finalization of this rule, none of the applications listed in the AIM Act and currently receiving ASAs would continue to receive priority access to allowances beyond calendar year 2025.

For entities in the five applications with renewed eligibility for ASAs, there

are no costs or benefits in addition to those already accounted for in the Allocation Framework Rule; when EPA originally established eligibility for ASAs, the Agency did not presuppose that applications would lose that eligibility for analytical purposes. Furthermore, per subsection (i)(7)(B)(i) of the AIM Act, the Technology Transitions provisions codified at 40 CFR part 84, subpart B are not currently applicable to any application receiving an ASA (40 CFR 84.56(a)(2)). As such, they are not subject to the restrictions on the manufacture or import at 40 CFR 84.54(a), sale and distribution at 40 CFR 84.54(b), or installation at 40 CFR 84.54(c). The labeling, reporting, and recordkeeping requirements are also not applicable.

EPA does not anticipate that there are marginal costs associated with entities in the defense spray application no longer being able to procure HFCs using ASAs. The decision to not renew the defense sprays application is based on analysis that the requirement described in subclause (II) of clause (i) are not met in accordance with the requirements of subsection (e)(4)(B) of the AIM Act (*i.e.*, the supply of the HFC used by the defense spray application is not insufficient to accommodate the application beginning January 1, 2026). The Agency is making the determination that the supply of the regulated substance that manufacturers and users are capable of securing from chemical manufacturers is not insufficient to accommodate the application. Entities using HFCs in the defense spray application are able to source HFCs from the open market, subject to general restrictions under 40 CFR part 84. Therefore, EPA anticipates that there would be no cost associated with losing eligibility to receive ASAs.

EPA acknowledges that the ability to receive ASAs and confer these allowances to HFC importers/producers as opposed to buying HFCs on the open market may theoretically be of value in cases where it insulates an entity in part from market risk related to availability or price increases. However, for those entities where EPA is making the determination not to renew ASA eligibility, EPA does not anticipate the price or availability of HFCs would differ on the open market.

Further, EPA's determination to not renew an application's eligibility for ASAs does not alter the overall amount of allowed production and consumption or the benefits associated with the phasedown. EPA notes that there are marginal benefits due to avoided recordkeeping and reporting costs required of an ASA holder (*e.g.*,

biannual report submissions, conferral requests). The annual recordkeeping and reporting cost burden for an ASA holder is estimated to be \$25,781 per entity. While only six entities have ever requested ASAs, EPA is aware of nine entities that manufacture defense sprays in the United States. All nine companies, as well as any additional companies that begin manufacturing defense sprays in the United States in the future, would have been eligible for ASAs if EPA renewed the application. For analytical purposes, the Agency is assuming six would request ASAs in each year consistent with the total number of entities that have requested ASAs to date. Assuming burden relief for six defense spray manufacturers would collectively avoid \$154,686 annually and \$773,430 over the five-year renewal period in recordkeeping and reporting costs for ASA holders.

There may be marginal benefits for general pool allowance holders (*i.e.*, production and consumption allowance holders) due to the defense sprays application no longer being eligible for ASAs. However, EPA notes that the number of additional allowances allocated to the general pool, and not allocated to the defense spray application, totals well under one percent of consumption allowances in a given year. For example, for calendar year 2025 allowances, defense spray companies were allocated 209,254.5 allowances collectively, which is equivalent to approximately 0.1% of consumption allowances issued. Because general pool allowances are allocated based on market share according to the methodology at 40 CFR 84.9 and 84.11, this effectively means each general pool allowance holder would be allocated approximately 0.1% more in allowances. While this may represent a marginal benefit to specific allowance holders, EPA notes that—as these benefits constitute a transfer from one group to another and do not change the total number of allowances issued—there is no net benefit. EPA has not endeavored to quantify the value of this marginal benefit for individual allowance holders and notes that it would likely differ from company to company.

EPA analyzed whether there are marginal costs or benefits associated with codifying a petition process for requesting the designation of an application as eligible for ASAs. EPA assumes for analytical purposes that the Agency will receive one petition over the five-year period with five entities in the application. EPA estimates a cost per entity of \$13,139 and a total cost of \$65,695.

As detailed in section VII. of the preamble, EPA is also finalizing updates to the recordkeeping and reporting requirements originally established in the Allocation Framework Rule and the 2024 Allocation Rule. While some of these updates represent clarifications of the existing requirements, others represent additional requirements that would impact the total anticipated compliance costs of this rule. Section VIII. of the preamble details EPA's determination to authorize an entity (*i.e.*, Iofina) to produce for export for application-specific uses abroad. There are likely benefits that Iofina would experience from receiving additional production for export allowances, such as the ability to increase its production of HFC-41 for export to support foreign semiconductor manufacturers. The Agency does not have sufficient information—such as the additional quantity that might be produced, the profits that might accrue from that production, and the related effects on employment at the facility—to quantify the effect. As a result of the regulatory changes listed above, EPA estimates that, starting in 2026, recordkeeping and reporting costs across all entities regulated under the HFC Allocation requirements will increase by approximately \$10,611 annually relative to the previous estimates reflected in the 2024 Allocation Rule.

Overall, EPA estimates this final rule will result in an annual net cost savings of \$130,936. More details on recordkeeping and reporting costs can be found in the Information Collection Request (ICR) in the docket for this rulemaking.

XI. Judicial Review

The AIM Act provides that certain sections of the CAA “shall apply to” the AIM Act and actions “promulgated by the Administrator of [EPA] pursuant to [the AIM Act] as though [the AIM Act] were expressly included in title VI of [the CAA],” (42 U.S.C. 7675(k)(1)(C)). Among the applicable sections of the CAA is section 307, which includes provisions on judicial review. Section 307(b)(1) provides, in part, that petitions for review must only be filed in the United States Court of Appeals for the District of Columbia Circuit: (i) when the agency action consists of “nationally applicable regulations promulgated, or final actions taken, by the Administrator,” or (ii) when such action is locally or regionally applicable, but “such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that

such action is based on such a determination.”

The final action herein noticed is “nationally applicable” within the meaning of CAA section 307(b)(1). The AIM Act imposes a national cap on the total number of allowances available for each year for all entities nationwide (42 U.S.C. 7675(e)(2)(B)–(D)). In this rulemaking, EPA is not adjusting the baseline from which that total number of allowances is derived. The action noticed herein establishes a methodology to distribute that finite set of allowances in a nationally applicable rule. EPA is also establishing other nationally applicable regulations for

reporting, recordkeeping, and other implementation measures.

For these reasons, this final action is nationally applicable. Under CAA section 307(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by October 27, 2025.

XII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. EPA prepared an economic analysis of the potential costs and benefits associated with this action which can be found in section X. of this preamble, titled, “What are the costs and benefits of this action?”. The costs and benefits of this rule are estimated in the table below:

TABLE 2—SUMMARY OF COSTS AND BENEFITS

Activity	Annual costs (cost savings)
ASA recordkeeping and reporting burden relief for entities no longer eligible for ASAs	\$(154,686)
Petitions requesting eligibility for ASAs	13,139
Other regulatory revisions	10,611
Total	(130,936)

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is considered an Executive Order 14192 deregulatory action. Details on the estimated cost savings of this final rule can be found in EPA’s analysis of the potential costs and benefits associated with this action.

C. Paperwork Reduction Act (PRA)

The information collection activities in this rule, along with the full ICR titled “Recordkeeping and Reporting of the Hydrofluorocarbon Allowance Allocation and Trading Program,” will be submitted for approval to OMB under the PRA. The ICR document that EPA prepared modifies and renews the existing ICR and has been assigned EPA ICR number 2685.06. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The new information collection requirements finalized in this rule are not enforceable until OMB approves them.

Subsection (d)(1)(A) of the AIM Act specifies that on a periodic basis, but not less than annually, each person that, within the applicable reporting period, produces, imports, exports, destroys, transforms, uses as a process agent, or reclaims a regulated substance shall submit to EPA a report that describes, as applicable, the quantity of the regulated substance that the person: produced, imported, and exported; reclaimed; destroyed by a technology approved by the Administrator; used and entirely

consumed (except for trace quantities) in the manufacture of another chemical; or, used as a process agent. EPA collects such data regularly to support implementation of the AIM Act’s HFC phasedown provisions. EPA requires quarterly reporting to ensure that annual production and consumption limits are not exceeded. It is also needed for EPA to be able to review allowance transfer requests, of which remaining allowances is a major component of EPA’s review. In addition, EPA collects information to calculate allowances, to track the movement of HFCs through commerce, and to require auditing. Collecting these data elements allows EPA to confirm that the entity has not exceeded its allowed level of production and consumption and that the aggregated annual quantity of production and consumption in the United States does not exceed the cap established in the AIM Act. As described above in this preamble, EPA is establishing a procedural process for submitting a petition to designate a new application as eligible for priority access to allowances; reporting and recordkeeping requirements relevant for narrow revisions to the methodology used to allocate allowances to ASA holders for calendar years 2026 and beyond; and other limited reporting and recordkeeping revisions, such as authorizing an entity to produce regulated substances for export.

All information sent by the submitter electronically is transmitted securely to

protect information that is CBI or claimed as CBI consistent with the confidentiality determinations made in the Allocation Framework Rule and the confidentiality determinations being finalized in this rule as described in section IX. of this preamble. The reporting tool guides the user through the process of submitting such data. Documents containing information claimed as CBI must be submitted in an electronic format, in accordance with the recordkeeping requirements.

Respondents/affected entities: Respondents and affected entities will be individuals or entities that produce, import, export, reclaim, recycle for use as a fire suppressant, distribute, destroy, transform, use HFCs as a process agent, or produce for export, certain HFCs that are defined as a regulated substance under the AIM Act. Respondents and affected entities will also be any entity issued or conferred ASAs.

Respondent’s obligation to respond: Mandatory (AIM Act).

Estimated number of respondents: 342.

Frequency of response: Quarterly, biannual, annual, and as needed depending on the nature of the report.

Total estimated burden: 36,248 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$5,643,734 (per year), includes \$1,063,204 annualized capital or operation & maintenance costs.

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 OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR renewal and modification, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in the existing ICR and as modified in this final rule.

D. 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. In making this determination, EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the Agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule has a minor burden on a subset of the small entities subject to the rule. However, this rule relieves the overall burden for small entities subject to the rule, and all entities expected to experience cost savings as a result of this rule are small entities. The small entities subject to the requirements of this action are entities that hold HFC allowance allocations (including production, consumption, and application-specific allowances), entities that applied for but did not receive set-aside allowances in 2022, entities that previously imported HFCs between 2017 and 2019 but did not receive 2022 allowance allocations, and entities that recover and reprocess HFCs. Details of this analysis are presented in *Economic Impact Screening Analysis for Phasedown of Hydrofluorocarbons: Review and Renewal of Eligibility for Application-specific Allowances*, which is available in the docket for this action (EPA-HQ-OAR-2024-0196). Certain small entities will have reduced regulatory burden due to EPA excluding defense sprays from Technology Transitions restrictions that would otherwise apply under the current regulation (*i.e.*, allowing for continued use of HFC-134a in defense sprays) and by removing recordkeeping and reporting requirements for those entities, while other small entities may incur negligible reporting costs. The reduced regulatory burden for entities in the defense spray application contribute to EPA's finding that this rule will result in an annual net

cost savings. We have therefore concluded that this action will have minor to no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate of \$100 million (adjusted annually for inflation) or more (in 1995 dollars) as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or Tribal governments and the costs involved in this action are estimated not to exceed \$183 million in 2023\$ (\$100 million in 1995\$ adjusted for inflation using the gross domestic product (GDP) implicit price deflator) or more in any one year.

F. 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.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications as specified in Executive Order 13175. EPA is not aware of Tribal businesses engaged in activities that would be directly affected by this action. Based on the Agency's assessments, EPA also does not believe that potential effects, even if direct, would be substantial. Accordingly, this action will not have substantial direct effects on 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

EPA periodically updates Tribal officials on air regulations through the monthly meetings of the National Tribal Air Association and has shared information on this rulemaking through this and other fora.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may

disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order.

Therefore, this action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. Since this action does not concern human health, EPA's Policy on Children's Health also does not apply.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action applies to certain regulated substances and certain applications containing regulated substances, none of which are used to supply or distribute energy.

J. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

K. Congressional Review Act (CRA)

This action is subject to the CRA, 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 in 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 84

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Imports, Reporting and recordkeeping requirements.

Lee Zeldin,
Administrator.

For the reasons set out in the preamble, 40 CFR part 84 is amended as follows:

PART 84—PHASEDOWN OF HYDROFLUOROCARBONS

■ 1. The authority citation for part 84 continues to read as follows:

Authority: Pub. L. 116–260, Division S, Sec. 103.

Subpart A—Production and Consumption Controls

■ 2. Amend § 84.3 by adding the definitions “healthcare system need”, “responsible corporate officer”, and “responsible official” in alphabetical order to read as follows:

§ 84.3 Definitions.

* * * * *

Healthcare system need means circumstances where an increase in demand for MDIs used to treat asthma, chronic obstructive pulmonary disease, and other respiratory diseases may occur because of a change in market conditions that otherwise would not be included in calculated rates of growth.

* * * * *

Responsible corporate officer means a person who is authorized by the regulated entity to make representations on behalf of, or obligate the company as ultimately responsible for, any activity regulated under 40 CFR part 84, subpart A.

Responsible official means a person who is authorized by the regulated entity to make representations on behalf of, or obligate the company as ultimately responsible for, any activity regulated under 40 CFR part 84, subpart A.

* * * * *

■ 3. Amend § 84.5 by:

- a. In paragraph (a)(1), adding “, unexpended production for export allowances,” after “unexpended production allowances and consumption allowances”.
- b. Revising paragraph (c)(2).
- c. In paragraph (d), adding “production for export,” after “All production, consumption,” and adding “production for export,” after “confer a production, consumption,”.
- d. Revising paragraph (f).
- e. Adding paragraph (k).

The addition and revisions read as follows:

§ 84.5 Prohibitions relating to regulated substances.

* * * * *

(c) * * *

(2) No person may use a regulated substance produced or imported by expending application-specific allowances for any purpose other than those for which the application-specific allowance was allocated, and as set forth in this paragraph (c). Application-specific allowances are apportioned to a person under §§ 84.13 and 84.15 for the production or import of regulated substances solely for the individual application listed on the allowance.

* * * * *

(f) *Sale and distribution.* No person may sell or distribute, or offer for sale or distribution, any regulated substance that was produced or imported in violation of paragraphs (a) through (d) of this section, except for such actions needed to re-export the regulated substance or if the regulated substance

was purchased at a government auction authorized by the United States Customs and Border Protection and consumption allowances were expended in the requisite quantity to cover the regulated substances at issue. Every kilogram of a regulated substance sold or distributed, or offered for sale or distribution, in contravention of this paragraph constitutes a separate violation of this subpart. Sale or distribution, or offer for sale or distribution, of less than one kilogram of regulated substance in contravention of this paragraph constitutes a separate violation of this subpart.

* * * * *

(k) *Production for export allowances.*

No person may use a regulated substance produced by expending production for export allowances for any purpose other than those for which the production for export allowance was allocated, aligning with the applications as listed in § 84.13(a).

■ 4. Amend § 84.9 by:

- a. In paragraph (b)(3), adding “and 3,000.0 MTEVe allowances to be allocated pursuant to § 84.18,” after “§ 84.13”.
- b. Redesignating paragraph (c) as paragraph (d).
- c. Adding paragraph (c).

The addition reads as follows:

§ 84.9 Allocation of calendar-year production allowances.

* * * * *

(c) Starting with the allocation of 2026 calendar year allowances, the relevant Agency official will withhold 1,000,000 MTEVe of production allowances. If there are remaining production allowances after distribution from the set-aside under § 84.15, the relevant agency official will distribute such allowances pro rata to all entities receiving production allowances in that calendar year.

* * * * *

■ 5. Amend § 84.11 by:

- a. Redesignating paragraph (c) as paragraph (d).
- b. Adding paragraph (c).

The addition reads as follows:

§ 84.11 Allocation of calendar-year consumption allowances.

* * * * *

(c) Starting with the allocation of 2026 calendar year allowances, the relevant Agency official will withhold 1,000,000 MTEVe of consumption allowances. If there are remaining consumption allowances after distribution from the set-aside under § 84.15, the relevant agency official will distribute such allowances to all entities receiving

consumption allowances in that calendar year.

* * * * *

■ 6. Amend § 84.13 by:

- a. In paragraph (a), replacing “2022, 2023, 2024, and 2025” with “as designated”.
- b. In paragraph (a)(1), adding “for calendar years 2022–2030” after “metered dose inhalers”.
- c. In paragraph (a)(2), adding “for calendar years 2022–2025” after “defense sprays”.
- d. In paragraph (a)(3), adding “for calendar years 2022–2030” after “trailer use”.
- e. In paragraph (a)(4), adding “for calendar years 2022–2030” after “semiconductor manufacturing sector”.
- f. In paragraph (a)(5), replacing “; and” with “for calendar years 2022–2030;”.
- g. In paragraph (a)(6), replacing “.” with “for calendar years 2022–2030; and”.
- h. Adding paragraph (a)(7).
- i. In paragraph (b)(1), adding “, including supporting documentation that verifies this need” after the phrase “this section” in the first sentence.
- j. In paragraph (b)(1)(ii) delete “or” after “facility or facilities;”.
- k. In paragraph (b)(1)(iii), replacing “A global pandemic or other public health emergency that increases” with “A global pandemic, other public health emergency, or other healthcare system needs related to increased” and replacing “.” with “; and”.
- l. Adding paragraph (b)(1)(iv).
- m. Adding paragraph (b)(2).
- n. Redesignating paragraph (c)(1) as paragraph (c)(5).
- o. Adding paragraph (c)(1).
- p. In paragraph (c)(2), replacing “; and” with “;”.
- q. Redesignating paragraph (c)(3) as paragraph (c)(7).
- r. Adding paragraphs (c)(3) through (4).
- s. In the newly designated paragraph (c)(5), replacing “Taking the higher of the use of regulated substances by the company in the specific application in the prior year multiplied by:” with “For entities that do not meet any of the criteria in paragraph (4), multiplying the use of regulated substances by the company in the specific application in the prior year by the higher of:”.
- t. Adding paragraph (c)(6).
- u. In the newly designated paragraph (c)(7), replacing “.” with “; and”.
- v. Adding paragraph (c)(8).
- w. Removing paragraph (e).
- x. Redesignating paragraphs (f) through (h) as paragraphs (e) through (g), respectively.

The additions read as follows:

§ 84.13 Allocation of application-specific allowances.

(a) * * *

(7) For any application designated as eligible for application-specific allowances pursuant to § 84.14, but in all instances for no longer than calendar year 2030.

(b) * * *

(1) * * *

(iv) Buildup of a stockpile of a specific regulated substance in the event of a production cessation. Requests for this unique circumstances must include: a letter from the applicant's supplier signed by a responsible corporate officer stating that the supplier is ceasing all production of the regulated substance at issue within three years; certification and supporting documentation that the applicant has regulatory requirements beyond this part that limit ability to switch suppliers or there are no other suppliers that can supply the regulated substance in the quantity needed; and evidence that the applicant has a restricted supply chain for regulated substances. Applicants must specify: quantity (in kilograms) they intend to purchase of each HFC; the year(s) of intended purchase; and description of stockpile plan.

(2) Entities must provide an estimate of the total quantity of regulated substances they expect to purchase in the following calendar year based on their expected eligibility for allowances.

(c) * * *

(1) Accounting for verified changes in inventory and quantities of regulated substances acquired (excluding amounts conveyed or sold) in calculating use, except for applications for mission-critical military end uses;

* * * * *

(3) Excluding quantities reported under § 84.31(h)(1)(x) and (xi) in calculating growth rates and use amounts;

(4) Allocating allowances equivalent to the highest verified use amount measured in exchange value equivalent from the prior three years for entities that meet any of the following criteria:

(i) Entity purchased equal to or less than 100 kilograms of regulated substances in at least one of the last three years, and the average growth rate of use for the company over the past three years calculated under subparagraph (7)(i) is equal to or greater than 200 percent;

(ii) Entity has a Year 3 use amount that is less than or equal to 33 percent of its Year 2 use;

(iii) Entity had zero purchases or use in one of the last three years for reasons

other than newly using regulated substances; or

(iv) Entity purchased equal to or less than 100 kilograms of regulated substances in each of the past three years;

* * * * *

(6) For an entity operating in the etching of semiconductor material or wafers and the cleaning of chemical vapor deposition chambers within the semiconductor manufacturing application, add 10 percent of the quantity derived pursuant to paragraphs 1 through 5;

* * * * *

(8) In all instances, using the amount reported in paragraph (b)(2) if it is less than the quantity otherwise determined under this paragraph.

* * * * *

■ 7. Add § 84.14 to read as follows:

§ 84.14 Petition for designation of an application as eligible for application-specific allowances.

(a) Petitions filed pursuant to 42 U.S.C. 7675(e)(4)(B)(ii) requesting the designation of an application as eligible for application-specific allowances must include:

(1) A description of the application, including an explanation of what the application is, what purpose or function it achieves, and what populations or commercial products benefit from the application;

(2) A list of regulated substance(s) and description of their use(s) in the application and an explanation as to why regulated substances are required in the application;

(3) Evidence that no safe or technically achievable substitute, including not-in-kind technologies, is or is expected to be available, and that the petitioner has conducted research to evaluate substitutes for the regulated substance(s);

(4) Evidence that supply of the regulated substance(s) used in the application is insufficient to accommodate the application;

(5) A signed certification from a responsible corporate officer at the requesting entity that the application cannot use recovered and reprocessed regulated substance in conjunction with or in place of virgin regulated substance, either due to demonstrated lack of technical achievability or insufficient supply, and an explanation and evidence documenting why recovered and reprocessed regulated substance cannot be used for the application;

(6) Total quantity (in kilograms) of all regulated substances acquired and used by each individual entity submitting the

petition for use in the application specified in the petition in each of the previous three years, including records documenting that quantity;

(7) The name of the entity or entities supplying regulated substances and contact information for those suppliers over the past three years;

(8) Total quantity (in kilograms) of each regulated substance held in inventory for use in the application specified in the petition by each entity submitting the petition as of the date the petition is submitted;

(9) An estimate of the total quantity of regulated substances the petitioner expects to purchase for use in the application specified in the petition in the first year it would be eligible for ASAs;

(10) Data on the proportion of the overall cost of the product or system that reflects the cost of regulated substances for each entity;

(11) Historic and projected sales for the product or system for each entity;

(12) Evidence of research into design changes to decrease the amount of regulated substance used in the product or system;

(13) An explanation regarding whether the use of the regulated substance(s) is necessary for the health, safety, or is critical for the functioning of society (encompassing cultural and intellectual aspects);

(14) An explanation regarding steps taken to minimize the use of the regulated substance and any associated emission of the regulated substance(s); and

(15) Information on regulatory restrictions related to possible alternatives and substitutes.

(b) If the petition does not include the required information listed in paragraph (a), the petition will be deemed incomplete, and EPA will notify the entity submitting the petition. The Agency will not consider the petition until it is complete.

(c) In the event that an application becomes eligible to receive application-specific allowances:

(1) EPA will allocate allowances to entities in a new application in accordance with § 84.13; and

(2) A new application would be eligible to receive application-specific allowances for no longer than the latest calendar year included in § 84.13(a).

■ 8. Amend § 84.15 by adding paragraph (h) to read as follows:

§ 84.15 Set-aside of application-specific allowances, production allowances, and consumption allowances.

* * * * *

(h) Consumption and production allowances from § 84.9(c) and § 84.11(c)

are available in the form of application-specific allowances to entities that request them no later than April 30 of the calendar year in which the allowances may be expended that:

(1) Qualify for application-specific allowances under § 84.13;

(2) Provide supporting documentation that verify a need to purchase regulated substances in the present calendar year beyond what is reflected by the rates of growth calculated in § 84.13(c)(1);

(3) Provide the total quantities (in kg) of regulated substances held in inventory as of the date the application is submitted, including documentation to verify this quantity (this includes zero quantities), and an explanation of why that inventory, if available, will not be sufficient to accommodate this increased demand;

(4) Are facing a situation that qualifies as a unique circumstance as defined in § 84.13(b)(iii); and

(5) Demonstrate to the satisfaction of the relevant Agency official that the situation described in subparagraph (3) was unknowable at the time the entity made its request for application-specific allowances pursuant to § 84.13(b).

■ 9. Amend § 84.17 by:

■ a. In the introductory paragraph, adding “, except for the export of regulated substances produced with a production for export allowance” after “a foreign country in accordance with this section”.

■ b. Revising paragraph (a)(5).

The revision reads as follows:

§ 84.17 Availability of additional consumption allowances.

* * * * *

(a) * * *

(5) The source of the regulated substances and whether the date purchased was before or after January 1, 2022;

* * * * *

■ 10. Add § 84.18 to read as follows:

§ 84.18 Authorization of production for export allowances.

(a) EPA will allocate 3,000.0 MTEVe of production for export allowances to Iofina Chemical by October 1 of the calendar year prior to the year in which the allowances may be used for calendar years 2026, 2027, 2028, 2029, and 2030.

(b) Production for export allowances cannot be transferred.

(c) Any regulated substances produced with production for export allowances must be exported in the same calendar year it was produced.

■ 11. Amend § 84.31 by:

■ a. In the introductory text of paragraph (a), removing the phrase “in

the six applications listed in subsection (e)(4)(B)(iv) of the AIM Act”;

■ b. In paragraph (b)(2)(ix), removing “and” after “those listed applications”;

■ c. Redesignating paragraph (b)(2)(x) as paragraph (b)(2)(xi);

■ d. Adding paragraph (b)(2)(x);

■ e. Redesignating paragraphs (c)(1)(v) through (c)(1)(ix) as paragraphs (c)(1)(vi) through (c)(1)(x), respectively;

■ f. Adding paragraph (c)(1)(v);

■ g. Redesignating paragraphs (d)(1)(vii) and (d)(1)(viii) as paragraphs (d)(1)(viii) and (d)(1)(ix), respectively;

■ h. Adding paragraph (d)(1)(vii);

■ i. In paragraph (h)(1)(i), adding “, including a copy of the sales records, invoices, or other records documenting that quantity” after the word “months”;

■ j. In paragraph (h)(1)(ii), adding “, including a copy of the sales records, invoices, or other records documenting that quantity” after the word “months”;

■ k. In paragraph (h)(1)(iii), adding “, including a copy of the sales records, invoices, or other records documenting that quantity” after the parenthetical “(i.e., from the open market)”;

■ l. In paragraph (h)(1)(iv), adding “, with separate reporting on any inventory of stockpiled HFCs acquired pursuant to § 84.13(b)(1)(iv), including a copy of inventory records documenting that quantity if said quantity is greater than zero” after the word “use”;

■ m. In paragraph (h)(1)(viii), removing the last “and” after the phrase “additional need”;

■ n. In paragraph (h)(1)(ix), replacing “.” with “;”;

■ o. Adding paragraphs (h)(1)(x);

■ p. Adding paragraph (h)(1)(xi);

■ q. In paragraph (h)(2)(iv), adding “, including a copy of inventory records documenting that quantity if said quantity is greater than zero” after the phrase “current year”;

■ r. In the introductory text of paragraph (h)(4), striking out “, except for the conferral of allowances for mission-critical military end uses,”;

■ s. In paragraph (h)(4)(v), removing “and” after “submitted to EPA”;

■ t. In paragraph (h)(4)(vi), replacing “.” with “; and”;

■ u. Adding paragraph (h)(4)(vii);

■ v. In paragraph (h)(7)(i), replacing “annual” with “biannual”;

■ w. Redesignating paragraphs (h)(7)(iii) through (h)(7)(vi) as paragraphs (h)(7)(iv) through (h)(7)(vii), respectively;

■ x. Adding paragraph (h)(7)(iii);

■ y. Redesignating paragraph (l) as paragraph (n); and

■ z. Adding paragraph (l) and (m).

The additions read as follows:

§ 84.31 Recordkeeping and reporting.

* * * * *

(b) * * *

(2) * * *

(x) The conferral certificate number, generated by the Department of Defense, for any regulated substances produced using application-specific allowances for mission-critical military end uses; and

* * * * *

(c) * * *

(1) * * *

(v) The conferral certificate number, generated by the Department of Defense, for any regulated substances imported using application-specific allowances for mission-critical military end uses;

* * * * *

(d) * * *

(1) * * *

(vii) Internal Transaction Numbers for all shipments, except shipments where an exemption from the requirements for the filing of Electronic Export Information (EEI) is provided in 15 CFR part 30, subpart D;

* * * * *

(h) * * *

(1) * * *

(x) If allowances are allocated for a unique circumstance under § 84.13(b)(1)(v), the quantity (in kilograms) of each regulated substance purchased with the intent to build inventory during the prior six-month period, including a copy of records documenting that quantity; and

(xi) The quantity (in kilograms) of each regulated substance that was sold, returned, or otherwise conveyed to another entity during the previous six months, excluding heels as defined in § 84.3, including a copy of records documenting that quantity.

* * * * *

(4) * * *

(vii) For the conferral of allowances for mission-critical military end uses, a conferral certificate number generated by the Department of Defense.

* * * * *

(7) * * *

(iii) A copy of confirmation notices when conferring allowances for application-specific use;

* * * * *

(l) *Holders of production for export allowances.* Any person allocated production for export allowances must comply with the following recordkeeping and reporting requirements:

(1) *Quarterly reporting.* Within 45 days after the end of each quarter, each holder of production for export allowances must submit to the relevant Agency official a report containing the following information:

(i) The quantity (in exchange value equivalent) of production for export allowances expended for each regulated substance and the quantity (in kilograms) of each regulated substance produced for export;

(ii) The quantity (in kilograms) of each regulated substance produced using production for export allowances that was exported;

(iii) The quantity (in kilograms) of each regulated substance produced with production for export allowances held in inventory at the end of the quarter;

(iv) Internal Transaction Numbers for all exports of regulated substances produced with production for export allowances;

(v) The country or countries to which regulated substances produced using production for export allowances were exported

(2) *Annual reporting.* Within 45 days after the end of the fourth quarter, each holder of production for export allowances must submit to the relevant Agency official a report containing the following information:

(i) In instances where the regulated HFCs produced using production for export allowances are sold directly to final foreign users, signed certifications by a responsible corporate officer from all foreign customers attesting that any regulated substances produced using production for export allowances will only be used in an application as listed in § 84.13(a). Each certification must include the name and address of the foreign entity, and a contact person's name, email address, and phone number;

(ii) In instances where the regulated HFCs produced using production for export allowances are held at an intermediary prior to receipt by final foreign users, signed certifications by a responsible corporate officer from the intermediary attesting that any regulated substances produced using production

for export allowances will only be used in an application as listed in § 84.13(a). Each certification must include the name and address of the foreign entity, and a contact person's name, email address, and phone number; and

(iii) A description of how the use identified in the signed certifications from either the final foreign user or intermediary as appropriate, provided pursuant to paragraph (i) aligns with the applications as listed in § 84.13(a).

(3) *Recordkeeping.* Entities who receive production for export allowances must maintain the following records for three years:

(i) A copy of all certifications reported pursuant to paragraph (2)(i); and

(ii) Records demonstrating due diligence undertaken to verify and ensure that all regulated substances produced with production for export allowances and exported are being used in an application as listed in § 84.13(a).

(m) *Purchasers of HFCs at a government auction.* Any entity purchasing regulated substances at a government auction authorized by U.S. Customs and Border Protection must report such purchase to EPA as if they were an import consistent with the applicable provisions under this section, except for the following adjustments.

(i) *Quarterly reporting.* The date that the regulated substances were released to the purchaser by U.S. Customs and Border Protection or an authorized agent acting consistent with direction from U.S. Customs and Border Protection must be reported as the date on which the regulated substances were imported for purposes of paragraph (c)(1)(v). Unless otherwise unavailable, all requirements of paragraph (c)(1) must be reported to EPA. If a data element is unavailable, the auction purchaser must contact EPA and state that fact in writing by the time they make their filed report.

(ii) *Recordkeeping.* In addition to the records specified in paragraph (c)(2), the auction purchaser must maintain records of the auction purchase, including the accepted bid, confirmation of payment, certification by the entity that they expended allowances, container composition testing to verify the regulated substances contained within the cylinder, and all other final documentation of the auction purchase. Unless otherwise unavailable, all requirements of paragraph (c)(2) must be met. If a data element is unavailable, the auction purchaser must contact EPA and state that fact in writing by the time they make their filed report.

(iii) *Advance notification.* The auction purchaser must report the information specified in paragraph (c)(7) electronically in a format specified by EPA within 30 calendar days and prior to the HFCs entering U.S. commerce. The requirement in paragraph (c)(7)(xvi) does not apply if a certificate of analysis is not available at the time of submitting the information in paragraph (c)(7). The entity must complete all required sampling and testing required in this subpart prior to sale in U.S. commerce and maintain such records consistent with 84.31.

* * * * *

Subpart B—Restrictions on the Use of Hydrofluorocarbons

■ 12. Amend § 84.54 by:

■ a. In paragraph (a)(16)(i), adding “, defense sprays as defined in § 84.3,” after “an aerosol solvent.”

■ b. In paragraph (a)(16)(ii), adding “, except defense sprays as defined in § 84.3” after “150 or greater”.

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Part IV

Federal Communications Commission

47 CFR Part 1

Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WC Docket No. 17–84; FCC 25–38; FR ID 308601]

Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, a *Fifth Report and Order* adopted by the Federal Communications Commission (Commission) establishes rules ensuring greater collaboration and cooperation between utilities and attachers, establishing a timeline for large pole attachment requests, revising and improving the pole attachment timeline, and establishing a deadline for the contractor approval process. In addition, the Commission denies in part and grants in part a Petition for Clarification and/or Reconsideration from the Edison Electric Institute of portions of the Commission's December 2023 *Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking*. Finally, the Commission denies a Petition for Reconsideration from the Coalition of Concerned Utilities of a portion of the *Fourth Report and Order*.

DATES: Effective September 25, 2025, except that the amendments to §§ 1.1403(b), 1.1411(c) through (k), and 1.1412(a) and (b), (e) of the Commission's rules, which may contain new or modified information collection requirements, will not become effective until the Office of Management and Budget completes review of any information collection requirements that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: For further information about this proceeding, please contact Michele Berlove, FCC Wireline Competition Bureau, Competition Policy Division, at (202) 418–1477, or michele.berlove@fcc.gov, or Michael Ray, FCC Wireline Competition Bureau, Competition Policy Division, at (202) 418–0357 or michael.ray@fcc.gov. For additional information concerning the Paperwork Reduction Act proposed information collection requirements contained in this document, send an email to [\[fcc.gov\]\(http://fcc.gov\) or contact Nicole Ongele at \(202\) 418–2991.](mailto:PRA@</p>
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SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fifth Report and Order* in WC Docket No. 17–84, FCC 25–38, adopted on July 24, 2025, and released on July 25, 2025. The full text of this document is available for public inspection at the following internet address: <https://docs.fcc.gov/public/attachments/FCC-25-38A1.pdf>. To request materials in accessible formats for people with disabilities (e.g., Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418–0530.

Synopsis

I. Introduction

1. The Federal Communications Commission is focused on expanding access to high-speed broadband services. One way the agency is delivering on that goal is by accelerating the buildout of next-generation infrastructure. Today, we continue our infrastructure efforts by promoting fast and efficient deployment of broadband facilities on utility poles. As the Commission previously noted, access to the vital infrastructure of utility poles must be “swift, predictable, safe, and affordable, to ensure that broadband providers can continue to enter new markets and deploy facilities that support high-speed broadband.” And as more and more consumers rely on mobile wireless services to access broadband, pole access becomes increasingly essential for the small wireless antennas and wireline backhaul on which these wireless services depend.

2. The Commission has taken significant steps in recent years to expedite the pole attachment process, but there is more work to be done. Today, we take further action to advance the goal of ubiquitous high-speed broadband by revising our pole attachment rules to eliminate barriers to efficient broadband deployment by building on the work begun in the Commission's *December 2023 Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking*. Specifically, we adopt rules (1) ensuring greater collaboration and cooperation between utilities and attachers, (2) establishing a timeline for large pole attachment requests, (3) improving the pole attachment timeline, and (4) speeding up the contractor approval process. We also seek comment in the *Further Notice* on ways to further facilitate the processing of

pole attachment applications and make-ready to enable faster broadband deployment and, in response to a Petition for Declaratory Ruling filed by CTIA, seek comment on whether light poles fall within the purview of Section 224(f) of the Communications Act of 1934, as amended (the Act). We then deny in part and grant in part a Petition for Clarification and/or Reconsideration from the Edison Electric Institute of portions of the Declaratory Ruling. Finally, we deny a Petition for Reconsideration from the Coalition of Concerned Utilities of a portion of the *Fourth Wireline Infrastructure Order*, 89 FR 2151 (Jan. 12, 2024).

II. Background

3. Section 224(f) of the Act requires that utilities provide cable television systems and telecommunications carriers with nondiscriminatory access to their poles. (For purposes of this statutory provision, “utility” is defined as “any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications.” Railroads, cooperatives, and federally- and state-owned entities are expressly excluded from this definition. The term “pole attachment” is defined as “any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.”) Section 224(b)(1) of the Act requires the Commission to set the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable. (Note that Section 224(c) of the Act exempts from Commission jurisdiction those pole attachments in states that have elected to regulate pole attachments themselves (so-called “reverse preemption”). To date, 23 states and the District of Columbia have opted out of Commission regulation of pole attachments in their jurisdictions.) The Commission has rules intended to ensure nondiscriminatory pole access and just and reasonable rates, along with a robust complaint process to ensure that our rules are enforced.

4. *Pole Attachment Process.* Attaching equipment to utility poles is a multi-stage process. In the first stage, the utility reviews the pole attachment application submitted by the communications attacher for completeness. In the second stage, the utility must determine whether to grant the complete application (review on the merits) and undertake a survey of the poles for which access has been

requested. In the third stage, the utility must prepare for the attacher an estimate of the cost of preparing the affected poles for the new attachments. In the fourth stage, utilities (or the existing attachers, if they want to move their own existing equipment) perform the work to make the affected poles ready for the new attachments (also known as “make-ready” work) and then the new attachers deploy their equipment on the poles. The make-ready stage is the most time-intensive stage in the pole attachment process. (Make-ready is defined as “the modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to accommodate additional facilities on the utility pole.” There are several different kinds of make-ready. Complex make-ready refers to “transfers and work within the communications space that would be reasonably likely to cause a service outage(s) or facility damage, including work such as splicing of any communication attachment or relocation of existing wireless attachments. Any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers, are to be considered complex.” Simple make-ready is “where existing attachments in the communications space of a pole could be transferred without any reasonable expectation of a service outage or facility damage and does not require splicing of any existing communication attachment or relocation of an existing wireless attachment.” There also is make-ready above the communications space on a pole, typically involving work either in the electric space or at the pole-top.)

5. *Existing Timelines.* The Commission’s rules set forth deadlines for each stage in the pole attachment process. A utility has up to 10 business days after receiving a new attachment application to determine whether it is complete. (If the utility timely notifies the new attacher that its application is not complete, it must specify all reasons for finding it incomplete, and any resubmitted application shall be deemed complete within 5 business days after its resubmission, unless the utility notifies the attacher of how the resubmitted application is insufficient. The new attacher may follow the resubmission procedure as many times as it chooses so long as it makes a bona fide attempt to correct the reasons identified by the utility, and in each case the 5-day deadline shall apply to the utility’s review.) Upon receipt of a complete application, (A new attacher’s

attachment application is considered complete if it provides the utility with the information necessary under its procedures, as specified in a master service agreement or in requirements that are available in writing publicly at the time of submission of the application, to begin to survey the affected poles) the utility has 45 days in which to make a decision on the application and complete any surveys to determine whether and where attachment is feasible and what make-ready is required. The utility then must provide an estimate of all make-ready charges within 14 days of its response granting access or, where the new attacher has performed the survey, within 14 days of receipt of such survey. The new attacher has 14 days or until withdrawal of the estimate by the utility, whichever is longer, to accept the estimate and make payment. Once the utility receives payment of the estimate, it then must notify existing attachers on the pole of the new attachment. The existing attachers then must move their equipment to make room for the new attachment within 30 days of receiving notice from the utility for attachments in the communications space or 90 days for attachments above the communications space. (Different portions of the vertical pole serve different functions. The bottom of the pole generally is unusable for most types of attachments. Above that, the lower usable space on a pole—the “communications space”—houses low-voltage communications equipment, including fiber, coaxial cable, copper wiring, and small wireless antennas. The topmost portion of the pole—the “electric space”—houses high-voltage electrical equipment. Work in the electric space generally is considered more dangerous than work in the communications space. Historically, communications attachers used only the communications space; however, mobile wireless providers increasingly are seeking access to areas above the communications space to attach pole-top small wireless equipment.) A utility must complete its make-ready work in the same time periods, except it may take up to 15 additional days to complete make-ready above the communications space. These deadlines apply to all pole attachment requests up to the lesser of 300 poles or 0.5 percent of the utility’s poles in a state (Regular Orders). For pole attachment requests larger than a Regular Order and up to the lesser of 3,000 poles or 5 percent of a utility’s poles in a state, a utility may add 15 days to the survey period and 45 days to the make-ready periods. For

pole attachment requests larger than the lesser of 3,000 poles or 5 percent of a utility’s poles in a state, our rules currently provide that the utility and the attacher must negotiate in good faith the timing of the pole attachment process. (Note that a utility may treat multiple requests from a single new attacher as one request when the requests are filed within 30 days of one another.) Utilities may deviate from the pole attachment timelines in our rules—for the make-ready phase only—for good and sufficient cause that renders it infeasible for the utility to complete make-ready within the required timeline. (Utilities may deviate from any of the pole attachment timelines in our rules before offering the estimate of charges if the parties have no agreement specifying the rates, terms, and conditions of attachment. In addition, existing attachers may deviate from the timelines specified in our rules during the performance of complex make-ready for reasons of safety or service interruption that renders it infeasible for the existing attacher to complete complex make-ready within the timelines.)

6. *Self-Help.* In certain instances, our rules allow the new attacher to avail itself of self-help for surveys and make-ready work when those pole attachment deadlines are not met. (Self-help is not available for pole replacements.) For simple surveys and make-ready work, our rules allow new attachers to perform the work themselves using an approved contractor from a utility list; if the utility does not maintain a list of approved contractors, the new attacher can hire its own contractor as long as that contractor meets the qualifications set forth in our rules and the attacher certifies as such to the utility. (Utilities may, but are not required to, maintain a list of approved contractors for surveys and simple make-ready work.) For surveys and make-ready work that are complex or above the communications space, an existing attacher still can avail itself of self-help, but it must use a utility-approved contractor. (Utilities are required to maintain an up-to-date “reasonably sufficient list” of approved contractors for self-help surveys and make-ready that is complex or above the communications space.)

7. *One-Touch-Make-Ready.* In 2018, the Commission adopted a new framework that allows attachers to control the surveys, notices, and make-ready work necessary to attach their equipment to utility poles in certain circumstances. In what is known as one-touch, make-ready (OTMR), for an attachment involving simple make-ready, a new attacher may elect to

perform the work to attach its wireline equipment to the communications space of a pole. (“Any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers, are to be considered complex.”) This framework includes safeguards to promote coordination among parties and ensures that new attachers perform the work safely and reliably. As the Commission stated at the time, using OTMR will save new attachers “considerable time in gaining access to poles (with accelerated deadlines for application review, surveys, and make-ready work) and will save substantial costs with one party (rather than multiple parties) doing the work to prepare poles for new attachments.”

8. *Recent Commission Action.* In December 2023, the Commission took additional steps to speed-up broadband deployment by making the pole attachment process faster, more transparent, and more cost-effective. Specifically, the Commission adopted rules: (1) establishing the Rapid Broadband Assessment Team (RBAT) to provide coordinated review and assessment of qualifying pole attachment disputes and recommend effective dispute resolution procedures, and (2) requiring utilities to provide to potential attachers, upon request, the information contained in their most recent cyclical pole inspection reports, or any intervening, periodic reports created before the next cyclical inspection, for the poles covered by a submitted attachment application, including whether any of the affected poles have been “red tagged” by the utility for replacement, and the scheduled replacement date or timeframe. Additionally, the Commission clarified that a “red tagged” pole is one that the utility has identified as needing replacement for any reason other than the pole’s lack of capacity and provided additional examples of when, under § 1.1408(b) of our rules, a pole replacement is not “necessitated solely” as a result of a third party’s attachment or modification request because the pole already requires replacement at the time of the new request. The Commission also clarified the obligation to share easement information and the applicable timelines for the processing of attachment requests for 3,000 or more poles. (For the processing of pole attachment requests, the Commission specifically clarified that “when an application is submitted requesting access to more than the lesser of 3,000

poles or 5 percent of a utility’s poles in the state, the lesser of the first 3,000 poles or 5 percent of the utility’s poles in the state of that application are subject to the make-ready timeline set forth in § 1.1411(g)(3), which gives utilities 45 additional days beyond the standard make-ready timeline to process attachment applications, so long as the attacher designates in its application the first 3,000 poles (or 5 percent of the utility’s poles in the state) to be processed, which the utility must permit the attacher to do.”)

9. The Coalition of Concerned Utilities (CCU) sought reconsideration of the Commission’s decision in the *Fourth Wireline Infrastructure Order* requiring utilities to provide their recent cyclical pole inspection reports upon request to attachers. The Edison Electric Institute (EEI) sought clarification and/or reconsideration of certain aspects of the *Declaratory Ruling* and asked that the Commission “(1) clearly define the narrow circumstances in which a utility pole owner is required to provide a copy of its easement to an attacher that seeks to access a pole within such easement; and (2) remove or clarify its ruling that a ‘pole replacement is not ‘necessitated solely’ by an attachment request’ if a utility’s previous or contemporaneous change to its internal construction standards necessitates replacement of an existing pole.” Both petitions remain pending.

10. The rise in government funding for broadband deployment has contributed to a significant increase in deployment of extensive new broadband facilities, resulting in a significant increase in the number of applications seeking to attach these facilities to large numbers of utility poles. Both attachers and utilities acknowledge that these increases, along with increases in privately funded projects, have put greater demand on utility resources and the pool of qualified contractors and have resulted in difficulties and delays in accessing poles. As a result, the Commission sought comment in the *Third Further Notice* (89 FR 1859; Jan. 11, 2024) on: (1) a tentative conclusion that utilities should have an additional 90 days for make-ready work for requests exceeding the lesser of 3,000 poles or 5 percent of the utility’s poles in a state; (2) whether the Commission should prohibit utilities from limiting the number of poles included in a pole attachment application and from limiting the number of applications an attacher may submit at a time; (3) a proposal that the Commission add additional time to the existing timelines for larger orders; (4) whether the Commission should create additional

make-ready timeline tiers for attachment applications of different sizes; (5) a proposal that a utility notify an attacher within 15 days after receiving a complete application if it cannot conduct the survey within the required 45-day period (so that the attacher can elect self-help for the survey sooner); (6) whether the Commission should make self-help available for the make-ready estimate process; and (7) the impact of contractor availability when attachers seek to use their own contractors for self-help and whether to amend the Commission’s rules to make it easier for attachers to use their own contractors for self-help when there are no contractors available from a utility contractor list. Comments on the *Third Further Notice* were due on February 13, 2024, and replies were due on March 13, 2024.

11. *CTIA Petition for Declaratory Ruling.* In 2019, CTIA filed a Petition for Declaratory Ruling in this proceeding. (The CTIA Petition was also filed in the Wireless Telecommunications Bureau’s *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment* proceeding. The Wireline Competition and Wireless Telecommunications Bureaus placed the CTIA Petition on public notice and in response received dozens of comments, replies, and *ex parte* presentations from communication providers and utility groups. The Bureaus twice extended the comment deadlines.) CTIA requested three declarations concerning pole attachments in its Petition: (1) that the term “pole” in Section 224 includes light poles; (2) that utilities may not impose “blanket” restrictions on access to portions of any poles they own; and (3) that utilities may not seek bargained-for terms and conditions that are inconsistent with the Commission’s pole attachment rules. The latter two issues were addressed in a *Declaratory Ruling* released in July 2020. The question of whether the term “pole” encompasses light poles remains pending.

III. Report and Order

12. In this Report and Order, we adopt new requirements that will aid attachers and utilities in planning for larger broadband deployments and in allocating critical contractor resources to ensure that large broadband deployments are completed in an efficient and timely manner. During this critical time of infrastructure deployment and with both utilities and attachers seeking guidance from the Commission, these requirements represent a multi-pronged, holistic

approach that will best balance the difficulties faced by utilities in processing large applications against attachers' need for speedier deployments, as follows: (1) requiring attachers to provide written notice to utilities of forthcoming pole attachment orders that are greater than the lesser of 300 poles or 0.5 percent of the utility's poles in a state up to the lesser of 6,000 poles or ten percent of a utility's poles in a state; (2) providing that an attacher that fails to provide timely advance notice of such orders must, upon prompt notice from the utility, still wait the relevant advance notice period before the applicable timeline begins; (3) imposing a meet-and-confer requirement following the requisite advance notice for orders exceeding the lesser of 3,000 poles or five percent of a utility's poles in a state up to the lesser of 6,000 poles or ten percent of a utility's poles in a state; and (4) establishing a new set of timelines for utilities to complete each pole access phase for large orders.

13. We also revise our pole attachment timelines as follows: (1) require utilities to notify attachers within 15 days of receiving a complete application if they know or reasonably should know that they cannot meet the survey deadline, and require utilities to notify attachers within 15 days of payment of the estimate, and existing attachers to notify utilities and new attachers within 15 days of receiving notice from the utility, if they know or reasonably should know that they cannot meet the make-ready deadline; (2) add a self-help remedy for make-ready estimates, provided certain safeguards are met; and (3) prohibit utility-imposed limits on application size and frequency that have the effect of restricting the number of pole attachments attachers may seek in a given timeframe. We also adopt improvements to the contractor approval process. Our current rules require that a utility may not unreasonably withhold its consent to an attacher request to add qualified contractors to the utility's list of contractors approved to do pole work. (As the Commission stated in the *Third Wireline Infrastructure Order*, "to be reasonable, a utility's decision to withhold consent must be prompt, set forth in writing that describes the basis for rejection, nondiscriminatory, and based on fair application of commercially reasonable requirements for contractors relating to issues of safety or reliability.") To ensure promptness in the utility's contractor decision-making, we require utilities to

respond to a request to add contractors to a utility-approved list within 30 days of receiving the request. We note, however, that the parties are free to negotiate for a longer approval period. (Parties have always been free to reach negotiated agreements with terms that differ from our rules.)

A. Advance Notice and Meet-and-Confer Requirements

14. Both attachers and utilities cite the need for better coordination in the pole attachment process. And the Commission has always encouraged "a high degree of pre-planning and coordination between attachers and pole owners, to begin as early in the process as possible." (We note that the advance notice and meet and confer requirements adopted here are an outgrowth of the large order management issues on which the Commission sought comment in the *Third Further Notice*, particularly: (1) seeking comment on utility concerns related to large-order processing, especially workforce availability and the submission of multiple applications at the same time; (2) asking about steps the Commission could take to facilitate the pole attachment process for larger orders; (3) asking about other ways to assist utilities in processing the expected increase in large applications; and (4) seeking comment on factors identified by USTelecom as reasons to give utilities additional time to process larger orders—permitting delays, workforce shortages, staffing issues, and the coordination required among attachers to make room for a new attachment.) To that end, we adopt a requirement that attachers provide written advance notice to utilities of Mid-Sized Orders associated with a single network deployment (For Mid-Sized Orders only, the advance notice requirement is limited to instances where the order threshold would be exceeded by pole attachment application(s) that are part of a single network deployment project being undertaken by the new attacher.) and Large Orders. (Several commenters advocate that we extend the advance notice requirement to orders involving government-funded broadband projects, while EEI supports advance notice for Large Orders, but limited only to those involving government-funded broadband projects. We disagree with EEI's proposed limitation, as we find that a prior notice requirement will benefit the processing of both Mid-Sized Orders associated with a single network deployment and Large Orders for all broadband projects, including privately funded projects. We note that

government-funded orders more than likely are Large Orders or Mid-Sized Orders associated with a single network deployment and thus already will be covered by the advance notice requirement. Additionally, attachers give no proposed definition of a government-funded project, nor any size limitation on such an order, and also put the onus on the utility to determine whether an order is associated with a government-funded project (*i.e.*, allegedly because such grants are in the public domain and easily verifiable). Moreover, many government-funded projects will involve areas where the utilities are cooperatives that are not subject to our rules.) Mid-Sized Orders are orders exceeding the lesser of 300 poles or 0.5 percent of a utility's poles in a state up to the lesser of 3,000 poles or 5 percent of a utility's poles in the state. Large Orders are orders exceeding the lesser of 3,000 poles or 5 percent of a utility's poles in a state up to the lesser of 6,000 poles or 10 percent of a utility's poles in a state. We require the written advance notice to be sent as soon as practicable, but not less than 15 days in advance of submitting a Mid-Sized Order or 60 days in advance of submitting a Large Order, and that it shall set forth detailed information that will allow the utility to properly assess the potential resource needs for the order. While we expect the notice to be as detailed as possible, at the very least it must contain (1) the attacher's contact information; (2) description of the proposed deployment area(s) and anticipated route(s); (3) an anticipated build-out schedule; and (4) a request to meet and confer with the utility within 30 days of the date of the notice for a Large Order. (There are three categories of information requested by Dominion, UTC, and USTelecom that we do not find should be required for the advance notice, although such information could be helpful to share with the utility, if available at the time of the notice: (1) in the case of a government-funded project, all deployment plans prepared in connection with the attacher's application for funds; (2) a list of all contractors that the attacher seeks to have pre-approved for one-touch and self-help make-ready work; and (3) a list of all permits and authorizations necessary for the proposed deployment and their status. The lists of contractors, permits, and authorizations may not be readily discernable until after the Mid-Sized or Large Order is submitted, while the detailed deployment plans for government-funded projects can be shared after the advance notice is sent.) We do not adopt a meet-and-confer

requirement for Mid-Sized Orders. We also clarify, as requested by NCTA, that “minor changes to routes should not necessitate new notice and/or a new meet-and-confer, but that the attacher and utility should jointly work to accommodate these changes.”

15. Smaller orders, up to the lesser of 300 poles or 0.5 percent of the utility's poles in a state (Regular Orders) will not be subject to this requirement, as such orders do not implicate as many resources as larger orders. We also do not impose this new requirement on orders that exceed the lesser of 6,000 poles or 10 percent of a utility's poles in a state (Very Large Orders) and instead require the parties to engage in good faith negotiation of the attachment timelines for such orders. We do, however, encourage prior notice for Very Large Orders given their attendant complexities and the benefits of coordination and collaboration between the parties.

16. In adopting a written advance notice requirement for Mid-Sized Orders associated with a single network deployment and Large Orders, we acknowledge the concerns of utilities that “[w]ithout ample advanced notice, there is a risk that attachers may flood pole owners with applications predictably leading to delays due to scarcity of resources.” The record does not reflect opposition to this requirement for Large Orders, and both utilities and attachers generally agree that it will be useful for all parties. However, we disagree with attachers who argue that we should not apply an advance notice requirement for Mid-Sized Orders. (We disagree with NCTA's assertion that “[p]rior to the release of the Draft Order, utilities had not requested that advanced notice requirements apply to smaller or mid-size orders.” We note that both EEI and the Electric Utilities advocated for an advance notice for Mid-Sized Orders during the comment period.) Instead, we agree with utilities that a written advance notice requirement will promote broadband deployment and lead to greater efficiency in the processing of not just Large Orders but also Mid-Sized Orders associated with a single network deployment, especially with regard to allocating important contractor resources. As CCU notes, “[a]dvance notice would enable utilities to better prepare by, for example, working to secure as many additional contractor resources as possible to support the negotiated timeframes.” However, in recognition that applying the prior notice requirements to Mid-Sized Orders risks slowing the process for completing these orders, which

according to commenters are often not scheduled in advance and can regularly exceed 300 poles in a thirty-day period, we shorten the advance notice period for Mid-Sized Orders associated with a single network deployment to 15 days. And in light of attachers' concern that “[t]he 300 poles in a 30-day period threshold, if it included even unrelated ‘business as usual’ builds, would require notice nearly every month,” we limit the advance notice requirement for Mid-Sized Orders to when the threshold would be exceeded by pole attachment application(s) that are part of a single network deployment project being undertaken by the new attacher.

17. If an attacher submits an application to the utility without giving the required the advance notice, then the utility may promptly notify the attacher that it is treating the application as the requisite advance notice, that the application will commence the advance notice period, and, if it is a Large Order, that the attacher must request the meet-and-confer required by our rules. If the attacher fails to request the meet-and-confer described below, then the advance notice period will not begin to run until such request is made. At the end of the advance notice period, the new attacher can submit a new application or notify the utility that it is continuing with its original submission as its application, and the utility may not charge any additional or increased application fee. Failure by the utility to give prompt notice that it is treating the attacher's application as the advance notice will result in the application proceeding to be processed under the applicable timelines without an advance notice period or meet-and-confer requirement. This approach still will provide utilities with the advance notice they assert is routinely lacking. (We note that if disputes arise regarding the sufficiency of the attacher's notice (especially with regard to the adequacy of the required information in the notice), the parties can resort to the RBAT to resolve such conflicts.) Although we encourage advance notice from attachers to utilities for larger orders as early in the process as possible, we find that a minimum of 15 days is needed for the utility to begin planning for how to process Mid-Sized Orders associated with a single network deployment, and a minimum of 60 days is needed for Large Orders, which present more complications that the parties will need to iron out in the ensuing meet-and-confer. (Utilities generally agree that 60 days is the minimum amount of time needed for an

advance notice of Large Orders. We find that 60 days' advance notice for Large Orders strikes the right balance between giving the utility enough time to begin planning for the new project and the time at which an attacher's plans become more concrete and less likely to change. We also find that the advance notice for Mid-Sized Orders associated with a single network deployment should be shorter than the notice for Large Orders, as such orders are smaller and presumably easier to process.) It also will require responsiveness on the part of utilities, which attachers assert is often not forthcoming. We expect that this requirement will foster a more collaborative approach to the pole attachment process and increase efficiency and planning in processing larger orders, resulting in speedier broadband deployment.

18. We reject utilities' request that if an attacher fails to comply with the advance notice requirement, then it forfeits the right to have its application processed under the Mid-Sized and Large Order timelines and instead will have to negotiate timelines for their application in good faith with the utility. We find that such a penalty is too onerous. The impact of failure to comply with the advance notice requirement is readily ameliorated by utilities' ability to deem the associated application to constitute the attacher's advance notice, still requiring the parties to meet and confer (as described below) within the specified period of time after a Large Order is filed, and tolling for the length of the advance notice period the applicable pole attachment timeline, which includes the time the utility has to review the associated application for completeness and begin its review on the merits.

19. To further enhance collaboration between the parties, we require attachers and utilities to meet and confer within 30 days after written advance notice is given to negotiate in good faith the mechanics and timing by which Large Orders will be processed. We encourage the parties to discuss and plan, among other things, the utility's ability to meet deadlines for an order, the availability of contractors (particularly the need for, and availability of, electric space contractors to the extent necessary), a prioritization of the poles to be worked on, the status of local permitting efforts, and estimated timelines for the work. We also require that the parties find a mutually agreeable day and time for the meeting (which can be in-person, virtual, or by phone), and to conduct the meeting, within the 30-day period after the attacher sends written advance notice.

Any allegations of bad faith by either party in fulfilling this requirement can be referred to the RBAT for resolution. We agree with utilities that such a pre-planning requirement will “enable utilities and attaching entities to prepare for larger orders or better yet avoid the need to submit larger orders altogether and instead submit applications in stages.” (UTC in particular supports the idea that “processing applications incrementally is more efficient and enables utilities to process as many applications as quickly as possible and avoids the situation where if there is a hold-up with one application, then the attachers’ entire project is held up” and that a pre-planning requirement will enable the parties “to prioritize the work appropriately so that resources can be allocated and projects can be

completed as efficiently as possible with the resources that are available.”)

B. Large Orders

20. While we do not change the existing timelines for processing pole attachment applications for Regular Orders and Mid-Sized Orders, (The pole attachment deadlines for all four phases of the pole attachment process apply to all requests for Regular Orders. Utilities currently get an extra 15 days for the survey process and an extra 45 days for the make-ready process for Mid-Sized Orders. There currently are no required timelines for the processing of orders exceeding the lesser of 3,000 poles or 5 percent of a utility’s poles in a state; rather, the current rules require the parties to negotiate such timelines in good faith. Note also that attachers have

the right to engage in self-help for surveys and make-ready work if utilities fail to complete those items by the deadlines established in our rules.) we agree with attachers that fixed timelines are necessary for some level of pole attachment applications above 3,000 poles (or 5 percent of a utility’s poles in a state). Presently, our rules require attachers and utilities to negotiate in good faith the timelines for such applications, but today we shift away from an uncertain negotiation method and adopt a new level of defined timelines for processing applications exceeding the lesser of 3,000 poles or 5 percent of a utility’s poles in a state, up to the lesser of 6,000 poles or 10 percent of a utility’s poles in a state. We define this grouping as Large Orders, and the timelines we adopt are as follows:

LARGE ORDER TIMELINE

Pole access phase	Time for completion
Application Completeness Review	10 business days after receipt.
OTMR Application Review	10 business days for completeness, 45 days on the merits after application is complete.
Survey/Review on Merits	90 days after application is complete.
Estimate	29 days after survey.
Communications Space Make-Ready	120 days after attacher payment.
Above Communications Space Make-Ready (Power space)	180 days after attacher payment.

For orders that exceed the lesser of 6,000 poles or 10 percent of a utility’s poles in a state (Very Large Orders), we leave in place the requirement that utilities and attachers negotiate in good faith the pole attachment timelines for such orders. However, consistent with the Commission’s clarification in the *Declaratory Ruling*, the lesser of the first 6,000 poles (or 10 percent of the utility’s poles in the state) of that application are subject to the new make-ready timelines that we adopt today for Large Orders, so long as the attacher designates in its application the first 6,000 poles (or 10 percent of the utility’s poles in the state) to be processed, which the utility must permit the attacher to do.

21. We adopt the 6,000 pole cap for the expanded timeline for Large Orders after consideration of comments from parties on both sides of the equation. In particular, we agree with NCTA’s judgment that “[i]n NCTA members’ experience, the cap should not be less than 6,000 poles or 10% of the utilities’ poles in the state to correspond with NCTA members’ collective experience to date deploying funded broadband projects.” Dominion/Xcel also advocate for a 6,000 pole cap on the next level of applications subject to a timeline, while noting that their ultimate preference is for the Commission to refrain from

adopting a timeline for orders over 3,000 poles.

22. We agree with attacher commenters that an additional defined timeline layer is needed to process these Large Orders. As NCTA asserts, having defined timelines only for applications up to 3,000 poles, and requiring attachers to negotiate the timing of applications exceeding this threshold, fails to provide the required certainty and expediency necessary to meet critical broadband buildout needs and requirements. As the Commission noted when it first adopted timelines to govern the pole attachment process, “in the absence of a timeline, pole attachments may be subject to excessive delays.” Since that time, when the Commission established a good-faith negotiation solution for the processing of orders exceeding the lesser of 3,000 poles or 5 percent of a utility’s poles in a state, circumstances have changed, with an established nationwide priority on broadband deployment and the need for communications attachers to move quickly to achieve the needed buildouts.

23. Utilities’ opposition to an additional layer of defined timelines for Large Orders centers on the desire for flexibility, especially with regard to the allocation of contractor resources for pole attachment work; as USTelecom

notes, no utility can “escape the realities of workforce shortages, staffing issues, permitting delays, supply chain difficulties, and the need to divert resources to address storms or other emergencies, which can add time to a deployment project.” While we recognize these realities and the benefits of flexibility, we address utilities’ concerns by adopting the advance notice and meet-and-confer requirements that will jump start the pole attachment process for Large Orders earlier than under our current rules, a requirement that utilities have identified as crucial to adopting timelines for Large Orders. With additional planning added to the process on the front end (especially with regard to planning for contractor resources), and given the over-arching need of communications attachers to deploy broadband as quickly as possible, we find that a defined pole attachment timeline for Large Orders will greatly facilitate the pole attachment process. And we agree that in adopting new timelines for Large Orders, “the parties will remain free to negotiate alternative solutions.”

24. *Timelines for Large Orders.* We find that the new timelines for Large Orders strike a balance between a utility’s need for sufficient time to

process such orders and an attacher's need for a quicker pole attachment

process in order to meet buildout deadlines. For ease of reference, the

pole attachment timelines for all sizes of orders will now be as follows:

POLE ATTACHMENT TIMELINES

Pole access phase	Regular orders	Mid-sized orders	Large orders
Application Completeness Review.	10 business days	10 business days	10 business days.
OTMR Application Review.	10 business days for completeness, 15 days on the merits after application is complete.	10 business days for completeness, 30 days on the merits after application is complete.	10 business days for completeness, 45 days on the merits after application is complete.
Survey/Review on Merits.	45 days after application is complete ..	60 days after application is complete ..	90 days after application is complete.
Estimate	14 days after survey	14 days after survey	29 days after survey.
Communications Space Make-Ready.	30 days after attacher payment	75 days after attacher payment	120 days after attacher payment.
Above Comms Make-Ready (Electric Space).	90 days after attacher payment	135 days after attacher payment	180 days after attacher payment.

25. While we adopt the Commission's proposal in the *Third Further Notice* to add 90 days to the make-ready timelines for Large Orders, (The proposed additional 90 days for make-ready were in addition to the make-ready deadlines for Regular Orders (*i.e.*, 30 days for communications space make-ready and 90 days for make-ready above the communications space).) we also find it necessary to adopt longer timelines for other stages of the pole attachment process, not just the make-ready phase. As a result, we add incremental days for the application review, survey, and estimate phases of the pole attachment process for Large Orders in recognition of utilities' concerns that as pole attachment orders become larger, they become more complex and thus require even more time to complete. The new timelines we adopt for Large Orders are the same as those proposed by NCTA, but are shorter than the Large Order timelines proposed by USTelecom (USTelecom proposes incremental timelines for each 300-pole batch over 3,000 poles in an order, which would be added to the timelines for Regular Orders: (1) *Review of Application for Completeness*—for each increment of 300 poles over 3,000 poles, the utility has 10 additional business days to determine whether an application is complete; (2) *Survey/Application review on the merits*—for each increment of 300 poles over 3,000 poles, the utility has 45 additional days to decide whether to grant a complete application and to complete any surveys; (3) *Estimate*—for each increment of 300 poles over 3,000 poles, the utility has 14 additional days to provide an estimate of make-ready charges; (4) *Attacher acceptance*—for each increment of 300 poles over 3,000 poles, the attacher has 14 additional days, or until withdrawal

of the estimate by the utility, whichever is later, to approve the estimate and provide payment; (5) *Make-ready for attachments in the communications space*—for each increment of 300 poles over 3,000 poles, there are 30 additional days to complete make-ready work for attachments in the communications space; and (6) *Make-ready for attachments above the communications space*—for each increment of 300 poles over 3,000 poles, there are 90 additional days to complete make-ready work for attachments above the communications space, and a utility may take an additional 15 days to complete the make-ready.) and Dominion/Xcel Energy, (We note that Dominion/Xcel generally are opposed to additional pole attachment timelines for Large Orders, but are proposing timelines in the alternative “if the Commission is compelled to reach this result.” Dominion/Xcel also caveat that their proposed timeline should be limited to broadband projects funded by government programs and expressly conditioned on their proposed notice requirement. The Dominion/Xcel timeline for Large Orders would provide: (1) 30 days for application completeness review; (2) 75 days for OTMR application review; (3) survey/application review on the merits 150 days after application is complete; (4) estimate due 30 days after the survey is completed; (5) communications space make-ready within 165 days after attacher payment; and (6) make-ready work above the communication space within 285 days after attacher payment.) which we find are too lengthy to help attachers efficiently meet broadband buildout deadlines. For example, the proposed Dominion/Xcel timelines would extend the total make-ready time period to over five months for utilities

and existing attachers to complete make-ready work for attachments in the communications space and to over nine months for utilities to complete work for attachments above the communications space. Given that make-ready timelines follow several months already afforded to utilities by the Commission's rules for assessing the completeness of applications, deciding the merits of an application, performing surveys, and providing make-ready estimates, adding an additional 5–7 months for make-ready would extend the pole attachment process to almost a year, thereby unnecessarily delaying the process. While some utility commenters oppose the Commission's proposal for additional make-ready time for Large Orders, we conclude that the 90-day increase in the make-ready deadlines for Large Orders strikes a balance between getting attachers onto poles faster while still making it more likely that a utility will be able to meet our pole attachment timelines. The new timelines we adopt today would mean that Large Orders would be processed more slowly than if an applicant broke the requests up into two smaller applications and submitted them separately a month apart. As a result, attachers will have an incentive to submit smaller orders that allow utilities to better manage their workflows and contractors and thus complete applications in a timely manner.

26. To the extent utilities need additional time for make-ready work, we note that the Commission's rules allow for deviations to the make-ready deadlines “for good and sufficient cause that renders it infeasible for the utility to complete make-ready within the time limits specified in this section.” (While utilities are concerned about the increased complexities associated with

increasingly larger orders and the inability to predict what might arise in the course of the work related to these orders, the advance notice and meet-and-confer requirements will go a long way toward obviating these concerns.) USTelecom requests that we provide additional examples of what constitutes “good and sufficient cause” for deviations to the make-ready timelines, but we decline to do so at this time. Our rules currently provide that a utility may deviate from the make-ready timeline “for good and sufficient cause that renders it infeasible for the utility to complete make-ready within the [specified] time limits.” (When so deviating, the utility must “immediately notify, in writing, the new attacher and affected existing attachers,” and identify the affected poles and provide a detailed explanation of the reason for the deviation and a new completion date.” The utility shall deviate from the time limits specified in this section for a period no longer than necessary to complete make-ready on the affected poles and shall resume make-ready without discrimination when it returns to routine operations. A utility cannot delay completion of make-ready because of a preexisting violation on an affected pole not caused by the new attacher.”) In interpreting this provision, the Commission in 2011 stated that “utilities may toll the timeline to cope with an emergency that requires federal disaster relief, but may not stop the clock for routine or foreseeable events such as repairing damage caused by routine seasonal storms; repositioning existing attachments; bringing poles up to code; alleged lack of resources; or awaiting resolution of regulatory proceedings, such as a state public utilities commission rulemaking, that affect pole attachments. Aside from these examples of very serious occurrences that impede make-ready on the one hand, and routine events that do not justify tolling the timeline on the other hand, a utility must exercise its judgment in invoking a clock stoppage in the context of its general duty to provide timely and nondiscriminatory access.” We find that this previous guidance on what constitutes “good and sufficient cause” under our rules affords sufficient flexibility while still providing the certainty and expediency needed to ensure timely broadband buildouts.

27. While our overall approach provides for shorter timelines than utilities might otherwise prefer, the advance notice and meet-and-confer requirements that we adopt today should obviate any attendant concerns

and help both sides set more realistic expectations. For example, USTelecom advocates for the status quo regarding the pole attachment timelines for Large Orders, stating that “[n]egotiated timelines let companies anticipate the challenges that will likely arise in a project, discuss potential solutions or workarounds, and tailor a realistic timeline that accounts for them.” However, the status quo results in delay because timeline negotiations do not even begin until after a Large Order is filed. Under the approach we adopt today, attachers are required to provide utilities with advance notice, and attachers and utilities then must meet and confer before a Large Order is submitted, thereby capturing the efficiencies identified by USTelecom much earlier in the pole attachment process.

28. The advance notice and meet-and-confer requirements also will help utilities when multiple attachers submit applications in the same timeframe. As Dominion/Xcel identifies the problem, it is hard to manage utility resources “to the extent that sudden upticks in its workload arise from multiple modest-sized orders, submitted simultaneously by multiple attachers.” But, as Dominion/Xcel note, “[t]o ensure that adequate resources are available to process applications submitted in connection with massive deployments, DEV [already] requests that attachers provide prior notice of expanded orders as soon as the details of such orders are known—and some attachers honor this request.” As we now mandate advance notice and meet-and-confer requirements before the submission of Large Orders, utilities and attachers can work out beforehand any resource problems caused by multiple such orders being submitted by different attachers around the same time.

29. *Negotiated Timelines for Very Large Orders.* We agree with NCTA that the parties should engage in good faith negotiations for the timelines applicable to Very Large Orders, which we have defined as orders exceeding the lesser of 6,000 poles or 10 percent of a utility’s poles in a state. While ACA Connects argues for established timelines for Very Large Orders, we find NCTA’s position to be a reasonable accommodation between utilities and attachers for dealing with orders of that size. We reject NCTA’s request that, if the utility fails to establish a reasonable timeline for Very Large Orders, the timeline for Large Orders will then govern. We find that there may be reasons beyond the utility’s control, including the possible failure of attachers to agree to a reasonable timeline, that may prevent

the establishment of a timeline for Very Large Orders.

C. Improvements to the Pole Attachment Timeline

30. *Utility and existing attacher notification requirement to enable quicker self-help for surveys and make-ready.* We require utilities to notify new attachers within 15 days of receipt of a complete application if they know or reasonably should know that they cannot meet the survey timelines. We further require utilities to notify new attachers as soon as practicable but no later than 15 days after payment of the estimate if they know or reasonably should know that they cannot meet the make-ready timelines. (We disagree with NCTA that the 15-day make-ready notification deadline should begin on completion of the survey. As USTelecom points out, at completion of the survey, “utilities will lack insight into several relevant facts . . . including when the make-ready period will begin (something that depends on when the attacher pays a make-ready estimate) and whether third-party attachers will comply with deadlines for moving their attachments (something that occurs during the make-ready period).”) Similarly, existing attachers shall notify the utility and the new attacher as soon as practicable but no later than 15 days after receiving notice from the utility pursuant to § 1.1411(e) of our rules that the existing attacher knows or reasonably should know that it cannot meet the make-ready deadline. Existing attachers giving such notice also must notify the utility of their inability to meet the make-ready deadline, and we note that existing attachers already receive notice of payment of the estimate when the utility sends them make-ready letters pursuant to § 1.1411(e). Where a utility or existing attacher notifies the new attacher that it is unable to meet the survey or make-ready timelines, the new attacher may then elect self-help for the work that the notifying party cannot do pursuant to § 1.1411(i)(1) (for surveys) or § 1.1411(i)(3) (for make-ready) of our rules upon receipt of the notice rather than having to wait until the relevant timeline period runs. However, if either a utility or an existing attacher does not give advance notice to the new attacher that it will be unable to meet the survey or make-ready deadlines, then the new attacher must wait until the end of the survey or make-ready timelines in our rules before availing itself of any self-help remedies for that party’s work. Attachers can submit to the RBAT any allegations that the utility or existing attachers knew or reasonably should

have known that the survey or make-ready work could not be completed on time and advance notice was not timely given.

31. In the *Third Further Notice*, the Commission sought comment on NCTA's proposal "that the utility notify an attacher 15 days after receiving a complete application that it cannot conduct the survey within the required 45-day period so that the attacher can elect self-help for the survey sooner." Specifically, the Commission asked whether utilities can "feasibly be required to inform attachers within 15 business days of receiving a completed application that they will be unable to conduct a survey, estimate, or make-ready within the required time period." While utilities argue that it is not feasible for them to determine whether they can meet the survey or the make-ready deadlines so soon after their timetable begins, attachers assert that utilities "generally know immediately upon reviewing an application whether they will be able to facilitate the pole access process in a timely manner" and that such advance notice is key to speeding up the pole attachment process because they can then invoke the self-help option sooner.

32. We agree with Altice that the Commission has recognized the importance "for attachers to receive swift access to utility poles so that they can efficiently deploy networks in new markets. To achieve this goal, early communication is essential, particularly with respect to whether utilities will be able to process applications within the Commission's established timeframes." As Crown Castle notes, "[t]his change will be productive for utilities because it will allow them to dispense with surveys that they will not be able to complete, and it benefits attachers by accelerating their access to the pole." By the same token, we take heed of the fact that utilities may not know within 15 days of receipt of a complete application whether they will be able to meet the make-ready deadline. While the advance notice and Large Order meet-and-confer requirements will help utilities and attachers level-set expectations for potential Mid-Sized Orders associated with a single network deployment and Large Orders, certain factors remain outside the utilities' control, including the timing of the new attacher obtaining required local permits and third-party attachers' compliance with the deadlines for moving their attachments to make room for the new attachers' equipment. We thus have tied that notice obligation to a later point in the process where utilities will have greater certainty

regarding their ability to meet the make-ready deadline and have qualified the two separate notification requirements based on whether the utility knows or should know that it cannot meet the deadlines. We also extend the 15-day notice requirement to existing attachers who play a key role in the make-ready process. As UTC notes, "existing attachers on the pole may not be able to meet the make-ready timelines, which in turn will also affect the ability of the utility to meet the make-ready timelines."

33. With these changes to the proposed action, the advance notice and Large Order meet-and-confer requirements should help obviate the utilities' concerns that 15 days may be too short to give notice of being unable to meet the survey and make-ready deadlines, as the pre-planning and coordination that now will occur should give utilities earlier insight into the scope of a project and the viability of the associated deadlines. We also note that in utilities' experience, the self-help remedy is rarely, if ever, used, but we want to provide attachers with access to the tools they need to deploy broadband quickly and cheaply.

34. We reject Altice's proposal requiring utilities that miss the survey and make-ready timelines to refund attachers for any pre-paid and uncompleted survey and/or make-ready work within 30 days of missing the 15-day notice deadline, with interest dating back to the date the pre-payment was made. Altice's proposed remedy could penalize the utility for missed deadlines that may be beyond the control of the utility, especially when make-ready is dependent on existing attachers moving their equipment. In addition, the parties already have a true-up mechanism, usually in their pole attachment agreements, for the refund of any sums paid for work that ultimately is not done.

35. *Self-help for the estimate phase.* In order to further improve the pole attachment timeline, we adopt a self-help remedy for make-ready estimates where the utility is unable to meet the estimate timelines, provided there are certain safeguards as proposed by utility commenters. Currently in our rules, utilities have 14 days after giving notice of granting the new attacher's complete application or receiving the new attacher's self-help survey to complete an estimate of make-ready costs and present the estimate to the attacher. ("Where a new attacher's request for access is not denied, a utility shall present to a new attacher a detailed, itemized estimate, on a pole-by-pole basis where requested, of charges to

perform all necessary make-ready within 14 days of providing the response required by paragraph (c) of this section, or in the case where a new attacher has performed a survey, within 14 days of receipt by the utility of such survey.") Although note that herein we have adopted a 29-day period for the estimate phase for Large Orders. A utility may withdraw the estimate beginning 14 days after it is presented if the attacher has not yet accepted that estimate, and the new attacher may accept the estimate and make payment any time after receiving it unless it has been withdrawn. However, unlike for surveys and make-ready work, there currently is no self-help remedy for attachers if utilities miss the deadline to present the estimate of make-ready costs. In the *Third Further Notice*, the Commission sought comment on NCTA's proposal to make self-help available for the estimate process. In the ensuing record, both utilities and attachers supported this concept as a way to speed the pole attachment process and ensure broadband projects do not get stuck at the estimate phase.

36. To respond to the concerns articulated by some utility commenters, we adopt certain safeguards for a self-help remedy in the estimate context. Specifically: (1) the attacher must wait until the utility's 14-day estimate deadline (or 29 days in the case of Large Orders) has expired before exercising the self-help remedy; (2) the attacher must provide notice that it is exercising its self-help remedy for an estimate; (3) the self-help estimate is to be performed by an approved contractor in accordance with § 1.1412(a) and (b) of our rules; (4) this remedy is not available for pole replacements; and (5) utilities have the right to review and approve the estimates at the attacher's expense, but such expenses must be reasonable and based on only the actual costs incurred by the utility in reviewing the estimate. We agree with commenters that new attachers should be able to use utility-approved contractors to perform self-help estimates for make-ready work above the communications space because "[w]ithout having the estimate for electric space make-ready, the estimate for communications space make-ready is of little practical use. Make-ready in both the communications and power spaces is necessary to allow attachment to a pole." For self-help make-ready estimates above the communications space, the new attacher must use a utility-approved contractor pursuant to § 1.1412(a) of our rules, and we note that the utility's ability to refuse

acceptance of the attacher's estimate obviates any concern over the accuracy of any potential make-ready estimates for work above the communications space.

37. In addition, we adopt a requirement that utilities make a written decision on a self-help estimate within 14 days of receipt or before it is withdrawn by the attacher, whichever is later, noting that this is the same amount of time that a new attacher has to accept an estimate from the utility before the utility has the option to withdraw the estimate. If the estimate is accepted by the utility, then it is subject to the reconciliation process set forth in § 1.1411(d)(3) of our rules. If the estimate is not accepted by the utility, then the utility must detail in writing the reasons for non-acceptance. The attacher then can submit a revised estimate to the utility without restarting the pole attachment timeline. If the self-help process does not result in an accepted estimate, then the attacher can resort to the RBAT to have the utility generate an estimate pursuant to § 1.1411(d) of our rules.

38. *Utility limits on the size or frequency of pole attachment applications.* While we agree with USTelecom that reasonable application processing requirements provide benefits to utilities and attachers, we prohibit utilities from imposing application size limits in combination with application frequency limits that have the practical effect of restricting the number of pole attachments attachers may seek in a given timeframe. In determining the applicable pole attachment timelines for Regular, Mid-Sized, Large, and Very Large Orders, utilities have the ability to "treat multiple requests from a single new attacher as one request when the requests are filed within 30 days of one another." However, the Commission noted in the *Third Further Notice* the concern raised by NCTA that utilities may "limit[] 'the size of an application or the number of poles included in an application so as to avoid the timelines.'" More specifically, NCTA noted that even though the rules contemplate attachers filing and utilities considering large orders, various utilities have imposed limits on application size and frequency that may prevent attachers from applying for the attachments they need within the timeframes in the Commission's rules.

39. When the Commission first adopted pole attachment timelines in 2011, it addressed utilities' desire for flexibility by creating three size-categories of applications and allowing utilities to "treat multiple in-state

requests from a single attacher during a 30-day period as one request." While the subsequent record shows that utilities use application size and frequency limits to effectively manage application workflow, we want to ensure that such limits do not have the effect, whether intended or not, of restricting the number of pole attachments attachers may seek in a given 30-day period. Utilities still are able to accumulate together all orders received from an attacher within a 30-day period in order to determine the correct timeline for processing the combined orders, but those applications must be processed in accordance with our rules. (As the Commission clarified in the *Declaratory Ruling*, "when an application is submitted requesting access to the larger of 3,000 poles or 5 percent of a utility's poles in the state, the lesser of the first 3,000 poles or 5 percent of the utility's poles in the state of that application are subject to the make-ready timeline set forth in § 1.1411(g)(3), which gives utilities 45 additional days beyond the standard make-ready timeline to process attachment applications, so long as the attacher designates in its application the first 3,000 poles (or 5 percent of the utility's poles in the state) to be processed, which the utility must permit the attacher to do.") For example, if an attacher has a 3,500 pole project, the utility cannot impose limits on the size and frequency of the attacher's pole attachment application(s) that would prevent the attacher from submitting a 3,500 pole order in a 30-day period. While the utility can limit the size of a pole attachment application and can treat all applications filed by the attacher in a 30-day period as one application, the limits cannot have the effect of preventing the attacher from applying to access 3,500 poles in a 30-day period (although the utility can process the application(s) under the Large Order timeline). We agree with Crown Castle that "attachers should be allowed to file applications that make sense for their deployment plan, particularly for deployments under RDOF, BEAD, or other programs." Indeed, some utilities already adhere to this rule, thus demonstrating that it is reasonable. For example, Dominion Energy and Xcel Energy explain they "follow administrative policies that prescribe a maximum number of poles per application, but also permit an attacher to submit an unlimited number of applications at its discretion."

D. Deadline for Utilities To Respond to Requests To Add Contractors to Utility Lists

40. We amend § 1.1412 of the Commission's rules to establish a firm deadline by which utilities must respond to requests by attachers to add additional qualified contractors to their existing lists. Specifically, we require utilities to respond to such requests within 30 days of receipt by the utility. The response must state whether the proposed contractor meets the requirements in § 1.1412(c) of the Commission's rules and will be added to the utility's approved list of contractors following the completion of the utility's on-boarding process. (We seek comment in the *Further Notice* below on contractor on-boarding processes, the time required to complete such processes, and whether the Commission should adopt a deadline for the completion of that process.) If a utility fails to respond to an attacher's request to add a proposed contractor to its approved list within 30 days of receipt, the attacher's request will be deemed approved.

41. In the *Third Further Notice*, the Commission sought comment on whether it should modify the self-help rules to enable attachers to access poles more quickly. The self-help remedy allows attachers to perform surveys and make-ready work using utility-approved contractors. (Note that in this item, the Commission is extending the self-help remedy to the estimate phase as well.) For surveys and make-ready work that is complex or above the communications space, a utility must make available and keep up-to-date a reasonably sufficient list of contractors that it has authorized to perform such work on its poles. A new attacher engaging in self-help for complex or above the communications space make-ready must use a contractor from this list to perform the work. Attachers may, however, request that additional contractors meeting the minimum requirements of the Commission's rules be added to the utility-approved list, and utilities may not unreasonably withhold their consent. For surveys and make-ready work that is simple, utilities may—but are not required to—provide a reasonably sufficient list of contractors they authorize to perform such work. If a utility provides such a list, attachers must use a contractor from that list. Attachers may request that utilities add contractors that meet the minimum qualifications of the Commission's rules to their lists, and utilities may not unreasonably withhold their consent. (If a utility does not provide a list of

approved contractors for self-help surveys and make-ready that is simple, or none of the contractors on the utility-approved list are available within a reasonable time, attachers may retain their own contractors that meet the minimum qualifications of the Commission's rules to perform the work.) To be reasonable, a decision to withhold consent "must be prompt, set forth in writing that describes the basis for rejection, nondiscriminatory, and based on fair application of commercially reasonable requirements for contractors relating to issues of safety or reliability."

42. Some attachers contend that certain utilities may not be promptly responding to attacher requests to add additional qualified contractors. They state that utilities take months to respond to such requests, if they respond at all. Indeed, NCTA states that it took one of its members 6 to 8 months to qualify just one contractor with a utility. Attachers argue that these delays are not due to a shortage of qualified contractors for utilities to approve. Rather, NCTA asserts that the "utility approval process isn't working," and Crown Castle notes that it has identified qualified contractors but has been "unable to use them because the utility fails or refuses to approve the proposed contractor within a reasonable timeframe." Accordingly, attachers argue that utilities should be given a firm deadline to respond to attacher requests to add additional contractors to their approved lists to prevent untimely responses from delaying broadband deployments. Specifically, attachers have asked that the Commission require utilities to respond to such requests within either 21 or 30 days of the submission of the request. They further request that if utilities do not respond to the attacher's request by the deadline, that the attacher's request be deemed approved. NCTA argues that, "[a]bsent such a remedy, utilities will continue to lack any incentive to comply, forcing attachers to file complaints just to enforce bright-line rules."

43. The Commission authorized attachers to request that additional qualified contractors be added to utility-approved lists "to prevent the utility list from being a choke-point that prevents deployment." We conclude that failing to respond to an attacher's request to add an additional contractor for months creates such a choke-point and failing to respond at all certainly does. Indeed, we find that the Commission's prior direction that decisions to withhold consent be "prompt" means that utilities may not simply hold requests in abeyance without providing a response

at all. (We, thus, disagree with USTelecom that there is no need for the Commission to establish a deadline to respond to attacher requests to add additional qualifications because the Commission has already stated that such responses must be "prompt.") To conclude otherwise would defeat the purpose of allowing attachers to request that qualified contractors be added to utility-approved lists.

44. Thus, we amend § 1.1412 of the Commission's rules to require that utilities respond to any request by an attacher to add an additional contractor to a utility-approved list within 30 days of receipt of the request. (Because attachers currently have a remedy to retain their own contractors if a utility does not maintain an approved list of contractors for self-help surveys and make-ready that is simple, the deadline that we adopt today is particularly important for requests to add contractors to utility-approved lists for self-help surveys and make-ready that is complex or above-the communications space. We, thus, decline to limit the deadline to contractors that would perform work that is in the communications space, as some utilities have requested. We also decline the Electric Utilities' request that we revise § 1.1412(a) and (b) of our rules to apply to self-help work above and below the communications space, respectively, rather than to self-help work that is complex and above the communications space and self-help work that is simple, respectively.) The response must state whether the proposed contractor has been approved based on the requirements in § 1.1412(c) of the Commission's rules and will be on-boarded by the utility to work on its poles, after which the contractor will be added to the utility's approved list. We find that 30 days is enough time for utilities to evaluate whether a proposed contractor meets the minimum qualification requirements of the Commission's rules based on the information submitted by the attacher and to provide the response described above. To ensure swift compliance with this deadline by utilities, we require that requests to add attachers to utility-approved lists be deemed approved if a utility fails to respond to such requests by the 30-day deadline, and that the utility promptly on-board the contractor as necessary to commence work on the utility's poles. (Notwithstanding statements from utilities that contractors working on their poles must execute agreements with utilities, NCTA asserts that "it is the attaching entity, not the utility, that is responsible for

contracting with and onboarding the contractor and for the tasks the Electric Utilities identify as most time consuming." We find that the information in the record is insufficient for the Commission to determine the exact steps that must be taken to onboard a contractor to work on a utility's poles, how long those steps should take, and who the parties responsible for completing those steps are or should be. As stated above, we seek comment on these points in the Further Notice.) We find that a deemed approved remedy is appropriate to enable attachers to make meaningful use of the self-help remedy to timely complete their deployments when survey, estimate, and make-ready deadlines under our rules have been missed.

45. Some utilities argue that the Commission should not adopt a deadline to approve or deny requests to add additional contractors to their lists because it can take three months to a year or more to on-board contractors to perform surveys and make-ready work. We are not persuaded by this argument. We agree with NCTA that the process of approving the addition of a contractor that meets the requirements of § 1.1412(c) of the Commission's rules is distinct from the "on-boarding" requirements described by utilities, such as negotiating an agreement with the new contractor, providing employees of the new contractor with access to the utility's internal systems, and training. Section 1.1412(c) requires the proposed contractor to: (1) agree to follow published safety and operational guidelines of the utility, if available, but if not, to follow National Electrical Safety Code guidelines; (2) acknowledge that it knows how to read and follow licensed-engineered pole designs for make-ready, if required by the utility; (3) agree to follow all local, state, and federal laws and regulations including, but not limited to, requirements regarding Qualified and Competent Persons under the Occupational and Safety Health Administration rules; (4) agree to meet or exceed any uniformly applied and reasonable safety and reliability thresholds set by the utility, if made available; and (5) demonstrate that it is adequately insured or will establish an adequate performance bond for the make-ready it will perform, including work it will perform on facilities owned by existing attachers. (Dominion/Xcel suggests that the minimum qualification requirements in § 1.1412(c) of the Commission's rules are not sufficient as applied to contractors that perform complex or

above the communications space make-ready work. The Commission decided otherwise when it authorized attachers to request that utilities add “any contractor that meets the minimum qualifications in paragraphs (c)(1) through (5) of this section” to their lists of contractors authorized to perform self-help surveys and make-ready that is above the communications space and complex, and stated that utilities may not unreasonably withhold their consent. In so doing, the Commission did not “mandate specific qualification requirements for third-party cont[r]actors that perform work on or in the vicinity of electric power facilities” To the contrary, § 1.1412(c) of the Commission’s rules requires contractors to agree to “follow published safety and operational guidelines of a utility, if available” and “to meet or exceed any uniformly applied and reasonable safety and reliability thresholds set by the utility, if made available.” The Commission’s rules thus require compliance with any such reasonable, nondiscriminatory requirements as-set by the utility for work that is complex and above the communications space.) We find it is reasonable to assume that a utility could review information submitted to demonstrate a proposed contractor’s agreement to these requirements and issue a decision within 30 days that either approves the contractor contingent on completion of the utility’s on-boarding process or denies the contractor based on the sufficiency of that information.

46. Some utilities argue that allowing a “deemed approved” remedy if utilities miss this deadline will necessarily create safety concerns for workers and the public and risk the reliability of electric distribution systems. We disagree. As an initial matter, we do not believe it will be difficult for utilities to avoid a deemed approved result by simply complying with the deadline. The response we require merely requires the utilities to review information submitted by attachers to determine if the proposed contractor has made the representations required by § 1.1412(c) of the Commission’s rules. We acknowledge that utilities thereafter may need to take steps to on-board and train the contractors to perform work on their poles, and that the contractor will not be added to the utility’s approved list until that process is complete. In recognition of potential safety concerns associated with work in the supply space, that process may differ in certain respects for contractors that will conduct work above the

communications space as compared to contractors that will be working in the communications space. But, the first step is to approve or deny the contractor based on the requirements of § 1.1412(c) of the Commission’s rules within 30 days of receiving a request from an attacher, and we do not view that as burdensome—particularly given that utilities insist that attachers rarely invoke the self-help remedy or request to add contractors to utility-approved lists.

47. Further, if an attacher does not submit information sufficient to demonstrate that a contractor has made the representations required by § 1.1412(c) of the Commission’s rules, utilities may respond to the attacher within 30 days with a denial, provided that it is “set forth in [a] writing that describes the basis for rejection, nondiscriminatory, and based on fair application of commercially reasonable requirements for contractors relating to issues of safety or reliability.” (As explained above, this is the standard that the Commission adopted in 2018 to assess whether a utility’s withholding of consent to add additional contractors to its approved list is reasonable. We, therefore, decline Dominion’s request to exclude the language “fair application of commercially reasonable” from the rule amendment that merely codifies the existing standard. Further, we disagree with Dominion’s assessment that the rules we adopt today do not “contemplate a utility’s independent evaluation of any attacher-proposed contractor on the basis of its own standards, processes, and protocols to ensure safety and reliability.” Section 1.1412(c)(4) of the Commission’s rules requires the contractor to agree “to meet or exceed any uniformly applied and reasonable safety and reliability thresholds set by the utility, if made available,” 47 CFR 1.1412(c)(4), and our new rules require proposed contractors to successfully complete a utility’s on-boarding process (including its evaluation and training requirements) before they are added to the list of contractors approved to work on the utility’s poles. The rules we adopt today, therefore, provide ample opportunity for a utility to evaluate a contractor based on its own standards, processes, and protocols to ensure safety and reliability before the contractor is authorized to perform self-help work.) Finally, as has always been the case, the parties are free to negotiate for a longer review period for contractor approvals if needed. (Parties have always been free to reach negotiated agreements with terms that differ from our rules.)

48. Given that complying with the deadline imposes minimal burden on utilities, the parties’ ability to extend the deadline by agreement, and the right utilities have to deny a proposed contractor within the deadline if the information submitted by the attacher is insufficient to determine whether the contractor has made the representations required by § 1.1412(c) of the Commission’s rules, we find utilities have ample opportunity to avoid any potential risks of having contractors deemed approved to work on their poles.

49. While we believe it is important to improve the self-help remedy by expediting action on requests to add additional qualified contractors to utility-approved lists, (As explained herein, the *Third Further Notice* sought comment on whether the Commission should modify the self-help remedy to enable attachers to access poles more quickly, and the record indicates that setting a deadline that ensures a prompt response to requests to add qualified contractors to utility-approved lists would promote that objective. We, thus, decline the request of some utilities to seek comment on such a deadline in the *Further Notice* rather than adopt one here.) we recognize that there may be circumstances where a utility may need to disqualify a contractor that was previously approved by a utility or deemed approved due to reasonable safety or reliability concerns, as is the case when an attacher selects its own contractor to perform surveys and simple make-ready if a utility does not provide a list of approved contractors or the contractors on that list are not available within a reasonable time. We understand that having the right to disqualify contractors causing reasonable safety and reliability concerns is particularly important for work that is complex and above the communications space. We, therefore, make clear that utilities may disqualify a contractor that was previously approved by a utility or deemed approved based on reasonable safety or reliability concerns related to a contractor’s failure to meet the minimum qualifications described in § 1.1412(c) of the Commission’s rules or to meet the utility’s uniformly applied and reasonable safety or reliability standards. (We decline Dominion’s request to remove qualifying language from the safety and reliability standards that may be applied to disqualify a contractor. We are concerned that this could lead to discriminatory disqualifications of contractors if the standards applied in disqualification

decisions are not uniformly applied and reasonable. We, thus, grant Dominion's request insofar as it seeks removal of a requirement that safety and reliability standards be "public and commercially reasonable," but require that disqualification decisions be based on a contractor's failure to meet the minimum qualifications described in § 1.1412(c) of the Commission's rules or to meet the utility's *uniformly applied and reasonable* safety and reliability thresholds, consistent with § 1.1412(c)(4) of the Commission's rules.) We view this as consistent with the right afforded to utilities under our rules to have a representative present when self-help work is performed by a contractor and to "monitor a contractor's work and insist that the work meet utility specifications for safety and reliability, including requirements that may exceed NESC standards" on a nondiscriminatory basis. Although attachers and utilities are obligated to try to resolve any disagreements, electric utilities are entitled to make final determinations in disputes over capacity, safety, reliability, and generally applicable engineering purposes, consistent with Section 224(f)(2) of the Act. (By making it clear that utilities may disqualify a contractor that was previously approved by a utility or deemed approved based on reasonable safety or reliability concerns, we fully address the concern raised by Dominion/Xcel that Section 224(f)(2) of the Act "necessarily encompasses the right of a utility pole owner to prohibit an attacher's use of third-party contractors that have not been fully evaluated and approved by the utility to perform the work for which they were retained on the utility's poles." The rule we adopt today requires that utilities respond within 30 days to a request to add additional contractors to utility-approved lists based on whether attachers submit sufficient information to demonstrate the contractor's agreement to the requirements in § 1.1412(c), which incorporates the utility's published safety and operational guidelines and uniformly applied and reasonable safety and reliability thresholds. Regardless of whether a contractor is approved by a utility or "deemed approved" due to a failure to provide a timely response, the contractor will not start work on the utility's poles until the successful completion of the utility's on-boarding process (e.g., any required training). And, after that, the utility retains the right to remove the contractor from its approved lists due to noncompliance with safety and reliability requirements

on a nondiscriminatory basis. Utilities, thus, retain ample and ultimate control over contractors working above the communications space on their poles.) Accordingly, whether a contractor is added to a utility's approved list by the utility or at the request of an attacher, the utility ultimately has the authority to determine whether the contractor remains on the list on a going-forward basis consistent with these standards and the Commission's rules. (We note that our rules require utilities to "keep up-to-date" their lists of contractors authorized to perform self-help surveys and make-ready.)

50. If a utility disqualifies a contractor that was previously added to its approved list at the request of an attacher or deemed approved pursuant to the requirements we adopt today, (We disagree with Dominion that the rule we adopt today does not permit utilities to deny a contractor for safety and reliability reasons. As we state above, the utility will have 30 days to deny a request to add the contractor to the utility-approved if the attacher fails to submit sufficient information to determine that the contractor has made the representations required by § 1.1412(c) of the Commission's rules. If the utility does not respond with a denial or an approval by that deadline, then the contractor will be deemed approved, but may nonetheless be disqualified (i.e., have the approval rescinded) based on reasonable safety or reliability concerns related to a contractor's failure to meet the minimum qualifications described in § 1.1412(c) of the Commission's rules or to meet the utility's uniformly applied and reasonable safety or reliability standards. Further, as we have made clear, a proposed contractor will not be added to the utility's list of contractors approved to perform self-help work until it has successfully completed the utility's on-boarding process, which may include additional evaluations and training. Accordingly, none of the requirements we adopt today will allow a contractor to appear on a utility's approved list unless and until the utility has evaluated, trained, and otherwise completed its on-boarding steps for contractors that perform work on its poles.) we require that it provide written notice to the attacher that it has done so and specify the bases for the disqualification in that notice. An attacher wishing to challenge the reasonableness of the disqualification may avail itself of the Commission's Rapid Broadband Assessment Team process or submit a complaint to the Commission's Enforcement Bureau.

IV. Order on Reconsideration (EEI)

51. In this Order, we deny in part and grant in part EEI's Petition for Clarification and/or Reconsideration of the Commission's December 2023 *Wireline Infrastructure Declaratory Ruling*. EEI seeks clarification and/or reconsideration of certain actions taken by the Commission in that *Declaratory Ruling*, specifically (1) removal or clarification of the decision that a pole replacement is not "necessitated solely" by an attachment request if "a utility's previous or contemporaneous change to its internal construction standards necessitates replacement of an existing pole," and (2) clarification to "clearly define the narrow circumstances in which a utility pole owner is required to provide a copy of its easement to an attacher that seeks to access a pole within such easement." The Commission invited oppositions and replies to EEI's Petition by February 23, 2024, and it received five filings in support of the Petition and seven oppositions.

52. For the reasons set forth below, we deny in part and grant in part EEI's Petition, specifically (1) denying EEI's request that we remove or clarify the determination that a pole replacement is not "necessitated solely" by an attachment request if a utility's previous or contemporaneous change to its internal construction standards necessitates replacement of an existing pole (the internal construction standards determination) and the associated example of the internal construction standards determination; (2) granting clarification of the internal construction standards determination (and its associated example) to make clear that while utilities retain autonomy to refuse an attacher's request to replace an existing pole due to lack of capacity, a pole replacement is not "necessitated solely" by a new attachment request when it is necessitated (in part) by the utility's decision to adopt a new construction standard for the pole, even when the pole lacks capacity because of the new standard; and (3) denying reconsideration of the circumstances when a utility is required to provide a copy of its easement to an attacher, but granting clarification that the utility only has to provide a copy of the easement to the attacher when the utility relies on its interpretation of the easement to deny the attacher access to that easement.

A. The “Necessitated Solely” Clarification Was Properly Included in the Declaratory Ruling

53. The Commission has, both in the *Declaratory Ruling* and elsewhere, provided examples of when a pole replacement is and is not “necessitated solely” by a new attachment request for purposes of § 1.1408(b) of our rules, which governs the allocation and causation of costs for a new attachment. Under § 1.1408(b), a party with a preexisting attachment to a pole is not required to bear any of the costs of rearranging or replacing its attachment if such rearrangement or replacement “is necessitated solely as a result of an additional attachment or the modification of an existing attachment sought by another party.” EEI argues that the Commission should “remove its clarification that make-ready pole replacements that have been grandfathered under utility standards are not ‘necessitated solely’ by the new attachment,” asserting that this clarification: (1) was “not the product of reasoned decision-making;” (2) does not promote broadband development; and (3) is confusing and inappropriate. We deny EEI’s reconsideration request because EEI’s arguments were considered and rejected by the Commission in the underlying proceeding, and EEI’s Petition does not raise any points warranting reconsideration. We also deny EEI’s alternative request for the Commission to clarify that a utility’s replacement of a grandfathered pole to create capacity for a new attachment is “necessitated solely” by the attachment. (According to EEI, a “grandfathered” pole is one “that is deemed ‘compliant’ under applicable laws and codes, and by definition does not require replacement.”) That said, we take this opportunity to clarify further the contours and basis of the Commission’s internal construction standards determination, especially the role of capacity (or the lack thereof) on that determination.

54. Because of ongoing disputes regarding an attachers’s responsibility for causing a pole replacement when a pole already requires replacement at the time a request is made for a new or modified attachment, the Commission found it appropriate to provide “additional examples of situations where, under § 1.1408(b) of the Commission’s rules, a pole replacement is not ‘necessitated solely’ by a new attachment or modification request.” In each of the examples provided in the *Declaratory Ruling*, other precipitating factors contribute to the need for a pole replacement aside from the new

attachment request. By offering these examples, the Commission aimed to clarify instances where the cause of a pole replacement should not be solely attributed to the new attacher.

55. In its Petition, EEI takes issue with one of the Commission’s examples. Specifically, the Commission noted Crown Castle’s argument that “a pole replacement is not ‘necessitated solely’ by a new attacher . . . where a pole replacement is required due to a utility changing its construction standard after the pole is constructed.” This example was consistent with some commenter proposals and current practices of some commenters in the record. In deciding that a pole replacement is not “necessitated solely” by an attachment request if “a utility’s previous or contemporaneous change to its internal construction standards necessitates replacement of an existing pole,” the Commission added the following “grandfathered pole” example: “if a utility has ‘grandfathered’ a pole from compliance with its updated construction standards, a pole replacement to bring that pole into compliance with those updated standards would not be ‘necessitated solely’ by an attacher’s request to attach to that pole.”

56. EEI asks that we completely strike from the *Declaratory Ruling* both the internal construction standards determination and its associated example. Alternatively, EEI requests that we revise the *Declaratory Ruling* to clarify that a pole replacement is not “necessitated solely” by an attachment request when, at the time the attachment request is made, “[a] pole replacement is required as the result of a utility’s previous or contemporaneous change to its internal construction standards, such that the utility would be required to replace the pole even if no new attachment were made.” EEI also alternatively asks that we revise the grandfathered pole example in the *Declaratory Ruling* to state: “For clarity, if a utility has ‘grandfathered’ a pole from compliance with its updated construction standards in accordance with applicable laws or codes, such pole is not deemed to require replacement for purposes of this *Declaratory Ruling*, and a pole replacement performed to create capacity for a new attachment that incidentally brings such pole into compliance with those updated standards would not be ‘necessitated solely’ by an attacher’s request to attach to that pole.”

57. We deny EEI’s requests. Specifically, we find that the reconsideration and clarifications sought by EEI go beyond (EEI and

utilities such as CCU argue that “simply because a new construction standard must apply to a pole whenever in the future it might be replaced does not mean that the pole needs to be replaced at the time the attacher requests access to the pole.” This argument, and the argument that a grandfathered pole remains compliant with “the electric utility’s construction standards and does not require replacement until such time as there is a material modification to that pole,” miss the point. It is the utility’s change in its internal construction standards that has now made the pole unable to accommodate the new attachment and it is that condition that led us to clarify in the *Declaratory Ruling* that the new attachment request does not solely necessitate a pole replacement. This simple premise does not, as the Electric Utilities allege, “undermine an electric utility’s long-standing right (and responsibility) to adopt and implement non-discriminatory standards that exceed the NESC, where appropriate and necessary.”) our simple premise in including the internal constructions standard determination; namely, a pole replacement is not “necessitated solely” by a new attacher where a pole replacement is required due to a utility changing its construction standard after the pole is constructed. When a utility makes a unilateral decision to change its internal construction standards such that the existing pole must now be replaced the next time it is touched, it is not the case that replacing that pole is “necessitated solely” by a new attachment request that comes along. We agree instead with NCTA’s characterization that “[b]eing what EEI calls ‘grandfathered’ is not the same thing as compliant with current standards. As EEI’s arguments make clear, the issue is one of the utility’s choice of timing. The poles are not compliant with the latest construction standard, but the utility chooses when and why to replace the pole.” (Because of the importance attached to the utility’s sole purview on the timing of replacing a pole that is noncompliant with its construction standards, we disagree with the characterization of the Electric Utilities that “the fact that ‘the utility chooses when and why to replace the pole,’ does not justify the grandfathered pole ruling.”) As a result, we found it necessary to clarify in the *Declaratory Ruling* that, when a utility’s change in construction standards contributes to the need to replace a pole, the new attachment request does not solely necessitate the pole replacement.

58. However, we grant clarification insofar as we provide here an important caveat to the internal construction standards determination and associated example. We note that an important element of the internal construction standards determination is the capacity, or the lack thereof, on the existing pole. We clarify that, for purposes of the internal construction standards determination, when a utility is determining capacity on a pole to see whether a pole replacement is necessary, the relevant utility construction standards to consider are limited to the current standard and the standard immediately preceding that current standard. (We thus reject EEI's argument that the internal construction standards determination requires the utility to figure out "which of the many previous iterations of an electric utility's construction standards would be applicable" when a pole is replaced following a new attachment request.) That is, assuming a pole lacks capacity for a requested new attachment under the utility's new construction standard, but capacity would exist under its immediately preceding construction standard, the resulting pole replacement would not be "necessitated solely" by a new attachment request. By contrast, if the pole lacks capacity under both the new and immediately preceding construction standards, then application of § 1.1408(b) means that the new attachment request is the cause of the pole replacement, *i.e.*, it is "necessitated solely" by the new attachment. The clarification we offer today can be administered easily and also limits unreasonable actions to delay pole replacements in order to force new entrants to bear the entire cost of a pole replacement. To the extent this was not clear from the *Declaratory Ruling*, we hereby clarify accordingly.

59. With this clarification, we find that EEI's requests are unfounded. EEI bases its requests on the incomplete premise that "[i]f an attacher requests access to a pole, and the pole must be changed out to accommodate the new attachment under the electric utility's *current* construction standards, the new attachment is *the cause* of the make-ready pole replacement. In this instance, the pole would not be replaced 'but for' the attachment request, and the need to construct a new pole line in accordance with an updated construction standard would not exist had the pole not been replaced to create capacity for the new attachment." According to EEI, the internal construction standards determination and associated grandfathered pole example "can be

interpreted as requiring pole owners to share in the cost of every make-ready pole replacement involving a 'grandfathered' pole." This is mistaken because, as stated above, when a utility is maintaining poles at an immediately preceding standard, that standard is determinative of capacity for purposes of a new attachment request and determining whether a resulting pole replacement is "necessitated solely" by the new request. If that request would render the pole over capacity at the immediately preceding standard, then the utility could deny access under Section 224(f)(2) of the Act and any resulting pole replacement would be "necessitated solely" by the new request. But if the new attachment would only cause the pole to exceed the new standard but not the immediately preceding standard, then any pole replacement is not necessitated solely by a new attachment request, but rather is necessitated in part by the adoption of a new standard.

60. We reject EEI's claim that the Commission's decisions "run afoul of longstanding 'cost causation' principles." As attachers point out in the record, in the internal construction standards scenario, it is the utility's decision to leave the original pole in place until the new attacher comes along that necessitates the pole replacement, at least in part. In fact, it is EEI's contention that may run contrary to our cost causation principles by positing that "[i]f a grandfathered pole lacks capacity to host an additional attachment under an electric utility's *current* construction standards, the new attachment is *the cause* of a make-ready pole replacement. At the very most, the electric utility in this scenario would be an *incidental beneficiary* of the make-ready pole replacement, and the Commission has long held that incidental beneficiaries are not required to share in the cost of pole replacements." The utility is not merely an incidental beneficiary if the new attachment could have been accommodated on the pole under the utility's construction standards before they were changed, but now cannot because of the utility's unilateral decision to change its internal construction standards. Instead, the utility's decision to leave the existing pole in place until the new attacher comes along necessitates the pole replacement, at least in part. And the utility is far from an incidental beneficiary if it would be able to get its pole replaced at the new attacher's sole expense when the existing pole could have accommodated the new

attachment under the immediately preceding pole construction standard.

61. Relatedly, we reject EEI's claim that in advancing the internal construction standards determination, the Commission failed to consider the "enormous" economic burden placed on utilities as a result of the *Declaratory Ruling* and failed "to balance the respective interests, costs, burdens, and liabilities of pole owners and attachers, or to assess whether reasonable limitations are needed to minimize any adverse impact on utility pole owners." Instead, we recognize that this determination requires utilities to bear some of the burden, but we must also consider the burden on attachers. The internal construction standard determination spreads the burden across all of the parties who are causing the pole replacement.

62. Further, contrary to EEI's contention in its Petition, there was substantial record support for the clarification at issue. For example, several commenters have consistently advocated for the Commission to adopt a "more transparent, just, and reasonable process that ensures a fair allocation of replacement costs between pole owners and new attachers seeking to use the poles." With regard specifically to the application of the "necessitated solely" language in the Commission's rules, Charter sought to have the Commission extend the clarification in the *2021 Pole Replacement Declaratory Ruling* to find that "when a pole is scheduled for replacement or facing imminent replacement," the pole replacement is not "necessitated solely" by an attachment request. As ACA Connects states, "almost 18 months before the Commission issued the [internal construction standards determination], Crown Castle filed comments . . . demonstrating that pole owners were using internal construction standards to avoid cost-causation principles and requiring prospective attachers to pay the entire cost of pole replacements." After full consideration of the record, the Commission decided to include the internal construction standards determination in the non-exclusive list of examples of when a pole replacement is not "necessitated solely" by an attachment request—an example put forward in the record by Crown Castle as far back as August 2022.

63. We also find unpersuasive EEI's argument in the Petition that the internal construction standards determination and the grandfathered pole example will result in less broadband deployment because they would cause "uncertainty and financial

risk” for utilities. We concur with INCOMPAS that in fact “the clarity provided in the *Declaratory Ruling*” will advance broadband deployment by competitive providers “as these companies will now be able to devote more resources to extending builds and reaching new customers rather than paying to replace aging utility poles.” As Crown Castle notes, the “Commission’s decision regarding replacement of poles to bring them into compliance with a utility’s updated construction standards (including so-called ‘grandfathered’ poles) will promote broadband deployment by reducing costs and eliminating the opportunity and incentive for pole owners to manipulate the process to the detriment of attachers.”

64. Finally, we reject EEI’s argument in the Petition that the Commission’s application of the “necessitated solely” language in § 1.1408(b) to allocate make-ready pole replacement costs is “confusing and inappropriate.” EEI claims that the “‘cost causation language of the fourth sentence of 1.1408(b)’ speaks only of the costs for rearranging or replacing *existing attachments*.” However, as the Commission explained in the *Declaratory Ruling*, it agreed with the Bureau’s analysis in the *2021 Pole Replacement Declaratory Ruling* that when the cost-allocation and cost-causation provisions in § 1.1408(b) are read together, they “stand for the proposition that parties benefiting from a modification share proportionately in the costs of that modification, unless such modification is necessitated solely as a result of an additional or modified attachment of another party, in which case that party bears the cost of the modification.” The Commission further clarified that “it would be contrary to the Commission’s rules and policies to require a new attacher to pay the entire cost of a pole replacement when a pole already requires replacement . . . at the time a request for a new or modified attachment is made.”

65. Because the clarification in the *Declaratory Ruling* was both based on an extensive record and consistent with prior Commission decisions regarding pole attachments, we reject EEI’s request that we reconsider, or clarify in the manner requested by EEI, the portion of the *Declaratory Ruling* regarding the internal construction standards determination and the grandfathered pole example. We do, however, clarify that portion of the *Declaratory Ruling* as described above.

B. Easement Ruling

66. We reject EEI’s request to reconsider our clarification in the *Declaratory Ruling* that, consistent with their obligations under Section 224(f) of the Act, “utilities must provide potential attachers with a copy of a utility’s easement before a utility can refuse to let the attacher share that easement or require the attacher to obtain its own easement.” EEI asks that the Commission “clearly define the narrow circumstances in which a utility pole owner is required to provide a copy of its easement to an attacher that seeks to access a pole within such easement.” We deny EEI’s reconsideration request because the parameters of the easement sharing ruling are plainly set forth in the *Declaratory Ruling*. We do, however, clarify that the utility only has to provide a copy of the easement to the attacher to the extent that the utility relies on an interpretation of the easement to deny the attacher access to that easement.

67. Section 224(f)(1) of the Act requires a utility to provide “a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.” In the 1996 *Local Competition Order*, the Commission found that “the access obligations of section 224(f) apply when, as a matter of state law, the utility owns or controls the right-of-way to the extent necessary to permit such access.” Based on the language in Section 224(f)(1) and the Commission’s interpretation of that language as set out in the *Local Competition Order*, the Commission concluded in the *Declaratory Ruling* that “in order to enable attachers to effectuate their right of access under section 224(f) of the Act, utilities must provide potential attachers with a copy of a utility’s easement before a utility can refuse to let the attacher share that easement or require the attacher to obtain its own easement. In making this clarification, we find that the Section 224(f) right of access requires the sharing of information regarding the easement in cases where the utility claims the easement cannot accommodate an attacher; it does not require the utility to alter the underlying easement or act in contravention of state law.” Such a requirement is consistent with the best reading of Section 224(f)(1) because without information on the actual easement, neither attachers nor the Commission can verify whether the utility’s denial of access is justified, and the best source for easement information is the utility that

holds the easement. After all, the utility’s easement shows the extent of the utility’s ownership or control of the right-of-way under the relevant state law. Providing this information—which necessarily shows whether the attacher has a statutory right of access—gives the attacher the ability to make use of the pole and thus fits within the ordinary meaning of “access.” (The dictionary definition of “access” is “freedom or ability to obtain or make use of something.”)

68. EEI asserts that as written, the *Declaratory Ruling* implies that the utility, not the attacher, is responsible in the first instance for any determination that must be made about the scope of the utility easement, and that this goes against decades of precedent and standard practice. (Despite EEI’s claim that the Commission’s easement-sharing requirement goes against “decades-old-precedent”, EEI cites to no such precedent. In rejecting this argument, we note that the Commission has not ruled on any easement-related parameters since 1996.) In support of its Petition, EEI argues that: (1) “easement information is not relevant to pole attachment requests or to broadband deployment”; (2) the clarification “is premised on the baseless assertions of a single commenter to which no party had an opportunity to respond”; (3) the clarification “fails to balance the costs, burdens, risks, and potential benefits that will flow from a new disclosure requirement”; and (4) the clarification “fails to consider reasonable limitations on a pole owner’s obligation to share easement information.” We believe our clarification herein obviates the latter two concerns. For the reasons set forth below, however, we reject EEI’s first two objections.

69. We do not agree with EEI’s characterization that the *Declaratory Ruling* “implies that the utility, and not the attacher, is responsible in the first instance for any determination that must be made about the scope the utility easement.” (We do not disagree with EEI’s assertion that “where an attacher seeks to use a utility easement to access a pole that the utility approved for attachment under Section 224(f), the attacher (and not the utility) must determine whether the applicable easement for the pole location is sufficiently broad to allow or encompass a third-party communications facility.”) Rather, we plainly clarified in the *Declaratory Ruling* that “the section 224(f) right of access requires the sharing of information regarding the easement in cases where the utility claims the easement cannot accommodate an attacher.” Where the

utility claims the easement cannot accommodate an attacher, that claim is presumably based on some analysis of the easement by the utility. It is in this limited setting that the utility is required to share easement information. In such a case, an attacher must be able to evaluate the easement to determine its scope, and the best source for the easement is the utility that holds it.

70. With regard to EEI's other arguments against the easement ruling, they largely can be boiled down to an issue of balancing burdens against benefits, with EEI asserting that the Commission failed to consider and implement such a balance. We disagree. The burden of the sharing requirement is limited to "cases where the utility claims the easement cannot accommodate an attacher." (In rejecting EEI's argument that the easement clarification "fails to consider reasonable limitations on a pole owner's obligation to share easement information", we note that just the opposite is true—the "disclosure of easements should *only* be required when the pole owner denies an active request (*i.e.*, an application) for access to a specific pole based on its interpretation of the scope of an applicable easement.") As for the benefits and relevance of the easement sharing requirement, we agree with commenters who assert that the potential for disputes is amplified by the asymmetrical information between parties, thus slowing down the process of pole attachments and, consequently, delaying broadband deployment. By requiring utilities to provide relevant easement information, we are helping to level the playing field between utilities and attachers while also reducing the potential delays in broadband deployment. (This is contrary to EEI's claim that easement information is not relevant to pole attachment requests or to broadband deployment.) Thus, limiting the sharing of easement information to situations where the utility denies easement access is a reasonable limitation on a utility's obligation to share easement information without exacerbating the problem of asymmetrical information.

71. Specifically with regard to utility burdens, we disagree with EEI's argument that we should reverse or clarify our declaration because utilities do not maintain copies of easements in the ordinary course of business but instead rely on public records, and not all utility easements emanate from written easement instruments. EEI's argument of an undue burden on utilities in producing records in this case misses the point. Our requirement

that utilities produce easement information is conditioned on their claiming that the easement cannot accommodate the attacher, and the best source of information verifying the utility's claim is the utility that holds the easement. In accordance with Section 224(f) of the Act, we already determined that granting an attacher a "right of access requires the sharing of information regarding the easement in cases where the utility claims the easement cannot accommodate an attacher." Thus, we are not requiring the utility to alter any business practices. Rather, we only are requiring it to provide easement information when it denies access to the easement, especially since it is the best source of information for the evidence of the denial. We further clarify, however, that the utility must provide this information if it denies access based on its interpretation of the easement.

72. Because utilities' obligation to provide easement information is limited to instances in which the utility denies access to its easement based on its interpretation of the easement, we decline to adopt EEI's request to limit this obligation to instances where the attacher is unable to locate easement information after conducting a public search. The Commission has already considered this limitation and determined that easement information should be in the utility's possession if it has affirmatively denied access to an attacher. As NCTA notes in its opposition, "[f]orcing attachers to obtain copies of easements through either public resources or title searches when the utility already has such easements available unequivocally adds unnecessary expense and delay to the broadband deployment process."

73. We also disagree with EEI that the easement sharing requirement is deficient because it was adopted based entirely on new, untested assertions made in an *ex parte* submitted by Crown Castle after the start of the Sunshine Period. As INCOMPAS points out, the Commission's inclusion of the easement clarification cites to comments submitted by ExteNet. In addition, as NCTA notes, "the Declaratory Ruling was based on an interpretation of section 224(f) of the Act. . . . [and] the Commission can issue a Declaratory Ruling on its own motion interpreting a statute."

V. Order on Reconsideration (CCU)

74. In this Order, we deny CCU's Petition for Reconsideration of our December 2023 *Fourth Wireline Infrastructure Order*. In that *Order*, the Commission adopted new regulations

requiring utilities to provide copies of their cyclical pole inspection reports to prospective attachers upon request. The key purpose of this requirement is to increase transparency and provide attachers with more information that might assist them in planning broadband deployment projects. At the same time, the Commission sought to avoid imposing undue burdens on utilities by limiting the requirement to providing information they already possess and produce in the normal course of business.

75. CCU seeks reconsideration of this new requirement. CCU contends that the Commission adopted the requirement without appropriate notice and that the requirement is unduly burdensome, will create disputes, and could impede broadband deployment, all while providing no new benefit to prospective attachers. Four parties filed oppositions to the Petition. Much of the Petition relies on "arguments that have been fully considered and rejected by the Commission within the same proceeding," and to that extent, we dismiss the Petition on procedural grounds and also deny on substantive grounds. To the extent some of CCU's Petition raises new arguments, we fully consider and reject them herein. Thus, we deny CCU's Petition for the reasons discussed below.

A. Adequate Notice of the Rule

76. As a procedural matter, CCU argues that the Commission did not provide adequate notice that it might adopt a rule requiring utilities to provide attachers with copies of pole inspection reports. Specifically, CCU contends that the paragraph of the *Second Further Notice* seeking comment on whether the Commission should require utilities to provide more information to attachers "contains no indication that utilities might be required to provide pole inspection reports to communications attachers." CCU also asserts that the first the public learned of the potential requirement to provide copies of pole inspection reports was in the Commission's November 22, 2023 Draft Order, which was released two weeks before the start of the sunshine period, after which further comment was prohibited. CCU argues that two weeks was not sufficient to alert utilities to the prospective ruling and allow them to provide meaningful responses.

77. Groups representing attachers disagree. They state that the law does not require a notice of proposed rulemaking to have proposed the precise rule that the Commission ultimately adopts, but rather only that the final

rule be a “logical outgrowth of its notice.” They contend that the final rule on pole inspection reports was a logical outgrowth of a proposal in the *Second Further Notice* because the Commission specifically asked about the types of information utilities should be required to provide regarding the status of their poles, and both attachers and utilities addressed pole inspection reports as one such source of information in their comments, replies, and *ex parte* filings.

78. We reject CCU’s argument that the Commission adopted the transparency requirement without proper notice. As noted above, the relevant legal question is whether the final adopted rule was a “logical outgrowth” of the issues on which the Commission sought comment in the *Second Further Notice*. “A final rule qualifies as a logical outgrowth ‘if interested parties “should have anticipated” that a change was possible’” That test is met here.

79. The *Second Further Notice* sought comment on “additional measures that the Commission could adopt that would enable attachers and utilities to avoid pole replacement disputes and/or resolve them quickly when they occur.” As an example, the Commission noted one party’s proposal to require utilities to provide attachers with “information on the condition of, and replacement plans for, their poles.” The Commission also asked for comment on “what mechanism” utilities could use “to provide such information to attachers[.]” As noted above and described in more detail in the *Fourth Report and Order*, attachers made a variety of proposals for information-sharing requirements. Utilities responded by largely opposing such requirements. Most relevant here, in both comments and replies on this issue, commenters on both sides noted that many utilities create cyclical reports containing a range of information on their poles, including information about their condition and replacement plans. Attachers argued the information in such reports would be useful in planning projects and reducing the number of pole replacements they would have to pay for, while utilities generally argued the information would be outdated and was unnecessary in light of the same or similar information they already provide to prospective attachers. This debate continued in *ex partes* from both sides after the Commission released the Draft Order, with several parties supporting, opposing, and/or seeking modifications to the proposed rule.

80. This record demonstrates the final rule was a logical outgrowth of the *Second Further Notice*. The Commission

sought comments and proposals on requiring utilities to provide more pole-related information to attachers and mechanisms for doing so. It received a range of proposals and extensive comments, which included discussion on both sides regarding pole inspection reports. Parties, including CCU, therefore should have anticipated that a requirement to provide pole inspection reports was possible. Accordingly, there was no lack of adequate notice.

B. Substantive Challenges to the Rule

81. Turning to the substance, CCU raises several policy arguments that, it contends, demonstrate that the rule on pole inspection reports is unwise and unnecessary. CCU contends that the information contained in utilities’ cyclical pole inspection reports is either irrelevant to the attachment process or is already available through the attachment process, and that requiring utilities to provide such reports could lead to disputes and confusion between utilities and attachers that do not understand utilities’ asset management programs and prioritization and regulatory requirements. CCU also argues that such disputes will ultimately delay broadband deployment by slowing down the processing of pole attachment requests and harming the collaborative relationship between utilities and attachers. It further says the obligation created by the rule would impose significant burdens on utilities, which will have to create electronic notification systems to keep track of requests and pass along the cost to attachers. CCU also contends that the rule raises security concerns because it risks improper disclosure of sensitive network information.

82. Attachers respond that the information in cyclical pole inspection reports will indeed be beneficial, such as in helping them ensure the utility is complying with Commission rules and helping them negotiate with utilities when the reports reveal an issue with an attachers’ planned route. They note, as others did in their prior comments and replies, that pole inspection reports can sometimes be outdated, but nevertheless can contain more information than attachers might otherwise receive from utilities, and that this additional transparency can help reduce or resolve disputes and allow for better planning of a project before the make-ready process begins.

83. As a threshold matter, CCU and others already raised, and the Commission already considered, CCU’s arguments regarding the value or need for the information in pole inspection reports, the potential for disputes or

confusion, the possible impact on broadband deployment, and the burden of the new requirement on utilities. For example, as Altice notes, CCU’s Petition incorporates entire passages from its Reply submitted in response to the *Second Further Notice*, altering only a few words. (For example, the arguments at pages 13–15 of the CCU Petition are a nearly verbatim repeat of the arguments at pages 12–14 of CCU’s Reply to the *Second Further Notice*.) CCU’s Petition also reiterates the same arguments already presented by it and other utilities in comments and replies submitted in response to the *Second Further Notice* and in *ex parte* submissions after the Draft Order was released.

84. Furthermore, the Commission in the *Fourth Wireline Infrastructure Order* already fully considered the arguments raised in the Petition. The Commission explained that while it is aware that cyclical pole inspection reports may sometimes have outdated information and that there will be some burden on utilities to provide attachers with such reports, attachers still view the reports as valuable. The Commission therefore strove to strike a balance by limiting the new requirement to information that already exists and that utilities already collect in the normal course of business. The Commission also considered the potential burden on utilities and the effect of new collection and disclosure obligations when it rejected several more extensive information-sharing proposals by attachers. Moreover, as noted in the *Fourth Report and Order*, the Commission still strongly urges utilities and attachers to collaborate and cooperate in disclosing and reviewing pole-related information and finding the most efficient ways to address pole attachments and pole replacements. CCU’s argument on security concerns likewise was already raised and considered in the *Fourth Wireline Infrastructure Order*. As the Commission noted, such risks can be addressed through redactions or non-disclosure agreements.

85. CCU also argues that the deadlines associated with the requirement to provide cyclical inspection reports are problematic. The rule requires utilities to provide attachers with cyclical pole inspection reports for the poles covered by an application within 10 business days of a written request. CCU states that utilities’ ability to meet that deadline will vary depending on the volume of such a request and the availability of team members who process such applications.

86. CCU’s argument does not warrant changing or removing the timing

requirements. At this time, the argument is speculative, and the Commission's rule already seeks to limit the burden on utilities by limiting its reach only to pre-existing pole inspection reports. (To the extent utilities find it impossible to comply with the deadline requirement, they may seek relief through appropriate channels.) We also decline to reconsider the requirements because the 10-business-day deadline was stated in the Draft Order, and CCU submitted an *ex parte* filing related to the pole inspection reports requirement after public release of the Draft Order. Thus, CCU should have raised its concerns about the response deadline then.

87. CCU further asserts that the rule does not afford utilities sufficient time to inform a new attachers that it is restarting the clock for application review after an attachers's revision of its application. If an attachers revises a request after reviewing pole inspection reports, the new rule requires the utility to inform the attachers that it is restarting the clock on the application, and to do so within the lesser of five business days or the number of days remaining in the 45-day application approval period (or 60 days for larger orders). CCU contends that the addition of another time constraint on utility personnel will merely allow communications attachers to game the system to their advantage, such as by making vast changes in an application at a time that leaves the utility unable to timely notify the attachers that the application clock has restarted, and thus no time to review the changes. (Electric Utilities go further and assert that "there is little interest in the 'amendment' component of the [transparency rule] and/or that there are no cognizable uses for it" because the record is silent on this component of the rule.)

88. Once again, CCU's argument is not enough to warrant changing or removing the timing requirements. The rule appropriately balances competing interests by permitting attachers to amend their applications and permitting utilities to extend the application review period if attachers choose to do so. We expect that the utilities' discretion to extend the review period will provide a strong incentive for attachers not to seek to game the system, as last-minute amendments may be more likely to lead the utility to restart the 45-day clock due to lack of sufficient review time, and thus delay the processing of the attachment request. Moreover, as CCU concedes, it already requested that the 45-day timeline restart automatically when an attachers revises an application, but the Commission rejected that proposal,

finding that the procedures it was adopting "are sufficiently tailored to account for the needs of utilities to review amended applications while not needlessly slowing deployment." While CCU disagrees with that decision, it has failed to explain why a utility pole owner, when it chooses to restart the clock, is not able to inform the attachers within the required period. Moreover, the new advance notice and meet-and-confer requirements we adopt today for Large Orders, and the new advance notice requirement we adopt for Mid-Sized Orders associated with a single network deployment, should help reduce these situations from occurring in the first instance.

89. Finally, CCU asserts that the rule on cyclical pole inspection reports would reduce utilities' incentive to replace poles to accommodate attachers and could lead to some utilities simply denying access, which would be counter to the Commission's goals in the proceeding. In the *Fourth Report and Order*, however, the Commission took pains to adopt a rule that balanced the interests of utilities and attachers and limited the burden on utilities by requiring them to provide pole inspection reports that already exist and that the utilities already prepare in the normal course of business. The Commission also rejected a number of transparency proposals that would have been materially more burdensome and costly for utilities, and strongly encouraged utilities and attachers to collaborate and cooperate on ways to make the processing of pole attachment applications more efficient for all involved. CCU's arguments do not cause us to challenge the Commission's conclusion that the new transparency rule strikes the appropriate balance, and we therefore decline to reconsider the rule on that basis. (CCU previously argued that imposing more duties and deadlines on utilities would undermine their incentive to perform voluntary pole replacements. The Commission took account of such arguments when limiting the obligation here to pole inspection reports that already exist and that utilities already create in the normal course of business and in rejecting more extensive information-sharing proposals. CCU's Petition adds nothing new.)

VI. Final Regulatory Flexibility Analysis

90. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Federal Communications Commission (Commission) incorporated an Initial Regulatory Flexibility Analysis (IRFA) in the *Accelerating*

Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Third Further Notice of Proposed Rulemaking (Third Further Notice) released in December of 2023. The Commission sought written public comment on the proposals in the *Third Further Notice*, including comment on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA and it (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Fifth Report and Order

91. In the *Fifth Report and Order*, the Commission adopts rules and policy changes that will make the pole attachment process faster and cheaper, particularly when poles have to be replaced during broadband buildouts. In the last five years, the Commission took significant steps in setting standards for the discussions between utilities and telecommunications companies about the timing and cost of attaching broadband equipment to utility poles, with the backstop of a robust complaint process when parties cannot agree on the rates, terms, and conditions for pole attachments. In the *Fifth Report and Order*, we adopt rules (1) requiring attachers to provide written notice to utilities of forthcoming pole attachment orders of a certain size; (2) providing that if an attachers submits an application for a Mid-Sized Order associated with a single network deployment or Large Order without the requisite advance notice, the utility can treat the application as the advance notice, and the timelines are tolled for the relevant advance notice period; (3) imposing a meet-and-confer requirement following the requisite advance notice for Large Orders; (4) establishing a new set of timelines for utilities to complete each pole access phase for large orders; (5) requiring utilities to notify attachers within 15 days of receiving a complete application whether they can meet the survey and notify attachers within 15 days of payment of a make-ready estimate that they will not be able to meet the and make-ready deadline; (6) adding a self-help remedy for make-ready estimates, provided certain safeguards are met; (7) declaring that application size and frequency limits that extend pole attachment timelines beyond the limits set forth in § 1.411 violate our rules; and (8) requiring utilities to respond to a request to add contractors to a utility-approved list within 30 days of receiving the request or the contractor will be "deemed approved."

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

92. There were no comments raised that specifically addressed the proposed rules and policies presented in the *Third Further Notice IRFA*. Nonetheless, the Commission considered the potential impact of the rules proposed in the IRFA on small entities and took steps where appropriate and feasible to reduce the compliance burden for small entities in order to reduce the economic impact of the rules enacted herein on such entities.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

93. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

94. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act. A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

95. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business

having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 34.75 million businesses.

96. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

97. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2022 Census of Governments indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,845 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts) with enrollment populations of less than 50,000. Accordingly, based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 entities fall into the category of “small governmental jurisdictions.”

1. Internet Access Service Providers

98. *Wired Broadband Internet Access Service Providers (Wired ISPs).* Providers of wired broadband internet access service include various types of providers except dial-up internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission’s rules. Wired broadband internet services fall in the Wired Telecommunications Carriers industry. The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054

firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees.

99. Additionally, according to Commission data on internet access services as of June 30, 2019, nationwide there were approximately 2,747 providers of connections over 200 kbps in at least one direction using various wireline technologies. The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA’s small business size standard. However, in light of the general data on fixed technology service providers in the Commission’s 2022 *Communications Marketplace Report*, we believe that the majority of wireline internet access service providers can be considered small entities.

100. *Internet Service Providers (Non-Broadband).* Internet access service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) as well as VoIP service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications. The SBA small business size standard for this industry classifies firms with annual receipts of \$40 million or less as small. For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than \$25 million. Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

2. Wireline Providers

101. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they

operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.

102. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

103. *Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

104. *Incumbent Local Exchange Carriers (Incumbent LECs)*. Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small

business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers. Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

105. *Competitive Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local service providers. Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

106. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250

employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 127 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 109 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

107. *Operator Service Providers (OSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The closest applicable industry with an SBA small business size standard is Wired Telecommunications Carriers. The SBA small business size standard classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 20 providers that reported they were engaged in the provision of operator services. Of these providers, the Commission estimates that all 20 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, all of these providers can be considered small entities.

108. *Other Toll Carriers*. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The closest applicable industry with a SBA small business size standard is Wired Telecommunications Carriers. The SBA small business size standard classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 20 providers that reported they were engaged in the provision of operator services. Of these providers, the Commission estimates that all 20 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, all of these providers can be considered small entities.

3. Wireless Providers—Fixed and Mobile

109. The broadband internet access service provider category covered by these new rules may cover multiple wireless firms and categories of regulated wireless services. Thus, to the extent the wireless services listed below are used by wireless firms for broadband internet access service, the actions may have an impact on those small businesses as set forth above and further below. In addition, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that claim to qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments and transfers or reportable eligibility events, unjust enrichment issues are implicated.

110. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

111. *Wireless Communications Services*. Wireless Communications Services (WCS) can be used for a variety of fixed, mobile, radiolocation, and digital audio broadcasting satellite services. Wireless spectrum is made available and licensed for the provision of wireless communications services in several frequency bands subject to Part 27 of the Commission's rules. Wireless Telecommunications Carriers (*except Satellite*) is the closest industry with an

SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

112. The Commission's small business size standards with respect to WCS involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in WCS. When bidding credits are adopted for the auction of licenses in WCS frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in the designated entities section in part 27 of the Commission's rules for the specific WCS frequency bands.

113. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

114. *1670–1675 MHz Services*. These wireless communications services can be used for fixed and mobile uses, except aeronautical mobile. Wireless Telecommunications Carriers (*except Satellite*) is the closest industry with an SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that

a majority of licensees in this industry can be considered small.

115. According to Commission data as of November 2021, there were three active licenses in this service. The Commission's small business size standards with respect to 1670–1675 MHz Services involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For licenses in the 1670–1675 MHz service band, a “small business” is defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years, and a “very small business” is defined as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding \$15 million for the preceding three years. The 1670–1675 MHz service band auction's winning bidder did not claim small business status.

116. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

117. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (*except Satellite*). The size standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 331 providers that reported they were engaged in the provision of cellular, personal communications services, and specialized mobile radio services. Of

these providers, the Commission estimates that 255 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

118. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum encompasses services in the 1850–1910 and 1930–1990 MHz bands. The closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (except Satellite). The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

119. Based on Commission data as of November 2021, there were approximately 5,060 active licenses in the Broadband PCS service. The Commission's small business size standards with respect to Broadband PCS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. In auctions for these licenses, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding \$15 million for the preceding three years. Winning bidders claiming small business credits won Broadband PCS licenses in C, D, E, and F Blocks.

120. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small

under the SBA's small business size standard.

121. *Specialized Mobile Radio Licenses.* Special Mobile Radio (SMR) licenses allow licensees to provide land mobile communications services (other than radiolocation services) in the 800 MHz and 900 MHz spectrum bands on a commercial basis including but not limited to services used for voice and data communications, paging, and facsimile services, to individuals, Federal Government entities, and other entities licensed under Part 90 of the Commission's rules. Wireless Telecommunications Carriers (except Satellite) is the closest industry with a SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 95 providers that reported they were of SMR (dispatch) providers. Of this number, the Commission estimates that all 95 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, these 119 SMR licensees can be considered small entities.

122. Based on Commission data as of December 2021, there were 3,924 active SMR licenses. However, since the Commission does not collect data on the number of employees for licensees providing SMR services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard. Nevertheless, for purposes of this analysis the Commission estimates that the majority of SMR licensees can be considered small entities using the SBA's small business size standard.

123. *Lower 700 MHz Band Licenses.* The lower 700 MHz band encompasses spectrum in the 698–746 MHz frequency bands. Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services. Wireless Telecommunications Carriers (except Satellite) is the closest industry

with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

124. According to Commission data as of December 2021, there were approximately 2,824 active Lower 700 MHz Band licenses. The Commission's small business size standards with respect to Lower 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For auctions of Lower 700 MHz Band licenses the Commission adopted criteria for three groups of small businesses. A very small business was defined as an entity that, together with its affiliates and controlling interests, has average annual gross revenues not exceeding \$15 million for the preceding three years, a small business was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years, and an entrepreneur was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$3 million for the preceding three years. In auctions for Lower 700 MHz Band licenses seventy-two winning bidders claiming a small business classification won 329 licenses, twenty-six winning bidders claiming a small business classification won 214 licenses, and three winning bidders claiming a small business classification won all five auctioned licenses.

125. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as

small under the SBA's small business size standard.

126. *Upper 700 MHz Band Licenses.* The upper 700 MHz band encompasses spectrum in the 746–806 MHz bands. Upper 700 MHz D Block licenses are nationwide licenses associated with the 758–763 MHz and 788–793 MHz bands. Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services. Wireless Telecommunications Carriers (*except* Satellite) is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

127. According to Commission data as of December 2021, there were approximately 152 active Upper 700 MHz Band licenses. The Commission's small business size standards with respect to Upper 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years, and a "very small business" an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. Pursuant to these definitions, three winning bidders claiming very small business status won five of the twelve available licenses.

128. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers,

unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

129. *Air-Ground Radiotelephone Service.* Air-Ground Radiotelephone Service is a wireless service in which licensees are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft. A licensee may provide any type of air-ground service (*i.e.*, voice telephony, broadband internet, data, etc.) to aircraft of any type, and serve any or all aviation markets (commercial, government, and general). A licensee must provide service to aircraft and may not provide ancillary land mobile or fixed services in the 800 MHz air-ground spectrum.

130. The closest industry with an SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except* Satellite). The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

131. Based on Commission data as of December 2021, there were approximately four licensees with 110 active licenses in the Air-Ground Radiotelephone Service. The Commission's small business size standards with respect to Air-Ground Radiotelephone Service involve eligibility for bidding credits and installment payments in the auction of licenses. For purposes of auctions, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding \$15 million for the preceding three years. In the auction of Air-Ground Radiotelephone Service licenses in the 800 MHz band, neither of the two winning bidders claimed small business status.

132. In frequency bands where licenses were subject to auction, the Commission notes that as a general

matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, the Commission does not collect data on the number of employees for licensees providing these services therefore, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

133. *3,650–3,700 MHz Band.* Wireless broadband service licensing in the 3,650–3,700 MHz band provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3,650 MHz band (*i.e.*, 3,650–3,700 MHz). Licensees are permitted to provide services on a non-common carrier and/or on a common carrier basis. Wireless broadband services in the 3,650–3,700 MHz band fall in the Wireless Telecommunications Carriers (*except* Satellite) industry with an SBA small business size standard that classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

134. The Commission has not developed a small business size standard applicable to 3,650–3,700 MHz band licensees. Based on the licenses that have been granted, however, we estimate that the majority of licensees in this service are small internet Access Service Providers (ISPs). As of November 2021, Commission data shows that there were 902 active licenses in the 3,650–3,700 MHz band. However, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

135. *Fixed Microwave Services.* Fixed microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Upper Microwave Flexible Use Service (UMFUS), Millimeter Wave Service (70/80/90 GHz), Local Multipoint Distribution

Service (LMDS), the Digital Electronic Message Service (DEMS), 24 GHz Service, Multiple Address Systems (MAS), and Multichannel Video Distribution and Data Service (MVDDS), where in some bands licensees can choose between common carrier and non-common carrier status. Wireless Telecommunications Carriers (*except* Satellite) is the closest industry with a SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

136. The Commission's small business size standards with respect to fixed microwave services involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in fixed microwave services. When bidding credits are adopted for the auction of licenses in fixed microwave services frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in Part 101 of the Commission's rules for the specific fixed microwave services frequency bands.

137. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

138. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and

Multichannel Multipoint Distribution Service (MMDS) systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). Wireless cable operators that use spectrum in the BRS often supplemented with leased channels from the EBS, provide a competitive alternative to wired cable and other multichannel video programming distributors. Wireless cable programming to subscribers resembles cable television, but instead of coaxial cable, wireless cable uses microwave channels.

139. In light of the use of wireless frequencies by BRS and EBS services, the closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except* Satellite). The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

140. According to Commission data as of December 2021, there were approximately 5,869 active BRS and EBS licenses. The Commission's small business size standards with respect to BRS involves eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of BRS licenses, the Commission adopted criteria for three groups of small businesses. A very small business is an entity that, together with its affiliates and controlling interests, has average annual gross revenues exceed \$3 million and did not exceed \$15 million for the preceding three years, a small business is an entity that, together with its affiliates and controlling interests, has average gross revenues exceed \$15 million and did not exceed \$40 million for the preceding three years, and an entrepreneur is an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$3 million for the preceding three years. Of the ten winning bidders for BRS licenses, two bidders claiming the small business status won 4 licenses, one bidder claiming the very small business status

won three licenses and two bidders claiming entrepreneur status won six licenses. One of the winning bidders claiming a small business status classification in the BRS license auction has an active licenses as of December 2021.

141. The Commission's small business size standards for EBS define a small business as an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than \$55 million for the preceding five (5) years, and a very small business is an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than \$20 million for the preceding five (5) years. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

4. Satellite Service Providers

142. *Satellite Telecommunications.* This industry comprises firms "primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with \$44 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year. Of this number, 242 firms had revenue of less than \$25 million. Consequently, using the SBA's small business size standard most satellite telecommunications service providers can be considered small entities. The Commission notes however, that the SBA's revenue small business size

standard is applicable to a broad scope of satellite telecommunications providers included in the U.S. Census Bureau's Satellite Telecommunications industry definition. Additionally, the Commission neither requests nor collects annual revenue information from satellite telecommunications providers, and is therefore unable to more accurately estimate the number of satellite telecommunications providers that would be classified as a small business under the SBA size standard.

143. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (e.g., dial-up ISPs) or Voice over Internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of \$40 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than \$25 million. Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

5. Cable Service Providers

144. Because Section 706 of the Act requires us to monitor the deployment of broadband using any technology, we anticipate that some broadband service providers may not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

145. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The

programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA small business size standard for this industry classifies firms with annual receipts less than \$47 million as small. Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year. Of that number, 149 firms operated with revenue of less than \$25 million a year and 44 firms operated with revenue of \$25 million or more. Based on this data, the Commission estimates that a majority of firms in this industry are small.

146. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide. Based on industry data, there are about 420 cable companies in the U.S. Of these, only seven have more than 400,000 subscribers. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Based on industry data, there are about 4,139 cable systems (headends) in the U.S. Of these, about 639 have more than 15,000 subscribers. Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

147. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 498,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator. Based on industry data, only six cable system operators have more than 498,000 subscribers. Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as

small cable operators under the definition in the Communications Act.

6. All Other Telecommunications

148. *Electric Power Generators, Transmitters, and Distributors.* The U.S. Census Bureau defines the utilities sector industry as comprised of "establishments, primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer." This industry group is categorized based on fuel source and includes Hydroelectric Power Generation, Fossil Fuel Electric Power Generation, Nuclear Electric Power Generation, Solar Electric Power Generation, Wind Electric Power Generation, Geothermal Electric Power Generation, Biomass Electric Power Generation, Other Electric Power Generation, Electric Bulk Power Transmission and Control and Electric Power Distribution.

149. The SBA has established a small business size standard for each of these groups based on the number of employees which ranges from having fewer than 250 employees to having fewer than 1,000 employees. U.S. Census Bureau data for 2017 indicate that for the Electric Power Generation, Transmission and Distribution industry there were 1,693 firms that operated in this industry for the entire year. Of this number, 1,552 firms had less than 250 employees. Based on this data and the associated SBA size standards, the majority of firms in this industry can be considered small entities.

E. Description of Economic Impact and Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities

150. The RFA directs agencies to provide a description of the projected reporting, recordkeeping and other compliance requirements for the rules adopted herein, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

151. In the *Fifth Report and Order*, we adopt new, advance notice and pre-planning requirements in the pole attachment process for Orders of a

certain size to facilitate greater coordination between attachers and utilities. Parties seeking to use the pole attachment timelines for a Mid-Sized Order associated with a single network deployment or Large Order must send written advance notice of the forthcoming Order to utilities as soon as practicable, but not less than 15 days in advance of submitting a Mid-Sized Order associated with a single network deployment and not less than 60 days in advance of submitting a Large Order. The notice should contain, at a minimum, (1) the attacher's contact information; (2) a detailed description of the proposed deployment area(s) and anticipated route(s); (3) an anticipated build-out schedule; and (4) a request to meet with the utility within 30 days of the date of the notice for Large Orders. If an attacher submits an application with providing the required written advance notice (including the required minimum information), the utility can treat the application as the advance notice, and the applicable timelines will tolled during the relevant advance notice period. Attachers and utilities must also meet and confer within 30 days after written advance notice of Large Orders is given.

152. We also create new, fixed pole attachment phase timelines for Large Orders, specifying the time for completion of each pole access phase. These new timelines add incremental days to all stages of the pole attachment process to recognize the concern that, as pole attachment orders become larger, they become more complex and thus require more time to complete. Additionally, we improve our existing pole attachment timelines by (1) requiring utilities to notify attachers within 15 days of receiving a complete application when they know or should have reason to know that they can meet the survey and notify attachers within 15 days of payment of a make-ready an estimate when they know or have reason to know that they will be unable to meet the make-ready deadline, (2) adding a self-help remedy for make-ready estimates, provided certain safeguards are met; and (3) declaring that application size and frequency limits that extend pole attachment timelines beyond the limits set forth in § 1.411 violate our rules. Finally, we require utilities to respond to a request to add contractors to a utility-approved list within 30 days of receiving the request or the contractor will be deemed approved. These new requirements are expected to be minimally burdensome, as they merely require parties to (1) provide advanced information and

collaboration that both utilities and attachers claim is lacking and will be useful, (2) continue collaborative efforts begun under the new advanced notice and pre-planning requirements, and (3) will ensure that parties can readily access and work on poles without concomitant burden on utilities and attachers.

153. The Commission does not have sufficient information on the record to determine whether small entities will be required to hire professionals to comply with its decisions, or to quantify the cost of compliance for small entities with the *Fifth Report and Order*. While some small entities may have some unique burdens, the Commission anticipates the requirements for pole attachment disputes and data collection by utility companies will result in greater cost savings because the more collaborative approach adopted in these rules will increase efficiency and result in faster broadband deployment.

F. Discussion of Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

154. The RFA requires an agency to provide "a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."

155. The Commission took steps to minimize significant economic impact on small entities and considered alternatives to new rules and processes adopted in the *Fifth Report and Order* that may impact small entities. By imposing a written advance notice requirement for Mid-Size and Large Orders and a meet-and-confer requirement for Large Orders, we address utilities' concern that attachers are often not providing sufficient notice and attachers' concern utilities are often nonresponsive, practices that harm utilities and attachers and ultimately delay buildout. However, we do not impose the same new written advance notice requirement for smaller orders because they do not have the same impact as larger orders, nor for Very Large Orders because the parties are still required to engage in good faith negotiation of the attachment timelines. And while we adopt a new timeline for Large Orders, it is longer than the timelines for Regular and Mid-Sized Orders to incentivize attachers to submit

smaller orders, which will allow utilities to better manage their workflows and contractors and thus timely complete applications. The Commission also considered and adopted a proposal regarding the pole caps for the expanded timeline for Large Orders based on commenters' experience deploying broadband projects. Moreover, at utilities' request, we adopt certain safeguards for an attacher-produced estimate to ensure that utilities can manage their poles. We also clarified that a utility must approve or deny a contractor based on the sufficiency of the information provided under our newly adopted 30 day timeframe, the utility can take additional time to on-board and train the contractors and remain in compliance with the Commission's rules.

156. In considering alternatives to the rules, we declined to adopt certain proposals that are burdensome, unnecessary, or would impose significant costs on utilities or attachers with little or no benefit to broadband deployment. For example, we decline proposed new timelines for Large Orders that are too lengthy to help attachers efficiently meet broadband buildout deadlines. We also declined to establish timelines for Very Large Orders nor require a utility itself to establish "reasonable" timelines for Very Large Orders, as there may be reasons beyond the utility's control that will prevent it from establishing such timelines.

G. Report to Congress

157. The Commission will send a copy of the *Fifth Report and Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Fifth Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA and will publish a copy of the *Fifth Report and Order*, and this FRFA (or summaries thereof) in the **Federal Register**.

VII. Procedural Matters

158. *Paperwork Reduction Act*. This document may contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. Specifically, the rules adopted in 47 CFR 1.1403(b), 1.1411(c) through (k), and 1.1412(a) and (b), (e) may require new or modified information collections. All such new or modified information collection requirements will be submitted to the Office of Management and Budget (OMB) for

review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. In this document, we describe several steps we have taken to minimize the information collection burdens on small entities.

159. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this Fourth Report and Order on small entities. The FRFA is set forth in Appendix B.

160. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Fifth Report and Order and Orders on Reconsideration to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A). ”

VIII. Ordering Clauses

161. Accordingly, *it is ordered* that pursuant to sections 1–4, 201, 202, 224, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–54, 201, 202, 224, and 303(r), the Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking, and Orders on Reconsideration hereby *is adopted* and part 1 of the Commission’s rules, 47 CFR part 1, *is amended* as set forth in Appendix A. (Pursuant to Executive Order 14215, 90 FR 10447 (Feb. 20, 2025), this regulatory action has been determined to be not significant under Executive Order 12866, 58 FR 68708 (Dec. 28, 1993)).

162. *It is further ordered* that the Fifth Report and Order shall become effective 30 days after publication in the **Federal Register**, except that the amendments to

Sections 1.1403(b), 1.1411(c) through (k), and 1.1412(a) and (b), (e) which may contain new or modified information collection requirements, will not become effective until the Office of Management and Budget completes review of any information collection requirements that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act. The Commission directs the Wireline Competition Bureau to announce the effective date for Sections 1.1403(b), 1.1411(c) through (k), and 1.1412(a) and (b), (e) by subsequent Public Notice.

163. *It is further ordered that*, pursuant to the authority contained in Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and § 1.429 of the Commission’s rules, 47 CFR 1.429, the Petition for Clarification and/or Reconsideration filed by the Edison Electric Institute *is denied in part and granted in part*.

164. *It is further ordered that*, pursuant to the authority contained in Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and § 1.429 of the Commission’s rules, 47 CFR 1.429, the Petition for Reconsideration of the Coalition of Concerned Utilities *is denied*.

165. *It is further ordered* that the Orders on Reconsideration *are effective* upon publication in the **Federal Register**.

166. *It is further ordered* that, pursuant to 47 CFR 1.4(b)(1), the period for filing petitions for reconsideration or petitions for judicial review of this Fifth Report and Order and Orders on Reconsideration will commence on the date that a summary of this Fifth Report and Order and Orders on Reconsideration is published in the **Federal Register**.

167. *It is further ordered* that the Office of the Managing Director, Performance Evaluation and Records Management, *shall send* a copy of this Fifth Report and Order and Orders on Reconsideration in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 1

Practice and procedure.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note; 47 U.S.C. 1754, unless otherwise noted.

■ 2. Amend § 1.1403 by revising paragraphs (b) and (c)(3) to read as follows:

§ 1.1403 Duty to provide access; modifications; notice of removal, increase or modification; petition for temporary stay; and cable operator notice.

* * * * *

(b) Requests for access to a utility’s poles, ducts, conduits or rights-of-way by a telecommunications carrier or cable operator must be in writing. If access is not granted within the time periods specified in §§ 1.1411(d)(1) through (2) and (h), the utility must confirm the denial in writing by the applicable deadline. The utility’s denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability or engineering standards.

(c) * * *

(3) Any modification of facilities by the utility other than make-ready noticed pursuant to § 1.1411(f), routine maintenance, or modification in response to emergencies.

* * * * *

■ 3. Amend § 1.1411 by:

- a. Adding paragraphs (a)(4) and (5);
- b. Redesignating paragraphs (c) through (j) as paragraphs (d) through (k);
- c. Adding new paragraph (c);
- d. Revising newly redesignated paragraphs (d)(2), (d)(3)(i) and (iii), (d)(4)(iv)(A) and (B);
- e. Revising the first sentence in the introductory text of newly redesignated paragraph (e);
- f. Revising the introductory text of newly redesignated paragraph (f) and paragraphs (f)(1)(ii) and (iv), (f)(2)(ii) and (v), and (f)(3);
- g. Adding paragraph (f)(4);
- h. Revising newly redesignated paragraphs (g), (h)(1) through (5), the second sentence of paragraph (i)(3), and the introductory text of paragraph (j)(1);
- i. Redesignating the newly redesignated paragraph (j)(2) as paragraph (j)(3), adding new paragraph (j)(2), and revising the introductory text of newly redesignated paragraph (j)(3);
- j. Revising the introductory text of newly redesignated paragraph (k), the introductory text of paragraph (k)(2),

The revisions and additions read as follows:

§ 1.1411 Timeline for access to utility poles.

(a) * * *

(4) The term “Mid-Sized Order” means pole attachment orders greater than the lesser of 300 poles or 0.5 percent of the utility’s poles in a state and up to the lesser of 3,000 poles or 5 percent of the utility’s poles in a state.

(5) The term “Large Order” means pole attachment orders greater than the lesser of 3,000 poles or 5 percent of the utility’s poles in a state up to the lesser of 6,000 poles or 10 percent of the utility’s poles in a state.

* * * * *

(c) *Advance notice for Mid-Sized and Large Orders; meet and confer for Large Orders.* (1) New attachers shall give written advance notice to utilities as soon as practicable, but in no event less than 15 days before submitting a Mid-Sized Order and 60 days before submitting a Large Order. For Mid-Sized Orders only, the advance notice requirement is limited to instances where the order threshold would be exceeded by pole attachment application(s) that are part of a single network deployment project being undertaken by the new attacher. The notice shall set forth detailed information that will allow the utility to properly assess the potential resource needs for the order, including but not limited to: (1) the new attacher’s contact information; (2) a description of the proposed deployment area(s) and anticipated route(s); (3) an anticipated build-out schedule; and (4) for a Large Order a request to meet and confer with the utility within 30 days of the date of the notice.

(2) If an application is filed without the required written advance notice, including the required minimum information, then the utility may, upon prompt notice to the new attacher, treat such application as the 15-day advance notice for Mid-Sized Orders associated with a single network deployment or the 60-day advance notice for Large Orders. Such notice from the utility to the attacher shall state that the application will commence the advance notice period and that the applicable timelines do not begin to run until after expiration of the relevant advance notice period. If it is a Large Order, the notice shall also state that the attacher must request the meet-and confer required by our rules. At the end of the advance notice period, the new attacher can submit a new application or notify the utility that it is continuing with its original submission as its application, and the utility may

not impose any additional or increased fees. Failure by the utility to give prompt notice that it is treating the attacher’s application as the advance notice will result in the application proceeding to be processed under the applicable timelines without an advance notice period or meet-and-confer requirement. If the attacher fails to request the meet-and-confer described in paragraph (c)(3) of this section, then the advance notice period will not begin to run until such request is made.

(3) New attachers and utilities shall meet and confer within 30 days after an advance notice is given to negotiate in good faith the mechanics and the timing of processing Large Orders. The parties shall find a mutually agreeable day and time for a meeting (which can be in person, virtual, or by phone) within the 30-day period after the advance notice is given.

(d) * * *

(2) *Application review on the merits.* A utility shall respond to the new attacher either by granting access or, consistent with § 1.1403(b), denying access within 45 days of receipt of a complete application to attach facilities to its utility poles (or within 60 days in the case of Mid-Sized Orders or within 90 days in the case of Large Orders as described in paragraph (h) of this section). A utility may not deny the new attacher pole access based on a preexisting violation not caused by any prior attachments of the new attacher.

(3) * * *

(i) A utility shall complete a survey of poles for which access has been requested within 45 days of receipt of a complete application to attach facilities to its utility poles (or within 60 days in the case of Mid-Size Orders or within 90 days in the case of Large Orders as described in paragraph (h) of this section). A utility shall notify a new attacher within 15 days of receipt of a complete application if the utility knows or reasonably should know that it cannot meet the survey deadline. A new attacher can elect self-help for the survey work pursuant to § 1.1411(j)(1) any time after it receives the utility’s notice.

* * * * *

(iii) Where a new attacher has conducted a survey pursuant to paragraph (k)(3) of this section, a utility can elect to satisfy its survey obligations in this paragraph by notifying affected attachers of its intent to use the survey conducted by the new attacher pursuant to paragraph (k)(3) of this section and by providing a copy of the survey to the affected attachers within the time period set forth in paragraph (d)(3)(i) of this

section. A utility relying on a survey conducted pursuant to paragraph (k)(3) of this section to satisfy all of its obligations under paragraph (d)(3)(i) of this section shall have 15 days to make such a notification to affected attachers rather than the applicable survey period.

(4) * * *

(iv) * * *

(A) A utility that receives such an amended attachment application may, at its option, restart the 45-day period (or 60-day period for Mid-Sized Orders or 90-day period for Large Orders) for responding to the application and conducting the survey.

(B) A utility electing to restart the 45-day period (or 60-day period for Mid-Sized Orders or 90-day period for Large Orders) shall notify the attacher of its intent to do so within five (5) business days of receipt of the amended application or by the 45th day (or 60th or 90th day, if applicable) after the original application is considered complete, whichever is earlier.

(e) *Estimate.* Where a new attacher’s request for access is not denied, a utility shall present to a new attacher a detailed, itemized estimate, on a pole-by-pole basis where requested, of charges to perform all necessary make-ready within 14 days of completing the survey required by paragraph (d)(3) of this section (or within 29 days in the case of Large Orders as described in paragraph (h)(3) of this section), or in the case where a new attacher has performed a survey, within 14 days of receipt by the utility of such survey (or within 29 days in the case of Large Orders as described in paragraph (h)(3) of this section). * * *

* * * * *

(f) *Make-ready.* Upon receipt of payment specified in paragraph (e)(2) of this section, a utility shall notify immediately and in writing all known entities with existing attachments that may be affected by the make-ready.

(1) * * *

(ii) Set a date for completion of make-ready in the communications space that is no later than 30 days after notification is sent (or up to 75 days in the case of Mid-Sized Orders or up to 120 days in the case of Large Orders as described in paragraph (h) of this section).

* * * * *

(iv) State that if make-ready is not completed by the completion date set by the utility in paragraph (f)(1)(ii) in this section, the new attacher may complete the make-ready specified pursuant to paragraph (f)(1)(i) in this section.

* * * * *

(2) * * *

(ii) Set a date for completion of make-ready that is no later than 90 days after notification is sent (or 135 days in the case of Mid-Sized Orders or 180 days in the case of Large Orders, as described in paragraph (h) of this section).

* * * * *

(v) State that if make-ready is not completed by the completion date set by the utility in paragraph (f)(2)(ii) in this section (or, if the utility has asserted its 15-day right of control, 15 days later), the new attacher may complete the make-ready specified pursuant to paragraph (f)(2)(i) of this section.

* * * * *

(3) Once a utility provides the notices described in this section, it then must provide the new attacher with a copy of the notices and the existing attachers' contact information and address where the utility sent the notices. The new attacher shall be responsible for coordinating with existing attachers to encourage their completion of make-ready by the dates set forth by the utility in paragraph (f)(1)(ii) of this section for communications space attachments or paragraph (f)(2)(ii) of this section for attachments above the communications space.

(4) Utilities shall notify a new attacher as soon as practicable but no later than 15 days after receipt of payment specified in paragraph (e)(2) of this section if the utility knows or reasonably should know that it cannot meet the make-ready deadline. Existing attachers shall notify the utility and a new attacher as soon as practicable but no later than 15 days after receiving notice from the utility pursuant to the requirements of paragraph (e) of this section that the existing attacher knows or reasonably should know that it cannot meet the make-ready deadline. Pursuant to paragraph (j)(3) of this section, a new attacher can elect self-help for the make-ready work that the notifying party cannot do any time after it receives the notice.

(g) A utility shall complete its make-ready in the communications space by the same dates set for existing attachers in paragraph (f)(1)(ii) of this section or its make-ready above the communications space by the same dates for existing attachers in paragraph (f)(2)(ii) of this section (or if the utility has asserted its 15-day right of control, 15 days later).

(h) * * *

(1) A utility shall apply the timeline described in paragraphs (d) through (g) of this section to all requests for attachment up to the lesser of 300 poles or 0.5 percent of the utility's poles in a state.

(2) A utility may add 15 days to the survey period described in paragraph (d) of this section and 45 days to the make-ready periods described in paragraph (f) of this section, for orders greater than the lesser of 300 poles or 0.5 percent of the utility's poles in a state and up to the lesser of 3,000 poles or 5 percent of the utility's poles in a state (Mid-Sized Orders).

(3) A utility may add 45 days to the survey period described in paragraph (d) of this section, 15 days to the estimate period described in paragraph (e) of this section, and 90 days to the make-ready periods described in paragraph (f) of this section to orders greater than the lesser of 3,000 poles or 5 percent of the utility's poles in a state up to the lesser of 6,000 poles or 10 percent of the utility's poles in a state (Large Orders).

(4) A utility shall negotiate in good faith the timing of all requests for attachment larger than the lesser of 6,000 poles or 10 percent of the utility's poles in a state.

(5) A utility may treat multiple requests from a single new attacher as one request when the requests are filed within 30 days of one another. However, a utility shall not impose application size limits in combination with application frequency limits that have the effect of restricting the number of pole attachments new attachers may seek in a given timeframe.

(i) * * *

(3) * * * An existing attacher that so deviates shall immediately notify, in writing, the new attacher and other affected existing attachers and shall identify the affected poles and include a detailed explanation of the basis for the deviation and a new completion date, which in no event shall extend beyond 60 days from the date the notice described in paragraph (f)(1) of this section is sent by the utility (or up to 105 days in the case of Mid-Sized Orders or up to 150 days in the case of Large Orders). * * *

(j) * * *

(1) *Surveys.* If a utility fails to complete a survey as specified in paragraph (d)(3)(i) of this section, then a new attacher may conduct the survey in place of the utility and, as specified in § 1.1412, hire a contractor to complete a survey.

* * * * *

(2) *Estimates.* If the utility fails to present an estimate to the new attacher by the date specified in paragraph (e) of this section, then a new attacher may prepare the estimate in accordance with the requirements applicable to utility-prepared estimates set forth in

paragraph (e) of this section. If a new attacher exercises its self-help option to prepare an estimate for utility review, the new attacher shall (1) wait until the utility's 14-day deadline (or 29 days in the case of Large Orders) has expired before exercising the self-help remedy; (2) provide notice to the utility that it is exercising its self-help remedy for an estimate; (3) use an approved contractor to prepare the estimate in accordance with § 1.1412(a) and (b); and (4) allow utilities the ability to review and approve the self-help estimate at the attacher's expense, but expenses must be reasonable and based only on the actual costs incurred by the utility in reviewing the estimate. The new attacher cannot use self-help for estimates of pole replacements. The utility must provide the new attacher with a written decision on the self-help estimate within 14 days of receiving the estimate from the new attacher or before it is withdrawn by the attacher, whichever is later. If the estimate is accepted by the utility, then it is subject to the reconciliation process set forth in § 1.1411(e)(3). If the estimate is not accepted by the utility, then the utility must detail in writing the reasons for non-acceptance. The attacher then has the ability to submit a revised estimate to the utility without starting the pole attachment timeline from the beginning.

(3) *Make-ready.* If make-ready is not complete by the date specified in paragraph (f) of this section, then a new attacher may conduct the make-ready in place of the utility and existing attachers, and, as specified in § 1.1412, hire a contractor to complete the make-ready.

* * * * *

(k) *One-touch make-ready option.* For attachments involving simple make-ready, new attachers may elect to proceed with the process described in this paragraph in lieu of the attachment process described in paragraphs (d) through (g) and (j) of this section.

* * * * *

(2) *Application review on the merits.* The utility shall review on the merits a complete application requesting one-touch make-ready and respond to the new attacher either granting or denying an application within 15 days of the utility's receipt of a complete application (or within 30 days in the case of Mid-Sized Orders or within 45 days in the case of Large Orders as described in paragraph (h) of this section).

* * * * *

(ii) Within the 15-day application review period (or within 30 days in the case of Mid-Sized Orders or within 45

days in the case of Large Orders as described in paragraph (h) of this section), a utility may object to the designation by the new attachers' contractor that certain make-ready is simple. The utility's objection is final and determinative so long as it is specific and in writing, includes all relevant evidence and information supporting its decision, made in good faith, and explains how such evidence and information relate to a determination that the make-ready is not simple.

* * * * *

(4) * * *

(iii) In performing make-ready, if the new attacher or the utility determines that make-ready classified as simple is complex, then that specific make-ready must be halted and the determining party must provide immediate notice to the other party of its determination and the impacted poles. The affected make-ready shall then be governed by paragraphs (e) through (j) of this section and the utility shall provide the notice required by paragraph (f) of this section as soon as reasonably practicable.

* * * * *

■ 4. Amend § 1.1412 by revising the section heading, the first sentence in the introductory text of paragraph (b), paragraphs (b)(1) and (b)(2) and adding paragraph (e) to read as follows:

§ 1.1412 Contractors for survey, estimates, and make-ready.

* * * * *

(b) *Contractors for simple work.* A utility may, but is not required to, keep up-to-date a reasonably sufficient list of contractors it authorizes to perform surveys, estimates, and simple make-ready. * * *

(1) If the utility does not provide a list of approved contractors for surveys,

estimates, or simple make-ready or no utility-approved contractor is available within a reasonable time period, then the new attacher may choose its own qualified contractor that meets the requirements in paragraph (c) of this section. When choosing a contractor that is not on a utility-provided list, the new attacher must certify to the utility that its contractor meets the minimum qualifications described in paragraph (c) of this section when providing notices required by § 1.1411(j)(1)(ii), (j)(2)(i), (k)(3)(i), and (k)(4).

(2) The utility may disqualify any contractor chosen by the new attacher that is not on a utility-provided list, but such disqualification must be based on reasonable safety or reliability concerns related to the contractor's failure to meet any of the minimum qualifications described in paragraph (c) of this section or to meet the utility's publicly available and commercially reasonable safety or reliability standards. The utility must provide notice of its contractor objection within the notice periods provided by the new attacher in § 1.1411(j)(1)(ii), (j)(2)(i), (k)(3)(i), and (k)(4) and in its objection must identify at least one available qualified contractor.

* * * * *

(e) Utilities must respond to an attacher's request to add contractors to their lists of contractors authorized to perform self-help surveys, estimates, and make-ready, as provided by paragraphs (a) and (b) of this section, within 30 days of receipt.

(1) The response must state whether the contractor meets the requirements of paragraph (c) of this section and will be added to the utility's list of approved contractors for survey, estimate, and make-ready work pursuant to paragraph (a) or (b) of this section following the

successful completion of any reasonable steps to begin work established by the utility. For contractors proposed to perform work above the communications space, such reasonable steps may include any evaluation, approval, orientation, or other requirements that the utility would ordinarily apply to contractors that perform work on its electric power system. If the contractor has been denied, the response must describe the bases for rejection, be nondiscriminatory, and based on a fair application of commercially reasonable requirements for contractors related to issues of safety or reliability.

(2) If a utility fails to provide the response required by paragraph (e)(1) of this section within 30 days of receipt of an attacher's request, the contractor proposed by the attacher will be deemed approved to perform self-help surveys, estimates, and make-ready work on the utility's poles consistent with paragraphs (a) or (b) of this section, and must be added to the utility's approved list of contractors following the successful completion of any reasonable steps to begin work established by the utility.

(3) A utility may disqualify a contractor that has been approved pursuant to paragraph (e)(1) or deemed approved pursuant to paragraph (e)(2) based on reasonable safety or reliability concerns related to the contractor's failure to meet any of the minimum qualifications described in paragraph (c) of this section or to meet the utility's uniformly applied and reasonable safety or reliability standards. Written notice must be provided to the attacher stating the specific safety and reliability bases for the disqualification.

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Part V

The President

Executive Order 14338—Improving Our Nation Through Better Design

Presidential Documents

Title 3—

Executive Order 14338 of August 21, 2025

The President

Improving Our Nation Through Better Design

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:

Section 1. *Purpose and Policy.* America has long led the world in innovation, technological advancement, and design. But with a sprawling ecosystem of digital services offered to Americans, the Government has lagged behind in usability and aesthetics. There is a high financial cost to maintaining legacy systems, to say nothing of the cost in time lost by the American public trying to navigate them. It is time to fill the digital potholes across our Nation.

With this order, I am announcing “America by Design,” a national initiative to improve experiences for Americans, starting by breathing new life into the design of sites where people interface with their Government. It is time to update the Government’s design language to be both usable and beautiful. This effort will be facilitated by a new National Design Studio and by a new Chief Design Officer. The Chief Design Officer will help recruit top creative talent, coordinate with executive departments and agencies (agencies), and devise innovative solutions.

It is the policy of my Administration to deliver digital and physical experiences that are both beautiful and efficient, improving the quality of life for our Nation. Towards that end, the National Design Studio will advise agencies on how to reduce duplicative design costs, use standardized design to enhance the public’s trust in high-impact service providers, and dramatically improve the quality of experiences offered to the American public.

Sec. 2. *Establishing America by Design and the National Design Studio.*

(a) There is established a national initiative, America by Design, to improve comprehensively the visual presentation and usability of Federal services provided to the public in both digital and physical spaces, creating first-class online and offline experiences for Americans.

(b) To help facilitate the America by Design initiative, there is established within the White House Office of the Executive Office of the President the National Design Studio (NDS) and, within the NDS, a new position entitled the Chief Design Officer. The NDS shall be led by an Administrator, who shall report to the Office of the White House Chief of Staff. There is further established within the NDS, in accordance with section 3161 of title 5, United States Code, a temporary organization headed by the NDS Administrator and dedicated to helping advance the America by Design initiative. The temporary organization shall terminate 3 years from the date of this order, but that termination shall not be interpreted to imply the termination, attenuation, or amendment of any other authority or provision of this order.

Sec. 3. *Implementing America by Design.* (a) Heads of agencies shall consult with the Chief Design Officer to implement the America by Design initiative at their respective agencies and shall produce initial results by July 4, 2026.

(i) Heads of agencies shall prioritize improving websites and physical sites that have a major impact on Americans’ everyday lives.

(ii) The Administrator of General Services shall consult with the Chief Design Officer to update the United States Web Design System consistent with the policies set forth in this order.

(iii) Heads of agencies shall consult with the Chief Design Officer to ensure Government-wide compliance with the 21st Century Integrated Digital Experience Act, Public Law 115–336.

(b) The Chief Design Officer shall consult with thought leaders and research and design firms on how best to implement the America by Design initiative. In order to employ the most talented designers of our generation to serve their country, the Chief Design Officer shall help recruit designers and other experts from the private sector as well as other sources of expertise. Heads of agencies shall use all relevant hiring authorities to facilitate this effort, including title IV of the Intergovernmental Personnel Act of 1970, Public Law 91–648, 5 U.S.C. 3371 *et seq.*

(c) The Chief Design Officer shall consult with the Director of the Office of Management and Budget, as appropriate, in carrying out his or her obligations under this order.

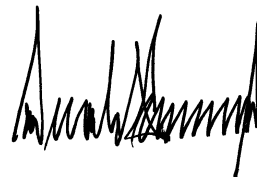
Sec. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
August 21, 2025.

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